INDEPENDENT CONTRACTOR SERVICES AGREEMENT

This INDEPENDENT CONTRACTOR SERVICES AGREEMENT is made effective the ____ day of _____ (the "**Effective Date**") between the **TOWN OF ROLESVILLE**, a North Carolina municipal corporation and body politic (the "**Town**"); and _____, (the "**Contractor**").

W I T N E S S E T H

WHEREAS, the Town has determined it to be in the interests of the Town and the public to commission the Contractor to perform the following services:

_____

_____

These are described with greater particularity in the Contractor's proposed scope of work attached hereto and incorporated herein as Exhibit A (the "**Proposal**"); and

WHEREAS, the Town desires to engage the Contractor to perform certain services for the Town, and the Contractor has agreed to perform such services in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, for the consideration set forth herein, the Town and Contractor agree that Contractor shall perform the services consistent with this Agreement and the Proposal.

DEFINITIONS.

- "**Agreement**" means this Independent Contractor Services Agreement, including all exhibits.
- "**Background IP**" means the Contractor's pre-existing materials, methods, and proprietary information.
- "**Change Order**" means a written amendment to this Agreement executed by both parties memorializing a change that affects compensation or schedule.
- "**Deliverables**" means the reports, data, work product, and other tangible items identified in Exhibit A to be furnished by Contractor to Town as part of the Services.
- "**Work Materials**" means the Contractor's preliminary notes, internal documents, and other materials prepared in providing the Services that are not Deliverables.
- "**Services**" means the services described in the Proposal.

SECTION 1. TERM. This Agreement shall commence on the Effective Date and shall continue until the earlier of: (a) completion of all Services and final acceptance of all Deliverables by the

Town; or (b) earlier termination in accordance with this Agreement (the "Term"). The Term may be extended by mutual written agreement of the parties.

SECTION 2. COMPENSATION AND PAYMENT. The Town shall compensate Contractor as provided in the Proposal, subject to the following additional terms and requirements: For Contractor's Services, total compensation is on a time and, if applicable, materials basis and shall not exceed _____ without a properly approved Change Order. Reimbursable expenses as may be described in the Proposal will be paid at cost without markup and must be pre-approved; travel expenses, if allowed, are limited to rates consistent with the Town of Rolesville travel policy. Each monthly invoice must include a summary by task, percent complete, labor categories and hours, rate, extended amounts, a list of reimbursables with receipts for any item over $50, and the current not-to-exceed balance. The Town shall make payments on invoices within thirty (30) days of receipt of a complete and accurate invoice. Town shall not be obligated to pay for Services performed beyond the not-to-exceed amount or beyond the authorized scope absent a fully executed Change Order. In the event the Town questions the amount of any invoice, any sums not in dispute shall be promptly paid and the disputed amounts paid upon adjustment and/or resolution of the dispute.

SECTION 3. COMMENCEMENT OF WORK; STANDARD OF CARE. Contractor agrees to begin work promptly upon notice from the Town. Contractor shall perform the Services in a competent, workmanlike manner, using qualified personnel and in accordance with industry standards for similar services. Contractor shall not engage in any activity or accept any employment that would reasonably appear to compromise Contractor's judgment with respect to the Services.

SECTION 4. SCHEDULE. As soon as practicable after the date of this Agreement, Contractor shall submit for the Town's approval a schedule for the performance of services as established by the Proposal (the "**Schedule**"). The Schedule shall establish an estimate of the time necessary for completion of tasks to a state of final deliveries. The Schedule shall include allowances for periods of time required for the Town's review of drafts.

- Once the Schedule is agreed to by the Town, it shall be the responsibility of Contractor to maintain reasonable progress consistent with the Schedule. If for any reason it appears any Services will be delayed, the Contractor shall notify the Town, in writing, prior to the due date of that phase with an explanation of the reason(s) for the delay. If the delay(s) are approved by the Town, the Schedule shall be modified and the Agreement may be amended as necessary. Failure to give the required notification of delay or failure to meet the Schedule timeline shall constitute failure to perform in accordance with the terms of this Agreement and the Town may pursue all remedies provided by law or equity, including Agreement termination.

- Town may, for its convenience, direct Contractor to suspend all or part of the Services by written notice. Contractor shall promptly resume upon Town's direction and propose a recovery schedule; schedule and compensation impacts, if any, will be addressed by Change Order.

SECTION 5. SCOPE OF SERVICES; DELIVERABLES; CHANGES. Contractor shall perform the Services and furnish to Town the Deliverables. Town may, by written directive, make changes to the scope, sequence, or timing of the Services. Any change that affects compensation

of Contractor or the timing of the Schedule must be memorialized in a written Change Order executed by both parties before the changed work is performed. Contractor shall, without additional cost to Town, promptly correct any portion of the Services or Deliverables that fails to conform to the requirements of this Agreement, if Town notifies Contractor within one year after final acceptance of the applicable Deliverable.

SECTION 6. INSURANCE. Contractor, at its own expense, shall maintain the following insurance policies at commercially reasonable levels throughout the term of this Agreement:

- Commercial General Liability
- Workers' Compensation: Statutory; Employers' Liability.
- Professional Liability (Errors & Omissions) (if applicable) [Required only if Contractor provides services requiring professional licensure.]

Town, its officers, officials, employees, and agents shall be named as additional insureds on the Commercial General Liability policy for ongoing and completed operations, on a primary and non-contributory basis, with a waiver of subrogation in favor of Town on Commercial General Liability and Workers' Compensation policies where permitted by law. Insurers shall be licensed in North Carolina with an A.M. Best rating of A- VII or better. Certificates of insurance and required endorsements must be provided before issuance of a notice to proceed and upon renewal. Failure to maintain required insurance is a material breach.

SECTION 7. INDEMNIFICATION; GOVERNMENTAL IMMUNITY. Contractor indemnifies and holds harmless the Town and its officers, officials, and employees from and against third-party claims, damages, losses, and expenses, including reasonable attorneys' fees, but only to the extent caused by the negligent acts or omissions or willful misconduct of Contractor, its employees, or subcontractors in the performance of the Services. This indemnity shall not require Contractor to indemnify Town for Town's own negligence or for the negligence of others. Nothing herein shall be construed as a duty to defend. Nothing in this Agreement shall be construed as a waiver of Town's governmental or sovereign immunity or any other defenses available to Town under North Carolina law. Any limitation of Contractor's liability or exclusion of damages shall be void and of no effect against Town unless expressly set forth in this Agreement and approved by Town's authorized official.

SECTION 8. INTELLECTUAL PROPERTY; OWNERSHIP; LICENSE. Upon Town's payment for the applicable Services, Town shall own the Deliverables. Contractor retains ownership of its Work Materials and its Background IP; however, Contractor grants Town a perpetual, irrevocable, royalty-free, non-exclusive license to use, reproduce, and create derivative works from the Work Materials and Background IP as embedded in or necessary to use the Deliverables for Town's governmental purposes. Contractor shall obtain equivalent rights for Town from subcontractors.

SECTION 9. PUBLIC RECORDS; CONFIDENTIALITY; TRADE SECRETS. Contractor acknowledges that Town is subject to North Carolina public records law. Records in Contractor's possession that are made or received in connection with the transaction of public business may be

public records. Contractor shall clearly mark, at the time of submission, any portion of materials it contends are trade secrets under applicable law and provide a legal basis for the same. Town will use reasonable efforts to notify Contractor of public records requests implicating such materials, but will make disclosures as required by law.

SECTION 10. RECORDS RETENTION AND AUDIT. Contractor shall maintain complete and accurate project and accounting records sufficient to document performance and charges under this Agreement for a period of at least five (5) years after final payment. Town, its auditors, and state and federal authorities may audit such records upon reasonable notice.

SECTION 11. DATA SECURITY. If Contractor will access Town data that includes personal or confidential information, Contractor shall implement and maintain appropriate safeguards, shall notify Town without unreasonable delay upon discovery of any data breach impacting such data, and shall cooperate with Town's incident response.

SECTION 12. PUBLIC ANNOUNCEMENTS. Unless otherwise required by applicable law, Contractor shall not issue any press releases, make any public announcements, or otherwise communicate with any news media regarding this Agreement or the transactions contemplated hereby without the prior written consent of the Town (which consent shall not be unreasonably withheld), and the parties shall cooperate as to the timing and contents of any such approved announcements.

SECTION 13. SUBCONTRACTORS AND KEY PERSONNEL. Contractor shall not use any subcontractors not referenced in the Proposal without Town's prior written consent. Contractor shall not replace any key personnel identified in the Proposal without Town's prior written consent, not to be unreasonably withheld. Contractor shall cause its subcontractors to agree in writing to terms no less protective of the Town than those in this Agreement.

SECTION 14. REPRESENTATIONS & COMPLIANCE WITH LAW. Contractor represents and warrants that it is duly organized, validly existing, and in good standing in its state of organization; is authorized to transact business in North Carolina; and that it holds all licenses and permits required to perform the Services. Contractor further certifies that: (a) Contractor and its subcontractors will comply with all applicable laws; (b) Contractor participates in E-Verify as required by North Carolina law; (c) Contractor is not debarred or otherwise excluded from federal or state contracts; (d) Contractor is not on any list maintained by the North Carolina State Treasurer prohibiting public contracting; (e) Contractor will not discriminate in employment; and Contractor further warrants that Contractor has no conflicts of interest in the entering of this Agreement and has not made improper gifts to Town officials.

SECTION 15. INDEPENDENT CONTRACTOR. Contractor is an independent contractor and not an employee, agent, or partner of Town. Contractor has exclusive control over the manner and means of performing the Services, subject to the requirements of this Agreement.

SECTION 16. ADDITIONAL SERVICES. If the Town requests services beyond the Proposal's scope, Contractor shall be paid for such additional services as agreed in writing prior to beginning the work.

SECTION 17. TERMINATION OF AGREEMENT.

- The Town may terminate this Agreement for any reason upon ten (10) calendar days' written notice.

- This Agreement may be terminated by either party upon seven (7) calendar days' written notice should one party fail to perform in accordance with the terms of this Agreement through no fault of the other.

- In the event of termination, the Contractor shall receive payment for Services properly performed prior to the effective date of termination, subject to any setoffs. Upon termination, Contractor shall deliver to Town all completed Deliverables and work-in-progress, in editable native formats to the extent practicable.

SECTION 18. DEFAULT AND REMEDIES.

- Events of Default. Each of the following shall constitute an event of default ("**Event of Default**") by the Contractor: (a) failure to perform or comply with any material term, covenant, or condition of this Agreement; (b) failure to perform the Services in accordance with the standards set forth in this Agreement; (c) failure to proceed diligently with the Services; (d) failure to maintain required insurance coverage; (e) assignment or subcontracting in violation of this Agreement; (f) material misrepresentation in any certification, representation, or warranty made by Contractor under this Agreement; (g) Contractor's insolvency, bankruptcy filing, or assignment for the benefit of creditors; or (h) Contractor's debarment or exclusion from federal or state contracting.

- Notice and Cure. Upon the occurrence of an Event of Default (other than under subsections (f), (g), or (h) above, which shall not be subject to cure), the Town shall provide written notice to Contractor specifying the nature of the default. Contractor shall have fifteen (15) calendar days from receipt of such notice to cure the default to the Town's reasonable satisfaction, or if the default is of a nature that cannot reasonably be cured within fifteen (15) days, Contractor shall commence cure within such period and diligently pursue completion of the cure. Failure to cure within the applicable cure period shall entitle the Town to exercise any of the remedies set forth below.

- Remedies Upon Default. Upon the occurrence of an uncured Event of Default, the Town may, at its option and in its sole discretion, exercise any one or more of the following remedies: (a) terminate this Agreement immediately upon written notice to Contractor; (b) withhold any payments due to Contractor under this Agreement; (c) engage another contractor to complete the Services and recover from Contractor any additional costs incurred by the Town in excess of the amounts that would have been payable to Contractor had Contractor completed the Services; (d) set off against any amounts due to Contractor any damages, costs, or expenses incurred by the Town as a result of the Event of Default; (e) demand and recover from Contractor all direct damages suffered by the Town as a result of the Event of Default; and (f) pursue any other remedy available at law or in equity.

- Remedies Cumulative. The remedies provided in this Agreement are cumulative and not exclusive. The exercise of any remedy shall not preclude the exercise of any other remedy, and the

Town's failure to exercise any remedy shall not constitute a waiver of such remedy or any other remedy.

- Survival of Remedies. The provisions of this Section shall survive termination or expiration of this Agreement.

SECTION 19. DISPUTE RESOLUTION. Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation pursuant to guidelines of the North Carolina Dispute Resolution Commission. Pending the resolution of any dispute, the Contractor shall continue to render services under this Agreement and the Town shall continue to make payments of amounts due the Contractor under this Agreement. If the parties are not able to resolve a dispute through mediation pursuant to this Section, either may proceed with litigation in the courts of Wake County, North Carolina, which shall have exclusive jurisdiction over the matter.

SECTION 20. ATTORNEYS' FEES. In any legal suit, action, or proceeding arising out of or relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, expenses, and court costs, in addition to all other damages to which it may be entitled.

SECTION 21. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, without regard to conflict of law principles.

SECTION 22. FORCE MAJEURE. No party shall be liable or responsible to the other party nor be deemed to have defaulted under or breached this Agreement for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from one or more of the following: (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order or law; (e) actions, embargoes, or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; or (g) national or regional emergency (each a "**Force Majeure Event**"). The party suffering a Force Majeure Event shall give Notice promptly to the other party and shall use diligent efforts to end the failure or delay and ensure its effects are minimized. Financial inability to perform shall not constitute a Force Majeure Event.

SECTION 23. NO PLEDGE OF TAXING POWER; PREAUDIT. Contractor acknowledges that all terms and conditions of this Agreement are dependent upon appropriation of funds. This Agreement shall automatically terminate if funds cease to be available. Pursuant to the Local Government Budget and Fiscal Control Act, this Agreement shall not be effective until the Finance Officer has preaudited this obligation by executing the certificate included on the signature page of this Agreement. No work shall begin and no payment shall be due until the preaudit certificate has been executed.

SECTION 24. ASSIGNMENT. Contractor may not assign its rights or delegate its obligations under this Agreement without the Town's prior written consent. Any unauthorized

assignment or delegation is void. No permitted assignment or delegation relieves Contractor of its obligations.

SECTION 25. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and permitted assigns.

SECTION 26. NOTICES. All notices, requests, consents, claims, demands, waivers, and other communications hereunder, whether required by this Agreement or in any way related to the transaction contracted for herein (each, a "**Notice**") shall be void and of no effect unless given in accordance with the provisions hereof. A Notice shall be in writing and shall be deemed to have been given (a) when delivered by hand to the addressee (with written confirmation of receipt) or upon refusal of delivery; (b) when received by the addressee if sent by a nationally recognized overnight courier (with written confirmation of receipt) or upon refusal of delivery; (c) on the date sent by email (with confirmation of transmission) if sent during normal business hours; or (d) on the fourth (4^{th}) day after the date mailed, by certified or registered mail (in each case, return receipt requested, postage pre-paid).

Notices must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a Notice given in accordance with this Section):

If to the Town:

_____

If to the Contractor:

_____

SECTION 27. NO WAIVER. No failure or delay by either party in exercising any right shall operate as a waiver of that right, nor shall any single or partial exercise of any right preclude any other or further exercise of that right or the exercise of any other right.

SECTION 28. SEVERABILITY. If any provision of this Agreement is held invalid, illegal, or unenforceable, the remaining provisions shall remain in full force and effect.

SECTION 29. NO THIRD-PARTY BENEFICIARIES. This Agreement is for the sole benefit of the parties and their permitted successors and assigns. Nothing in this Agreement confers any rights on any other person or entity.

SECTION 30. SURVIVAL. The following provisions shall survive the expiration or termination of this Agreement for any reason: Definitions; Compensation and Payment (with respect to amounts accrued prior to termination); Indemnification; Governmental Immunity; Intellectual Property; Ownership; License; Public Records; Confidentiality; Trade Secrets; Records Retention and Audit; Data Security; Default and Remedies; Dispute Resolution; Attorneys' Fees; Governing Law; No Waiver; Severability; No Third-Party Beneficiaries; and this

Survival provision. The survival of these provisions shall not imply that other provisions do not survive if their context or intent requires survival.

SECTION 31. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, representations, or agreements, whether written or oral. This Agreement may be amended only in writing.

SECTION 32. HEADINGS. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

SECTION 33. EXHIBITS. All exhibits are incorporated by reference.

SECTION 34. ORDER OF PRECEDENCE. In the event of a conflict between this Agreement and any exhibit, including the Proposal, the terms of the body of this Agreement control.

SECTION 35. COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together constitute one agreement. Delivery of an executed counterpart by electronic transmission (including PDF) shall have the same effect as delivery of an original. Electronic signatures as defined by the North Carolina Uniform Electronic Transactions Act (N.C. Gen. Stat. § 66-311 et seq.) are binding.

REMAINDER OF PAGE INTENTIONALLY BLANK
SIGNATURE & EXHIBIT PAGES FOLLOW

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth below.

The "Contractor"

By: _____
Name: _____
Title: _____

The "Town"

TOWN OF ROLESVILLE

By: _____
Name: _____
Title: _____

PREAUDIT CERTIFICATE

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

_____
Finance Officer

EXHIBIT A

The "Proposal"
Proposal/Scope of Services