

**TOWN OF ROLESVILLE
INDEPENDENT CONTRACTOR SERVICE AGREEMENT**

THIS INDEPENDENT CONTRACTOR AGREEMENT (hereinafter, this "Agreement"), entered into this XX of XX, 201XX, by and between the **TOWN OF ROLESVILLE**, a North Carolina municipal corporation (hereinafter, the "Town") and XX (hereinafter "Contractor").

WHEREAS, the Town and Contractor desire to enter into an Agreement whereby Contractor shall provide the following "Service":

XX

NOW, THEREFORE, in consideration of the mutual promises and obligations herein set forth, the sufficiency and adequacy of which is hereby acknowledged, the parties, and their respective successors, assigns, executors, administrators and legal representatives, hereby agree as follows:

General Terms. The Contractor shall provide the Service set forth hereinabove, in consideration for payment of no more than XX dollars per XX, for a period of XX based on Contractor's proposal which is attached hereto and incorporated herein by reference. Should any term of the attached proposal conflict with the terms contained in this Agreement, the terms of this Agreement shall control and supersede those terms of the Contractor's proposal. The Contractor warrants that it will perform the Scope herein in a good and workmanlike manner and that it knows and is familiar with all applicable laws, regulations and standard practices regarding these Services and has the expertise necessary to properly perform the obligations undertaken by this Agreement. The Contractor, and its employees and subcontractors, shall perform the Services herein as Independent Contractors and are not entitled to employee benefits of any kind. This Agreement will not be construed in any way to be a joint venture, partnership or employer-employee relationship. The Contractor further understands and agrees that he/she is responsible for the payment of all state and federal income taxes. In addition, the Contractor shall provide the Town a business license and any other licenses or certifications required by federal, state or local law as well as copies of any amendments or renewals thereof. The Contractor shall give the Town at least thirty (30) days written notice prior to any cancellation, modification or non-renewal of any license and/or certification required by federal, state or local law. Neither party may assign, transfer or delegate any of the rights or obligations herein without the prior written consent of the other party. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina and the venue for any litigation arising out of this Agreement shall be Wake County.

Payment. Town shall pay Contractor for the Services pursuant to the following:

Contractor shall invoice Town no more than every 30 days. The Town has the right to request that the Contractor provide reasonable documentation to support an invoice. Town shall pay invoices within 30 days of receipt of such invoice.

Release and Indemnity. The Contractor hereby releases and forever discharges the Town, its officers, agents and employees, from any and all claims, demands, expenses, costs and liabilities of any kind or nature directly or indirectly related to any personal injury and/or property damage arising out of the performance of the Service, except those claims that result from the sole negligence of the Town or a

Town employee acting within the scope of the employment. The Contractor shall indemnify, defend and hold harmless the Town, its agents and employees from and against any and all claims, demands expenses, costs and liabilities of any kind or nature, directly or indirectly caused by, arising out of, or related to the intentional, negligent or reckless acts or omissions of the Contractor, and its agents or employees, in the performance of these services.

Insurance. During the performance of the Service described herein, upon request of the Town, the Contractor shall:

- (1) Maintain Commercial General Liability to protect the Contractor against any and all injuries to third parties, including personal injury and property, and special and consequential damages, resulting from any negligent action, omission or operation by the Contractor or in connection with the services described herein. The insurance shall also include, coverage for explosion, collapse, and underground hazards, where required. This insurance shall provide bodily injury and property damage limits of not less than \$1,000,000 for each occurrence, respectively, and shall provide at least \$5,000 in Medical Expenses (Med Pay) coverage. The minimum liability coverage required may be increased depending on the nature of the services provided.
- (2) If this Agreement is for a design, engineering or consulting Service, maintain Professional Liability insurance of at least \$1,000,000.00 per incident.
- (3) Maintain Owned, non-owned, and hired Automobile Liability insurance, including property damage insurance, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the Contractor in furtherance of these services. In addition, all mobile equipment used by the Contractor in connection with the contract work, will be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy. This insurance shall provide bodily injury and property damages limits of not less than \$1,000,000 combined single limit/each accident.
- (4) Maintain Workers' Compensation insurance as required by North Carolina law.
- (5) Return with this agreement, before beginning the Service, an original, signed Certificate of Insurance, evidencing such insurance, naming the Town as an additional insured and stating that the coverage is primary to any other coverage the Town may possess. The Contractor shall furnish the Town immediate written notice of any changes or cancellation of the policy. The failure of the Contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished to the Town's Risk Manager. Insurance coverage required in these specifications shall be in force throughout the Term. Municipal Exclusions, if any, for General Liability coverage shall be deleted. Should Contractor fail to immediately provide acceptable evidence of current insurance at any time during the Term, the Town shall have the absolute right to terminate the Contract without any further obligation to the Contractor, and the Contractor shall be liable to the Town for all available remedies, in equity and at law.
- (6) The Contractor will secure evidence of all insurance policies of its subcontractors which shall be made available to the Town on demand. The Contractor shall require its subcontractors to name the Contractor and the Town as additional insured parties on the subcontractor's general and automobile liability insurance policies. The Contractor shall be as fully responsible to the Town for

the acts and omissions of its subcontractors and of persons employed by them as it is for the acts and omissions of persons directly employed by it.

- (7) Contractual and other Liability insurance provided under this Contract shall not contain a supervision inspection or engineering services exclusion that would preclude the Town from supervising and/or inspecting the project as to the end result.

Termination. Unless otherwise agreed upon in writing by the parties, this Agreement may be terminated by either party for convenience with no less than ten calendar days notice. In the event of termination, the Contractor will be paid for all Services properly rendered to the date of termination and shall promptly discontinue all Services affected (unless a termination notice from the Town directs otherwise). In the event of any termination, the Contractor will be paid for all Services properly rendered to the date of termination and he/she shall (i) promptly discontinue all Services affected (unless a termination notice from the Town directs otherwise); and (ii) deliver to the Town all documents, data, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Contractor in performing the Services herein. Other than being paid for Services properly rendered to the date of termination, Contractor hereby waives any and all other claims for lost profits, lost opportunity, and for any and all other direct, indirect special and consequential damages. In the event that the Town terminates this Agreement due to the Contractor's poor workmanship, failure to perform the Service set out herein or, otherwise, for breach of the Agreement, or in the event that the Contractor terminates this agreement for convenience or otherwise, the Town may pursue and recover all remedies available at law or in equity, as these remedies are cumulative and do not exclude each other.

Reuse of Documents. All documents, including drawings, specifications, supporting calculations, computer software, etc., prepared by the Contractor pursuant to this Agreement are instruments of service with respect to this Agreement and Contractor shall provide at least one copy of each to Town upon Town's request. The reuse of these documents by the Town or by others authorized by the Town, whether in this project or any other project, entitles the Contractor to no additional compensation. The Town reserves the right to require the Contractor to submit copies to the Town of any Service information and documentation during and after the completion of the Service with the Contractors compensation being limited to the direct printing and copying expense and/or direct expenses to copy and supply computer information on a diskette. The Contractors indemnity, release and warranty are limited to the use contemplated in this Agreement and Contractor shall not be liable to the Town or any third party for any claim arising out of the use of the Contractors documents apart from this Agreement.

Notices. Any notice or other communication herein shall be in writing and shall be sent via a method permitting confirmed receipt (such as registered U.S. mail or an overnight courier service such as Federal Express). All notices shall be confirmed by facsimile transmission. All notices shall be deemed given when deposited, postage prepaid, in the United States mail or to the overnight courier service, addressed as set forth below, or to such other address as any one party shall advise the other in writing:

If to the Town:

Name: XX

Position: XX

Address: Town of Rolesville

If to the Contractor:

Name: XX

Position: XX

Address: XX

PO Box 250
502 Southtown Circle
Rolesville, NC 27571

Severability. If any provision of this Agreement is held to be void, invalid, illegal or unenforceable under any law or regulation, such void, invalid, illegal or unenforceable provision shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the Town and the Contractor and this Agreement shall be considered as if such void, invalid, illegal or unenforceable provision had never been including herein.

Entire Agreement. This Agreement represents the entire understanding and agreement between the parties hereto relating to the Services and supersedes any and all prior negotiations, discussions and agreement, whether written or oral, between the parties regarding same. Headings within the Agreement are for convenience only and do not define, limit or construe the contents of such sections.

Amendment or Modification. This Agreement cannot be amended or modified except by another written document duly signed and executed by the Town and the Contractor.

Waiver. Failure or delay on the part of the Town to exercise any right, remedy, power or privilege hereunder shall not operate as a waiver of any current or future default. Further, a waiver of one provision of this Agreement is not a waiver of all or future provisions of this Agreement.

ADA, OSHA and Equal Opportunity. The Contractor shall comply with the applicable provisions of the Americans with Disabilities Act (ADA), the State of North Carolina Occupational/Safety and Health Act (OSHA) and the State and Federal Equal Opportunity Statutes, as well as all rules and regulations promulgated thereunder.

E-verify. The Contractor and its subcontractors shall comply with North Carolina law related to the use of the federal e-Verify program to verify the work authorization of newly hired employees.

Iran Divestment Act Certification. The Contractor verifies that it is not an entity listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 147-86.58.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives on the day and the year first above written.

CONTRACTOR:

TOWN OF ROLESVILLE:

Kelly Arnold, Town Manager

Name / Title

This instrument has been pre-audited in the manner required by the Local Government and Fiscal Control Act. This the ____ day of _____, 201__.

Amy L. Stevens, Finance Officer