

1

**COUNTY COMMISSIONERS OF CAROLINE COUNTY**  
**CONTRACT FOR MULTI-ROAD PIPE REPLACEMENT**

**THIS CONTRACT** (this “Contract”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between the COUNTY COMMISSIONERS OF CAROLINE COUNTY, MARYLAND, a body politic and corporate and a political subdivision of the State of Maryland (the “County”), and \_\_\_\_\_ (the “Contractor”).

In consideration of the promises and the covenants herein contained, the adequacy and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

**1. Definitions**

In this Contract, the following words have the meanings indicated:

- 1.1 “COMAR” means Code of Maryland Regulations.
- 1.2 “Contract Monitor” means the Roads Supervisor of the Caroline County Department of Public Works or his designee.
- 1.3 “Contractor” means the entity first named above whose principal business address is \_\_\_\_\_ and whose principal office in Maryland is \_\_\_\_\_, whose Federal Employer Identification Number or Social Security Number is \_\_\_\_\_.
- 1.4 “County” means Caroline County, Maryland.
- 1.5 “Financial Proposal” means the Contractor’s Financial Proposal dated \_\_\_\_\_.
- 1.6 “RFP” means the Request for Proposals for River Road Culvert Replacement, Solicitation # \_\_\_\_\_, and any amendments, addenda, and attachments thereto issued in writing by the County.
- 1.7 “Procurement Officer” means the Director of the Caroline County Department of Finance or his designee.
- 1.8 “State” means the State of Maryland.

- 1.9 “Technical Proposal” means the Contractor’s Technical Proposal dated \_\_\_\_\_, 2024, as modified and supplemented by the Contractor’s responses to requests for clarifications and requests for cure, and by any Final and Best Offer.
- 1.10 Capitalized terms not defined herein shall be ascribed the meaning given them in the RFP.

## **2. Scope of Contract**

- 2.1 The Contractor shall perform in accordance with this Contract and Exhibits A-D, which are listed below and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall control. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – The RFP

Exhibit B – The Bid/Proposal Affidavit, executed by the Contractor and dated \_\_\_\_\_ .

Exhibit C – The Technical Proposal

Exhibit D – The Financial Proposal

- 2.2 Caroline County shall not be responsible for any conditions resulting from the reuse of materials that are to be disposed of off-site by the Contractor.
- 2.3 The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of Contractor’s employees and subcontractors as may be necessary to comply with the requirements and regulations of the Health Department of Caroline County or other authorities having jurisdiction and shall commit no public nuisance.
- 2.4 Contractor's attention is directed to the fact that vehicle access to and through the site will be modified as a result of this project. The Contractor will provide temporary signage and other highly visible

barriers to prevent damage to or from vehicles during construction.

- 2.5 The Contractor shall determine the specific locations of all utilities, above and below ground, and shall take whatever precautions are necessary to prevent damage to them during construction. If any area is damaged due to construction activities, the Contractor shall make all necessary repairs at his own expense.
- 2.6 The Contractor will be required to restore any area and/or utilities disturbed during construction, prior to the completion of the project, to a condition equal to or better than existing at time of award of contract.
- 2.7 The Contractor shall be fully and solely responsible for the protection of the public from any construction activities or unfinished work areas. The Contractor shall erect barricades and post warning signs indicating that the construction area is restricted to construction personnel only, except as outlined below.
- 2.8 It shall be the Contractor's responsibility for vehicular traffic control during construction. Caroline County does not assume responsibility for any damage to vehicles caused by the Contractor's activities.
- 2.9 The Contractor shall maintain, at a minimum, the insurance coverages outlined below, or any minimum requirements established by law if higher, for the duration of the Contract, including option periods, if exercised:
- 2.9.1 The following type(s) of insurance and minimum amount(s) of coverage are required:
- A. Commercial General Liability - of \$1,000,000 combined single limit per occurrence for bodily injury, property damage, and personal and advertising injury and \$3,000,000 annual aggregate. The minimum limits required herein may be satisfied through any combination of primary and umbrella/excess liability policies.
- B. Worker's Compensation - The Contractor shall maintain such insurance as necessary or as required under Workers' Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act, to not be less than one million dollars

(\$1,000,000) per occurrence (unless a state's law requires a greater amount of coverage). Coverage must be valid in all states where work is performed.

- C. Automobile or Commercial Truck Insurance - The Contractor shall maintain Automobile or Commercial Truck Insurance (including owned, leased, hired, and non-owned vehicles) as appropriate with Liability, Collision, and PIP limits no less than those required by the State where the vehicle(s) is registered, but in no case less than those required by the State of Maryland.

2.10 The County shall be listed as an additional insured on the faces of the certificates associated with the coverages listed above, including umbrella policies, excluding Workers' Compensation Insurance.

2.10.1 All insurance policies shall be endorsed to include a clause requiring the insurance carrier to provide the Procurement Officer, by certified mail, not less than 30 days' advance notice of any non-renewal, cancellation, or expiration. The Contractor shall notify the Procurement Officer in writing, if policies are cancelled or not renewed within five (5) days of learning of such cancellation or nonrenewal. The Contractor shall provide evidence of replacement insurance coverage to the Procurement Officer at least 15 days prior to the expiration of the insurance policy then in effect.

2.10.2 Any insurance furnished as a condition of the Contract shall be issued by a company authorized to do business in the State.

2.10.3 The Contractor must provide current certificate(s) of insurance with the prescribed coverages, limits and requirements set forth in this section within five (5) Business Days from notice of recommended award. During the period of performance for multi-year contracts, the Contractor shall provide certificates of insurance annually, or as otherwise directed by the Contract Monitor.

2.10.4 Subcontractor Insurance

The Contractor shall require any subcontractors to obtain and maintain comparable levels of coverage and shall provide the Contract Monitor with the same documentation as is required of the Contractor.

- 2.11 The Contractor is responsible for making all necessary notifications required by the plans, specifications and permits required for the implementation of this project. The Contractor must also call Miss Utility (1-800-257-7777) to identify any utilities on the site before starting work. Written notification is to be made 10 days prior to starting work.
- 2.12 There shall be a Preconstruction Conference before the work is started. At that time, requirements for sediment and erosion will be discussed in detail with Caroline County Soil Conservation District staff. The Contractor is responsible for any sediment and erosion control measures required by regulatory authority regardless of whether or not they are explicitly stated in the Contract Documents. The County will compensate the Contractor for the cost of such measures at cost plus 10%. Sediment and erosion control measures must be in place and approved by the County Soil Conservation District before the work is started.
- 2.13 The Contractor must be sensitive to the community and adjacent property owners. The Contractor shall immediately advise the County of any problems involving the community.
- 2.14 A Performance Bond shall be supplied by the Contractor in the full value of the project.
- 2.15 The Contractor shall adhere to the terms of all permits required for the implementation of this project. This shall include permits from the Caroline County Soil Conservation District, and other applicable permits.
- 2.16 The Contractor shall prepare all work change orders, if any, for County approval.
- 2.16.1 The Contractor shall manage all work required under the Contract.
- 2.17 The County reserves the right to terminate the Contract within thirty (30) days' notice in writing, if, in the opinion of the Contract Monitor, the work performed by the Contractor under the provisions of the Contract is not satisfactory.

- 2.18 The Procurement Officer may, at any time, by written order, make unilateral changes in the work within the general scope of the Contract. No other order, statement, or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the time required for the performance of any part of the work, whether or not changed by the order, the Contract shall be modified in writing accordingly. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.
- 2.19 Without limiting the rights of the Procurement Officer under Section 2.18 above, the Contract may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; (b) all parties sign the modification; and (c) all approvals by the required agencies are obtained.

### **3. Period of Performance**

- 3.1 The term of this Contract begins on the date the Contract is signed by the County following any required prior approvals, including any necessary permits, if such approval is required (the "Effective Date") and shall continue until the project is completed (the "Term").
- 3.2. The Contractor's performance under the Contract shall commence as of the date provided in a written NTP.
- 3.3 The Contractor's obligation to pay invoices to subcontractors providing products/services in connection with this Contract, as well as the audit; confidentiality; document retention; patents, copyrights & intellectual property; warranty; indemnification obligations; and limitations of liability under this Contract; and any other obligations specifically identified, shall survive expiration or termination of the Contract.

### **4. Consideration and Payment**

- 4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the County shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted in the Financial

Proposal. Unless properly modified (see above **Section 2**), payment to the Contractor pursuant to this Contract shall not exceed the Contracted amount.

For time and materials Contracts, IDIQ (Indefinite Delivery, Indefinite Quantity) Contracts, or Contracts which include either or both a time and materials or IDIQ element(s), total payments to the Contractor pursuant to this Contract for the time and materials and IDIQ portion(s) may not exceed \$\_\_\_\_\_ (the "NTE Amount"), which includes \$\_\_\_\_\_ for the Initial Term and \$\_\_\_\_\_ for the Renewal Term(s).

Contractor shall notify the Procurement Officer, in writing, at least sixty (60) days before payments reach the NTE Amount. After notification by the Contractor, if the County fails to increase the Contract amount, the Contractor shall have no obligation to perform under this Contract after payments reach the stated amount; provided, however, that, prior to the stated amount being reached, the Contractor shall: (a) promptly consult and work in good faith with the County to establish a plan of action to assure that every reasonable effort is undertaken by the Contractor to complete County-defined critical work in progress prior to the date the NTE Amount will be reached; and (b) when applicable secure databases, systems, platforms, and applications on which the Contractor is working in an industry standard manner so as to prevent damage or vulnerabilities to any of the same due to the existence of any such unfinished work.

- 4.2 Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the County's receipt of a proper invoice from the Contractor.

The Contractor may be eligible to receive late payment interest at the rate of 6% per annum if:

- (1) The Contractor submits an invoice for the late payment interest within thirty days after the date of the County's payment of the amount on which the interest accrued; and
- (2) Suit has not been filed against the County to resolve the dispute.

The County is not liable for interest:

- (1) Accruing more than one year after the 31st day after the County receives the proper invoice; or
- (2) On any amount representing unpaid interest.

Electronic funds transfer shall be used by the County to pay Contractor pursuant to this Contract and any other County payments due Contractor unless the County's Department of Finance grants Contractor an exemption.

- 4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.
- 4.4 Payment of an invoice by the County is not evidence that services or materials were rendered or supplied as required under this Contract.

## **5. Rights to Records**

The Contractor agrees that all documents and materials including, but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations, and data prepared by the Contractor for purposes of this Contract shall be the sole property of the County and shall be available to the County at any time. The County shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.

## **6. Indemnification and Notification of Legal Requests**

- 6.1. At its sole cost and expense, Contractor shall (i) indemnify and hold the County, its employees and agents harmless from and against any and all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including but not limited to attorneys' fees and costs), whether or not involving a third party

claim, which arise out of or relate to the Contractor's, or any of its subcontractors', performance of this Contract and (ii) cooperate, assist, and consult with the County in the defense or investigation of any such claim, demand, action or suit. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the County or that adversely affects the County's rights or interests, without the County's prior written consent.

- 6.2. The County has no obligation: (i) to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations or performance under this Contract, or (ii) to pay any judgment or settlement of any such suit, claim or action. Notwithstanding the foregoing, the Contractor shall promptly notify the Procurement Officer of any such claims, demands, actions, or suits.

## **7. Non-Hiring of Employees**

No official or employee of the County, as defined by the County's Code of Ethics, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the County, become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

## **8. Disputes**

A. The Contractor shall file a written notice of a claim relating to the Contract with the Procurement Officer within 30 days after the basis for the claim is known or should have been known, whichever is earlier.

B. Contemporaneously with or within 60 days of the filing of a notice of a claim on the Contract, but no later than the date that final payment is made, the Contractor shall submit the claim to the Procurement Officer. On conditions the Procurement Officer considers satisfactory to the County, the Procurement Officer may extend the time in which the

Contractor, after timely submitting a notice of claim, must submit a contract claim under the Contract. An example of when the Procurement Officer may grant an extension includes situations in which the Procurement Officer finds that a contemporaneous or timely cost quantification following the filing of the notice of claim is impossible or impractical. The claim shall be in writing and shall contain:

- (1) An explanation of the claim, including reference to all Contract provisions upon which it is based;
- (2) The amount of the claim;
- (3) The facts upon which the claim is based;
- (4) All pertinent data and correspondence that the Contractor relies upon to substantiate the claim; and
- (5) A certification by a senior official, officer, or general partner of the Contractor or the subcontractor, as applicable, that, to the best of the person's knowledge and belief, the claim is made in good faith, supporting data are accurate and complete, and the amount requested accurately reflects the contract adjustment for which the person believes the County is liable.

C. A notice of claim or a claim that is not filed within the time prescribed in this **Section 8** shall be dismissed.

D. A claim may be filed by electronic means.

E. Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision.

## **9. Maryland Law Prevails**

9.1 This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.

9.2 The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland)

does not apply to this Contract or any purchase order, task order, or Notice to Proceed issued thereunder, or any software, or any software license acquired hereunder.

- 9.3 Any and all references to the Maryland Code, Annotated and contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

## **10. Contingent Fee Prohibition**

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor to solicit or secure the Contract, and that the Contractor has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this Contract.

## **11. Non-Availability of Funding**

If the Board of County Commissioners fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the County's or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the County from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The County shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

## **12. Termination for Default**

(1) The County may, subject to the provisions of paragraph (3) of this Section, by written notice of default to the Contractor, terminate the whole or any part of this Contract in any one of the following circumstances: (a) If the Contractor fails to perform within the time specified herein or any extension thereof; (b) If the Contractor fails to provide any required annual and renewable bond 30 days prior to expiration of the current bond then in effect; or (c) If the Contractor fails to perform any of the other provisions of this Contract, or so fails to make progress as to endanger performance of this Contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Procurement Officer may authorize in writing) after receipt of notice from the Procurement Officer specifying such failure.

(2) In the event the County terminates this Contract in whole or in part as provided in paragraph (1) of this Section, the County may procure substitute performance upon terms and in whatever manner the Procurement Officer may deem appropriate, and the Contractor shall be liable to the County for any excess costs for substitute performance; provided, that the Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this clause.

(3) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the County in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform shall be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if the default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform unless substitute performance for the subcontractor was obtainable from another source in sufficient time to permit the Contractor to meet the performance schedule.

(4) If, after notice of termination of this Contract under the provisions of this Section, it is determined for any reason that the Contractor was not in default under the provisions of this Section, or that the default was

excusable under the provisions of this Section, the rights and obligations of the parties shall, since the Contract contains a Section providing for Termination for Convenience of the County, be the same as if the notice of termination had been issued pursuant to such Section.

(5) If this Contract is terminated as provided in paragraph (1) of this Section, the County, in addition to any other rights provided in this Section, may require the Contractor to transfer title and deliver to the County, in the manner, at the times, and to the extent, if any, directed by the Procurement Officer, (a) the fabricated or unfabricated parts, work in progress, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (b) the completed or partially completed plans, drawings, information, and other property which, if the Contract had been completed, would have been required to be furnished to the County; and the Contractor shall, upon direction of the Procurement Officer, protect and preserve property in the possession of the Contractor in which the County has an interest. Payment for completed supplies delivered to and accepted by the County shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the County and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Procurement Officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the Section of this Contract entitled "Disputes." The County may withhold from amounts otherwise due the Contractor hereunder such sum as the Procurement Officer determines to be necessary to protect the County against loss because of outstanding liens or claims of former lien holders.

(6) The rights and remedies of the County provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

(7) As used in paragraph (3) of this Section, the terms, "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.

### **13. Termination for Convenience**

(1) The performance of work under this Contract may be terminated by the County in accordance with this Section in whole, or from time to time in

part, whenever the County shall determine that such termination is in the best interest of the County. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work is terminated and the time when such termination becomes effective.

(2) After receipt of a Notice of Termination, and except as otherwise directed by the Procurement Officer, the Contractor shall:

- (a) stop work as specified in the Notice of Termination;
- (b) place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of the portion of the work under the Contract as is not terminated;
- (c) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
- (d) assign to the County, in the manner, at times, and to the extent directed by the Procurement Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the County shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- (e) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Procurement Officer, to the extent the Procurement Officer may require, which approval or ratification shall be final for all the purposes of this Section;
- (f) transfer title and deliver to the County, in the manner, at the times, and to the extent, if any, directed by the Procurement Officer, (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (ii) the completed

or partially completed plans, drawings, information, and other property which, if the Contract had been completed, would have been required to be furnished to the County;

(g) use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Procurement Officer, any property of the types referred to in (f) above; provided, however, that the Contractor (i) may not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Procurement Officer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the County to the Contractor under this Contract or shall otherwise be credited to the price or cost of the work covered by this Contract or paid in such other manner as the Procurement Officer may direct;

(h) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(i) take any action that may be necessary, or as the Procurement Officer may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the County has or may acquire an interest.

The Contractor shall submit to the Procurement Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Procurement Officer, and may request the County to remove them or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the County shall accept title to these items and remove them or enter into a storage agreement covering the same; provided, that the list submitted shall be subject to verification by the Procurement Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made before final settlement.

(3) After receipt of a Notice of Termination, the Contractor shall submit to the Procurement Officer the Contractor's termination claim, in the form and with certification prescribed by the Procurement Officer. This claim shall be submitted promptly but in no event later than one (1) year from the effective date of termination, unless one or more extensions in writing are granted by the Procurement Officer, upon request of the Contractor made in writing within the one-year period or authorized extension thereof. However, if the Procurement Officer determines that the facts justify such action, the Procurement Officer may receive and act upon any such termination claim at any time after the one-year period or any extension thereof. Upon failure of the Contractor to submit the Contractor's termination claim within the time allowed, the Procurement Officer may determine the claim at any time after the one-year period or any extension thereof. Upon failure of the Contractor to submit the Contractor's termination claim within the time allowed, the Procurement Officer may determine, on the basis of information available to the Procurement Officer, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(4) Subject to the provisions of paragraph (3), the Contractor and the Procurement Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this Section, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The Contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (5) of this Section, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Procurement Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this Section, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts that may be agreed upon to be paid to the Contractor pursuant to this Section.

(5) In the event of the failure of the Contractor and the Procurement Officer to agree as provided in paragraph (4) upon the whole amount to be paid to

the Contractor by reason of the termination of work pursuant to this Section, the Procurement Officer shall pay to the Contractor the amounts determined by the Procurement Officer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (4):

- (a) for completed supplies or services accepted by the County (or sold or acquired as provided in paragraph (2)(g) above) and for which payment has not theretofore been made, a sum equivalent to the aggregate price for the supplies or services computed in accordance with the price or prices specified in the Contract, appropriately adjusted for any saving of freight or other charges;
- (b) the total of:
  - (i) the costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies or services paid or to be paid for under paragraph (5)(a) hereof;
  - (ii) the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (2)(e) above, which are properly chargeable to the terminated portion of the Contract (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or vendors before the effective date of the Notice of Termination, which amounts shall be included in the costs payable under (i) above); and
  - (iii) a sum, as profit on (i) above, determined by the Procurement Officer to be fair and reasonable; provided, however, that if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed under this subdivision (iii) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and
- (c) the reasonable cost of settlement accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination and

settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to this Contract.

The total sum to be paid to the Contractor under (a) and (b) of this paragraph shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the County shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor as provided in (5)(a) and (b)(i) above, the fair value, as determined by the Procurement Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the County or to a buyer pursuant to subsection (2)(g).

(6) Costs claimed, agreed to, or determined pursuant to (3), (4), (5) and (11) hereof shall be in accordance with COMAR 21.09 (Contract Cost Principles and Procedures) as in effect on the date of this Contract.

(7) The Contractor shall have the right to file suit in a court in Caroline County for breach of contract, under the section of this Contract entitled "Disputes," from any determination made by the Procurement Officer under subsection (3), (5), or (9) hereof, except that if the Contractor has failed to submit the Contractor's claim within the time provided in subsection (3) or (9) hereof, and has failed to request extension of the time, the Contractor shall have no right to file suit in court. In any case where the Procurement Officer has made a determination of the amount due under subsection (3), (5), or (9) hereof, the County shall pay to the Contractor the amount so determined by the Procurement Officer. Payment of such amount is not an admission of liability by the County and does not preclude the County from recovering the amount paid if a court subsequently modifies the decision of the Procurement Officer.

(8) In arriving at the amount due the Contractor under this Section there shall be deducted (a) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this Contract, (b) any claim which the County may have against the Contractor in connection with this Contract, and (c) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by

the Contractor or sold, pursuant to the provisions of this Section, and not otherwise recovered by or credited to the County.

(9) If the termination hereunder be partial, the Contractor may file with the Procurement Officer a claim for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices. Any claim by the Contractor for an equitable adjustment under this Section shall be asserted within sixty (60) days from the effective date of the termination notice, unless an extension is granted in writing by the Procurement Officer.

(10) The County may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this Contract whenever in the opinion of the Procurement Officer the aggregate of such payments shall be within the amount to which the Contractor shall be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Section, such excess shall be payable by the Contractor to the County upon demand, together with interest computed at the prime rate established by the State Treasurer for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the County; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or a later date as determined by the Procurement Officer by reason of the circumstances.

(11) Unless otherwise provided for in this Contract, or by applicable statute, the Contractor shall - from the effective date of termination until the expiration of three years after final settlement under this Contract - preserve and make available to the County at all reasonable times at the office of the Contractor but without direct charge to the County, all the Contractor's books, records, documents and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the work terminated hereunder, or, to the extent approved by the procurement officer, reproductions thereof.

## **14. Delays and Extensions of Time**

- 14.1 The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.
- 14.2 Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the County in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the County, fires, floods, epidemics, pandemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

## **15. Suspension of Work**

The County unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the County.

## **16. Pre-Existing County Ordinance**

The provisions of Chapter 51 – Purchasing of the Code of Local Laws of Caroline County in effect on the date of execution of this Contract are applicable to this Contract.

## **17. Retention of Records**

The Contractor and subcontractors shall retain and maintain all records and documents in any way relating to this Contract for (i) three (3) years after final payment by the County hereunder, or (ii) any applicable federal or State retention requirements (such as HIPAA) or condition of award, , whichever is longer, and shall make them available for

inspection and audit by authorized representatives of the County, as designated by the Procurement Officer, at all reasonable times. The Contractor shall provide copies of all documents requested by the County, including, but not limited to itemized billing documentation containing the dates, hours spent and work performed by the Contractor and its subcontractors under the Contract. All records related in any way to the Contract are to be retained for the entire time provided under this section.

## **18. Right to Audit**

- 18.1 The County reserves the right, at its sole discretion and at any time, to perform an audit of the Contractor's performance under this Contract. An audit is defined as a planned and documented independent activity performed by qualified personnel, including but not limited to County, State and federal auditors, to determine by investigation, examination, or evaluation of objective evidence from data, statements, records, operations and performance practices (financial or otherwise) the Contractor's compliance with the Contract, including but not limited to adequacy and compliance with established procedures and internal controls over the services performed pursuant to the Contract.
- 18.2 Upon three (3) Business Days' notice, the County shall be provided reasonable access to Contractor's records to perform any such audits. The County may conduct these audits with any or all of its own internal resources or by securing the services of a third party accounting or audit firm, solely at the County's election. The County may copy any record related to the services performed pursuant to the Contract. The Contractor agrees to fully cooperate and assist in any audit conducted by or on behalf of the County, including, by way of example only, making records and employees available as, where, and to the extent requested by the County and by assisting the auditors in reconciling any audit variances. Contractor shall not be compensated for providing any such cooperation and assistance.
- 18.3 The right to audit shall include any of the Contractor's subcontractors including but not limited to any lower tier subcontractor(s). The Contractor shall ensure the County has the right to audit such subcontractor(s).

## 19. Compliance with Laws

The Contractor hereby represents and warrants that:

- a. It is qualified to do business in the State and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- b. It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the Term;
- c. It shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- d. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

## 20. Cost and Price Certification

- 20.1 The Contractor, by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of the date of its Proposal.
- 20.2 The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of its Proposal, was inaccurate, incomplete, or not current.

## 21. Subcontracting; Assignment

The Contractor may not subcontract any of its obligations under this Contract without obtaining the prior written approval of the Procurement Officer, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Procurement Officer, each at the County's sole and absolute discretion; provided, however, that a Contractor may assign

monies receivable under a contract after written notice to the County. Any subcontracts shall include such language as may be required in various clauses contained within this Contract, exhibits, and attachments. The Contract shall not be assigned until all approvals, documents, and affidavits are completed and properly registered. The County shall not be responsible for fulfillment of the Contractor's obligations to its subcontractors.

## 22. Limitations of Liability

22.1 Contractor shall be liable for any loss or damage to the County occasioned by the acts or omissions of Contractor, its subcontractors, agents or employees as follows:

- (a) For infringement of patents, trademarks, trade secrets and copyrights;
- (b) Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and
- (c) For all other claims, damages, loss, costs, expenses, suits or actions in any way related to this Contract and regardless of the basis on which the claim is made, Contractor's liability shall be unlimited.
- (d) In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this Contract, Contractor agrees that all subcontractors shall be held to be agents of Contractor.

22.2 Contractor's indemnification obligations for Third Party claims arising under **Section 6 ("Indemnification")** of this Contract are included in this limitation of liability only if the County is immune from liability. Contractor's indemnification liability for third party claims arising under **Section 6** of this Contract shall be unlimited if the County is not immune from liability for claims arising under **Section 6**.

22.3. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this Contract, Contractor agrees that it is responsible for performance of the

services and compliance with the relevant obligations hereunder by its subcontractors.

### **23. Prompt Pay Requirements**

23.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the County, at its option and in its sole discretion, may take one or more of the following actions:

- (a) Not process further payments to the Contractor until payment to the subcontractor is verified;
- (b) Suspend all or some of the Contract work without affecting the completion date(s) for the Contract work;
- (c) Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due to the Contractor;
- (d) Place a payment for an undisputed amount in an interest-bearing escrow account; or
- (e) Take other or further actions as appropriate to resolve the withheld payment.

23.2 An “undisputed amount” means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such “undisputed amounts” include, without limitation: (a) retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor; and (b) an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

23.3 An act, failure to act, or decision of a Procurement Officer or a representative of the County concerning a withheld payment between the Contractor and a subcontractor under this **Section 23**, may not:

- (a) Affect the rights of the contracting parties under any other provision of law;
- (b) Be used as evidence on the merits of a dispute between the County and the Contractor in any other proceeding; or

- (c) Result in liability against or prejudice the rights of the County.

## **24. Use of Estimated Quantities**

Unless specifically indicated otherwise in the County's solicitation or other controlling documents related to the Scope of Work, any sample amounts provided are estimates only and the County does not guarantee a minimum or maximum number of units or usage in the performance of this Contract.

## **25. Risk of Loss; Transfer of Title**

Risk of loss for conforming supplies, equipment, materials, and Deliverables furnished to the County hereunder shall remain with the Contractor until such supplies, equipment, materials and Deliverables are received and accepted by the County, following which, title shall pass to the County.

## **26. Miscellaneous**

- 26.1 Any provision of this Contract which contemplates performance or observance subsequent to any termination or expiration of this Contract shall survive termination or expiration of this Contract and continue in full force and effect.
- 26.2 If any term contained in this Contract is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Contract, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.
- 26.3 The headings of the sections contained in this Contract are for convenience only and shall not be deemed to control or affect the meaning or construction of any provision of this Contract.
- 26.4 This Contract may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Signatures provided by facsimile or other electronic means, e.g., and not by way of limitation,

in Adobe .PDF sent by electronic mail, shall be deemed to be original signatures.

## **27. Contract Monitor and Procurement Officer**

27.1 The Contract Monitor is the County representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, and achieving completion of the Contract on budget, on time, and within scope. The Contract Monitor may authorize in writing one or more County representatives to act on behalf of the Contract Monitor in the performance of the Contract Monitor's responsibilities. The County may change the Contract Monitor at any time by written notice to the Contractor.

27.2 The Contract Monitor, subject to subsection 27.3 below, is the County representative designated by the Procurement Officer. The Contract Monitor is authorized to:

1. Serve as liaison between the County and the Contractor;
2. Give direction to the Contractor to ensure satisfactory and complete performance;
3. Monitor and inspect the Contractor's performance to ensure acceptable timeliness and quality;
3. Serve as records custodian for this Contract;
4. Accept or reject the Contractor's performance;
5. Furnish timely written notice of the Contractor's performance failures to the Procurement Officer and to the County Attorney, as appropriate;
6. Prepare required reports;

- 7. Approve or reject invoices for payment;
- 8. Recommend contract modifications or terminations to the Procurement Officer; and
- 9. Issue notices to proceed.

27.3 The Contract Monitor is NOT authorized to make determinations (as opposed to recommendations) that alter, modify, terminate, or cancel the Contract, effect a procurement, interpret ambiguities in contract language or waive the County's contractual rights.

27.4 The Procurement Officer has responsibilities as detailed in the Contract, and is the only County representative who can authorize changes to the Contract. The County may change the Procurement Officer at any time by written notice to the Contractor.

**28. Notices**

All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid, as follows:

If to the County:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_

E-Mail: \_\_\_\_\_

With a copy to:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_

E-Mail: \_\_\_\_\_

If to the Contractor:

(Contractor's Name)

(Contractor's primary address)

Attn: \_\_\_\_\_

SIGNATURES ON NEXT PAGE

IN WITNESS THEREOF, the parties have executed this Contract as of the date hereinabove set forth.

**ATTEST:**

**COUNTY COMMISSIONERS OF  
CAROLINE COUNTY, MARYLAND**

\_\_\_\_\_  
Jennifer Reibly  
Public Information Officer

By: \_\_\_\_\_  
J. Travis Breeding, President

**WITNESS:**

**CONTRACTOR:**

\_\_\_\_\_

By: \_\_\_\_\_

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

**APPROVED AS TO FORM AND LEGALITY FOR THE USE AND BENEFIT OF  
CAROLINE COUNTY ONLY THIS \_\_ DAY OF \_\_\_\_\_, 2024.**

\_\_\_\_\_  
Stewart Barroll, County Attorney