

1 **COMMISSIONERS MEETING**

2 **October 18, 2023**

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5 *YORK,ss*

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7 At a regular meeting of the County Commissioners of the County of York, begun and
8 holden at the York County Government Building in Alfred, within and for the County of York,
9 being held on Wednesday, October 18, 2023, A. D. at 5:00 P. M.

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12 **COMMISSIONERS PRESENT:**

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14 Richard R. Dutremble
15 Richard Clark
16 Robert Andrews
17 Justin Chenette
18 Donna Ring
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21 County Manager Gregory Zinser and Deputy County Manager Linda Corliss were present at the
22 meeting.

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24 **10-18-2023 ITEM**

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26 **1 PUBLIC COMMENT(S) ON ANY ITEM(S)**

27 None

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29 **2 TO APPROVE THE MINUTES OF THE FOLLOWING MEETINGS:**

30 a. Commissioners' meeting of October 4, 2023

31 Commissioner Clark motioned to approve the minutes. Commissioner
32 Andrews seconded the motion.

33 Vote 5-0.

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35 **3 TO APPROVE TREASURER'S WARRANTS**

36 a. Warrants to be approved on October 4, 2023 in the amount of \$828,869.35

37 Commissioner Clark motioned to approve the warrants. Commissioner
38 Andrews seconded the motion. Vote 5-0.

39 b. Warrants to be approved on October 12, 2023 in the amount of \$469,820.93

40 Commissioner Clark motioned to approve the warrants. Commissioner
41 Andrews seconded the motion. Vote 5-0.

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43 **4 TO HEAR ANY REPORTS FROM THE COUNTY**
44 **COMMISSIONERS**

45 Commissioner Clark recognized the Chair's (Commissioner Dutremble) birthday
46 and wished him many happy returns.
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48 Commissioner Ring reported that she attended the Sheriff's Office inspection, and
49 they did a phenomenal job. She thanked the Sheriff and deputies and all they do
50 for the citizens of York County.
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53 **5 NEW BUSINESS**

54 a. To hear two (2) NCEU grievances (executive session may be necessary)
55 (postponed)

56 b. Introduce Deputy Manager/H.R. Director Corliss to seek approval for the
57 hiring/transfer of the following individuals:

58 i. Rebecca Reed in the reserve position of DAR II in EMA with an effective
59 date of hire of October 23, 2023

60 Deputy Manager/H.R. Director Linda Corliss presented the new hires and
61 stated that Rebecca Reed worked for a couple of years at the vaccine center.
62 Commissioner Ring motioned to approve the hiring of Rebecca Reed in the
63 reserve position of DAR II in EMA with an effective date of hire of October
64 23, 2023. Commissioner Chenette seconded the motion. Vote 5-0.

65 ii. Cheryl Holmes in the full-time position of Court Investigator in the District
66 Attorney's Office with a date of hire of November 6, 2023

67 Commissioner Ring motioned to approve the hiring of Cheryl Holmes in the
68 full-time position of Court Investigator in the District Attorney's Office with
69 a date of hire of November 6, 2023. Commissioner Chenette seconded the
70 motion.

71 Vote 5-0.

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73 c. To seek Commissioner approval for First Responders' Day Proclamation
74 on October 28, 2023

75 County Manager Zinser informed the Commissioners that a copy of the
76 proposed Proclamation is in their packets. He thanked the York County
77 Sheriff's Office deputies, corrections officers and EMA for the hard work that
78 they do.

79 He added that he feels it is appropriate for the Board to recognize them.

80 Commissioner Ring motioned to approve the Proclamation. Commissioner
81 Chenette seconded the motion.

82 Vote 5-0.

83 The Proclamation was read into the record by Commissioner Ring.

84 County Manager Zinser recognized firefighters, also.

85
86 d. To seek Commissioner approval to change the Wednesday, December 6, 2023
87 Commissioners' meeting to Thursday, December 7, 2023 to accommodate
88 attendance at the annual holiday gathering

89 The County Manager reminded all that this follows what we have done in the
90 past.

91 Commissioner Chenette commented that we do set these meeting days in
92 advance so that the public can plan accordingly. If there is an emergency need,
93 he is fine with it but he doesn't see shifting a meeting to attend a holiday
94 gathering as a good reason so he stated that he would be opposed to moving a
95 meeting time for a party.

96 Commissioner Clark motioned to change the December meeting to Thursday,
97 December 7th. Commissioner Andrews seconded. Vote 4-1 with Chenette
98 opposed.

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e. To inform Commissioners of tour of My Place Teen Center at 3:30 on November 1, 2023, prior to the regular meeting
County Manager Zinser informed the Commissioners that they will meet at St. Andre's church to see what is going on and the work that is being done.

f. To select Commission Board Member for Southern Maine Dredge Authority
County Manager Zinser explained that the Board needs to take action on what they want to do as the first meeting of the Authority is on October 30th at 1:00 p.m. at Pine Point Fire Department.

DISCUSSION- Commissioner Chenette said that he would like the County Manager's feedback as we are trying to make sure that we are abiding by the rules on the Federal level, so there are many moving pieces and the latest information is needed. He added that the County Manager should be our county representative. The Commissioners' motion was that it didn't have to be a Commissioner. Commissioner Chenette continued that it seems like the County Manager would have the best information at that time to be able to engage. He added that he would lean towards having staff represent us at least for the first six months.

Commissioner Ring stated that when we entered into this, we were not going to be involved on a daily basis. We were going to turn the dredge over to them. She added that she doesn't think that the County Manager really has time to do this as he has more on his plate than he can handle. A place on the Board is fine but it shouldn't be the County Manager, stated Commissioner Ring. She added that she is not happy they are meeting in Cumberland County.

Commissioner Clark commented that he agreed with Commissioner Ring. He believes that the County Manager will get projects put on him. He is not happy with that proposal.

Commissioner Dutremble volunteered to serve on the Board.

Commissioner Ring motioned to have Commissioner Dutremble serve on the Board (Southern Maine Dredge Authority). Commissioner Clark seconded the motion. Vote 5-0.

6 OLD BUSINESS

a. To seek Commissioner approval of Findings of Fact re: McLean v. Town of Limerick property tax abatement denial appeal Hearing
Commissioner Clark motioned to approve the Findings of Fact for Mr. McLean as presented. Commissioner Andrews seconded the motion.
Vote 4-1 with Commissioner Chenette abstaining as he was not present at the meeting at which the Hearing was conducted.

7 TO CONDUCT AN EXECUTIVE SESSION ON PERSONNEL ISSUES PURSUANT TO 1 M.R.S.A. § 405 (6) (A), ACQUISITION OF REAL PROPERTY OR ECONOMIC DEVELOPMENT PURSUANT TO 1 M.R.S.A. § 405 (6) (C), LABOR NEGOTIATIONS PURSUANT TO 1 M.R.S.A. § 405 (6) (D) AND CONSULTATION WITH LEGAL COUNSEL PURSUANT TO 1 M.R.S.A. § 405 (6) (E), REVIEW OF CONFIDENTIAL RECORDS PURSUANT TO 1 M.R.S.A. § 405 (6) (F)

None

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8 PUBLIC COMMENT(S) ON ANY ITEM(S)

Susan Wiswell wished Commissioner Dutremble a happy birthday.

9 ADJOURN

Commissioner Clark motioned to adjourn. Commissioner Andrews seconded the motion. Vote 5-0.

Meeting adjourned at 5:30 p.m.

DRAFT



York County Government, Maine

OFFICE OF THE COUNTY COMMISSIONERS

Issuance and Notification for Bidders

Request for Qualifications RFQ # YC-2023-5899109

Qualifications to Provide Commissioning Agent Services

Issuance and Notification Date: August 30, 2023

***All proposals/Bids must be received in-hand by:
September 25, 2023 at 3:30 p.m. EST***

You are cordially invited to submit a proposal for the **Construction Commissioning Services** in accordance with the attached specifications, terms, and conditions. Prospective respondents are advised to read this information over carefully prior to submitting a proposal.

Please Click this link or go to <https://www.yorkcountymaine.gov/facilities> and select the action menu item named RFP/Bids on our website for the complete documentation associated with this RFP.

**** **IMPORTANT Please read and notate the following** ****

One (1) copy of the RFQ response may be emailed to ycg.procurement@yorkcountymaine.gov

Please use the following text in the SUBJECT field: **YORK COUNTY PROCUREMENT# YC-2023-5899109.**

Please make sure that you send your RFQ responses in a compressed folder format to ensure that our email filter will pass through your attachment. We will send a confirmation response that we have been able to open your attachment, content we be verified by sending number of pages received in the Original document OR submitted in a sealed envelope, plainly marked:

RFP # YC-2023-5899109

Qualifications to Provide Commissioning Agent Services

Finance Office/Procurement

149 Jordan Spring Road

Alfred, Maine 04002

IMPORTANT:

We respectfully request conformance to our procedure for asking questions related to this RFP. See the addendum named: **Submittal of qualified Questions and Respective Answers.**

Vendors may request addition to the York County bidders vendor database by sending an email to ycg.procurement@yorkcountymaine.gov please use the following text in the SUBJECT field: **VENDOR BID NOTIFICATION DATABASE – ADDITION.** In the body please give us Company Mailing Information, Industry/Sector and commodity provider or service provider or both.



York County Municipal Government, Maine

OFFICE OF THE COUNTY COMMISSIONERS General Information for Bidders/Contractors

The following terms, conditions and instructions apply to all York County solicitations whether they are bids, proposals, request for qualifications or other types of solicitations. The term "bidder" is used collectively for bidder, proposer, vendor, contractor, consultant and all other terms implying or meaning one who is responding to an opportunity with the County. The submission of a response means that the vendor understands and agrees with the County's "General Information for Vendors." Any variance is to be clearly noted on the submittal document. The County will be the sole judge as to whether the variance is "material" or "immaterial" to the bid.

1. Acceptance

The County will select the offer deemed most advantageous, appropriate and beneficial to the County.

2. Addenda

In the event that an addendum to a solicitation is issued, all solicitation terms and conditions shall remain in effect unless they are specifically changed by the addendum. Offers shall include acknowledgment of all addenda or be subject to rejection. The County shall post the addendum to its web page.

3. Assignment/Subcontracting

The bidder shall not assign or subcontract any agreement, sublet or subcontract any portion of the work without the written consent of the County. The bidder shall bind all subcontractors approved by the County to all the terms and conditions of the contract.

4. Award/Results

As soon as practicable after evaluation, the County shall post the award decision and a tabulation of all offers received, to its web page. Individual notes are not mailed or emailed.

5. Compliance with laws

The bidder is assumed to be familiar with and agrees to observe and comply with all Federal, State and local laws, statutes, ordinances and regulations. The bidder shall fully indemnify, save harmless and protect the County, their successors, assigns, agents, customers, affiliates, agents and employees against any loss, claim liability damage, and expense arising from the bidder's actual or alleged noncompliance with such laws and regulations.

6. Deliveries

All deliveries shall be to the designated County property stated in the solicitation and must be Freight on Board (FOB) Alfred, Maine with all delivery, handling, surcharges and other changes included in the offered price. Failure to do so may cause rejection of bid. The County will not pay additional surcharges.



York County Municipal Government, Maine

OFFICE OF THE COUNTY COMMISSIONERS General Information for Bidders/Contractors

7. Equal Employment Opportunity

Bidders agree not to discriminate against any employee or applicant for employment because of age, race, color, religion, sex or national origin. Bidders shall comply with applicable laws, Executive Orders, and regulations concerning nondiscrimination in employment, including the Equal Opportunity Clause of Section 202. Executive Order 11246, as amended, which is hereby incorporated by reference.

8. Freedom of Access Act (FOAA)

Under Maine's Freedom of Access Act (FOAA), all records in possession of the County are public, unless designated by law as confidential, privileged, or otherwise exempt. Accordingly, any documents you submit may be available to the public. If you believe that documents you submit contain information that is exempt from disclosure under the FOAA, you must mark those sections you believe exempt as "confidential." You may also request that the County inform you of any FOAA requests for your submitted documents. The Counties Legal representation shall make the final determination over what it and is not public.

9. Incurring Costs

All costs incurred in the preparation and submission of an offer will be borne by the bidder.

10. Informalities

The County reserves the right to waive informalities, irregularities or minor defects in an offer response or variations from the exact requirements of the solicitation provided that the defects or variations do not affect the price, quality, quantity or delivery of the service.

11. Inspections/Examination of Documents

The bidder is responsible for thoroughly inspecting the site of the proposed work, carefully examine the solicitation and for becoming completely familiar with any circumstances under which the work will be performed or equipment, material etc. be provided. Each bidder shall make his/her offer from his/her own examinations and estimates and shall not hold the County, its agents or employees responsible for any information received from them.

12. Late Bids

It is the responsibility of the bidder to see that their offers have sufficient time to be received by the Procurement Officer before the submittal deadline. All submittal deadlines are to be the standard time for Alfred, ME. Any offer, portion of an offer, or unrequested revision received at the County of York, 145 Jordan Springs Road, Alfred Me 04002 after the time and date specified will not be considered.

13. Permits

In connection with any work to be performed, the bidders shall procure all necessary permits and licenses applicable to the performance of work contained in the solicitation.



York County Municipal Government, Maine

OFFICE OF THE COUNTY COMMISSIONERS
General Information for Bidders/Contractors

14. Materials

All material submitted becomes the property of the County of York, Maine and shall become public information.

15. Questions.

All questions must be directed in writing to ycg.procurement@yorkcountymaine.gov. The County will issue a response in the form of an addendum, which will be available on the County's website. In addition, the County will notify all Bidders on file as being in receipt of the solicitation.

16. Rejection.

The County of York, Maine reserves the right to reject any and all offers or to accept a higher cost offer if it is deemed to be in the best interest of the County. The County also reserves the right to negotiate with the lowest qualified responsive Bidder. Rejection of any proposal shall be construed as meaning simply that the County does not deem the offer to be acceptable or that another offer is deemed to be more advantageous to the County for the particular services offered.

17. Taxes

The County of York, Maine is exempt from paying sales or use tax by State of Maine Statute and has been issued a Permanent Exemption Certification by the State of Maine. Permanent Exemption Certificate Number: E81874 Federal Identification Number: 01-6000017.

18. Termination

a. Termination for Convenience: The County may terminate any contract, in whole or in part, whenever the County determines that such termination is in the best interest of the County, without showing cause, upon giving thirty (30) days written notice to the bidder.

b. Termination for Default: When the bidder has not performed or has unsatisfactorily performed the work, the County may terminate the contract for default. Upon termination for default, payment may be withheld at the discretion of the County. Failure on the part of the bidder to fulfill contractual obligations shall be considered just cause for termination.

19. Withdrawal

No bidder may withdraw his/her offer for a period of ninety (90) days from the date of opening. All offers will be subject to acceptance by the County during that time.

York County Government Maine

RFQ # YC-2023-5899109 REQUEST FOR QUALIFICATIONS TO PROVIDE COMMISSIONING SERVICES FOR THE YORK COUNTY TRAINING CENTER AND THE YORK COUNTY RECOVERY CENTER FACILITIES IN ALFRED, MAINE.

SCOPE OF WORK

I. Purpose:

The York County Commissioners are pleased to announce this invitation to submit qualifications from bidders to provide professional commissioning agent services for two (2) facilities, the York County Training Center, and the York County Recovery Center. The County of York is proposing to use portions of the funding received under the American Rescue Plan to design and construct a regional public safety training facility, a substance abuse recovery center, and a 40-unit supportive housing complex.

Preliminary estimates for the combined projects are \$45 million in funding. The due date and time for the submission of qualifications is 3:30 p.m. on September 25, 2023 (described in more detail below).

The current stage of development is Design & Development, the Architect of record is the firm Lassel Architects and OakPoint Associates, actual site construction is expected to begin January 2024. The objective of commissioning is to provide a systematic process to ensure that the buildings and their systems are planned, installed, inspected, tested, operated and managed as designed and to provide documented confirmation that each facility fulfills the functional and performance requirements of the building owner and operators. The proposed commissioning process will establish and document the above referenced components of the process as well as the County's criteria for system function, performance, and maintainability; and will verify and document compliance with these criteria throughout construction, start-up, and the initial period of operation.

II. Requirements

Section 1 – Introductory/Cover Letter

Please provide a brief introduction letter stating your interest in the project and include the name and address/location of your firm, and provide the name, email, and phone number of a designated contact person for this project.

Section 2 – Professional Qualifications and Key Project Personnel Experience

Provide, for your firm and any sub consultants on your team, the following:

1. A brief description of the firm, the history of the firm and a description of capabilities and typical services offered.
2. Describe the firm's professional qualifications and experience, including those of any sub consultants, to clearly demonstrate your ability to successfully furnish the commissioning services described in this Request for Qualifications. Include any relevant professional certifications held by the firm, team members and sub consultants.
3. The proposing Firm must be licensed to practice in Maine. Please Submit a copy of this License.
4. The full name and address of the firm or team, including any sub consultants you might intend to include in your project team.

- III.** For Key Project Personnel, provide the names and brief resumes of the assigned project manager and/or other key staff members who will comprise the core of your firm's project team. Submission of names shall be considered a commitment on the part of the Commissioning Agent to retain stated personnel on the project throughout its duration. Also, provide brief resumes for any identified sub-consultants. Disclaimer: The County is aware of current economic conditions in our respective industries, under this condition we

York County Government Maine

RFQ # YC-2023-5899109 REQUEST FOR QUALIFICATIONS TO PROVIDE COMMISSIONING SERVICES FOR THE YORK COUNTY TRAINING CENTER AND THE YORK COUNTY RECOVERY CENTER FACILITIES IN ALFRED, MAINE.

For Key Project Personnel (continued)

would like to offer the following as part of a mutual understanding moving forward towards a formal contract. Within the **constraints of formal approval** by the County of York (revision to contract) the awarded

Proposing Vendor will be allowed the flexibility to substitute and provide other equally highly qualified personnel should these people leave the company or become unable to discharge their assigned duties and responsibilities.

Explain roles and availability of Key Project Personnel and expected commitment/assignment to the project. Describe how the project team will be organized and provide formal reporting lines and informal lines of communication in proposed organization chart.

Section 3 – Experience and Past Performance

a. List of 5 projects undertaken in the last five years demonstrating experience performing commissioning services. These reference projects must include:

1. Projects similar in size (Cost) and the complexity related to multiple buildings being erected in this project.
 2. Projects that have been performed by the prime consultant and sub-consultant team, where key personnel and core team are in essence the same team being proposed.
 3. The summary for each reference project should include project title, location, brief description of the project, services provided, size and cost of project, percentage of error and omissions, original and final schedule dates (including reason for any changes), fee and fee percentage, client (owner) contacts, design team contacts, construction contractor team contacts. For contacts include name, telephone number and email of key representative.
- b. Provide (3) Reference letters from ONE of the projects listed in your experience. One letter each from the following: Owner, Architect/Engineer, and General Contractor.
- c. Provide other pertinent information demonstrating the firm and key team members experience and past performance (Examples: unique challenges or problems, innovative solutions, project successes, etc.)

Section 4 – Other Requirements

Applicants shall indicate their ability to provide proof of coverage for the following minimum insurance requirements:

- a. General Liability coverage of \$1 million per occurrence and \$2 million in the aggregate
- b. Motor vehicle liability coverage of \$1 million combined single limit
- c. Proof of workers' compensation coverage
- d. Professional errors and omissions coverage of \$1 million

List all lawsuits your firm has been involved in within the last 5 years related to Commissioning.

The entity that is selected will be expected to perform all services consistent with the industry accepted role of a Commissioning Agent. To be considered, a firm must be capable of starting work promptly following the conclusion of the selection process. A detailed scope of work will be established after final selection as part of the contract process.

Section 5 – Fees and Costs

Submissions will include the firm's fee structure including billing rates associated with pertinent personnel and prices for anticipated direct reimbursable costs. However, that information should only be placed in a single, separately-sealed envelope within the submission package.

York County Government Maine

RFQ # YC-2023-5899109 REQUEST FOR QUALIFICATIONS TO PROVIDE COMMISSIONING SERVICES FOR THE YORK COUNTY TRAINING CENTER AND THE YORK COUNTY RECOVERY CENTER FACILITIES IN ALFRED, MAINE.

III. Submissions. Qualifications shall be submitted according to the following:

Time, Date and Place Due. Submittals are due no later than **3:30pm** on **September 25, 2023**. All submissions shall be addressed and submitted as follows:

**** IMPORTANT Please read and notate the following ****

One (1) copy of the RFQ response can be emailed to ycg.procurement@yorkcountymaine.gov. Please use the following text in the SUBJECT field: **YORK COUNTY PROCUREMENT# YC-2023-5899109**. Please make sure that you send your RFQ responses in a compressed folder format to ensure that our email filter will pass through your attachment. We will send a confirmation response that we have been able to open your attachment, content and verified by sending number of pages received.

OR it can be submitted in a sealed envelope, plainly marked:

RFP # YC-2023-5899109
Qualifications to Provide Commissioning Agent Services
Finance Office/Procurement
149 Jordan Spring Road
Alfred, Maine 04002

Submittals received after the deadline will not be considered. Faxed submissions will not be accepted. Firms assume all risks of the method of delivery chosen. York County assumes no responsibility for delays caused by any package or mail delivery service. **Submission Identifier (Paper Copies Only)**. Please see Issuance Notice herein contained as Page 1. The **exterior** of the envelopes/containers in which qualifications are submitted must be clearly marked with the firm's return address and the notation: **Qualifications to Provide Commissioning Agent Services**.

Number of Copies. One (1) printed original, five (5) hard copies and one (1) .pdf copy.

IV. Evaluation of Proposals

Evaluation Criteria – Proposals will be evaluated in diminishing hierarchical importance (A – J) order, using the following criteria:

- a. Education and relevant experience of principals and key employees
- b. Firm's history of performance on previous projects with attention given to projects of a similar nature.
- c. Adequacy of personnel and equipment to perform the work.
- d. Completeness of the proposal
- e. Firm's approach to planning, organizing, and management of the project including approach to problem solving, data gathering, and communication.
- f. Firms understanding of issues associated with the design and construction of the facilities.
- g. Present workload with consideration of present and future commitments
- h. Firm's ability to demonstrate professional liability insurance consistent with the County's requirements.
- i. Familiarity working with public sector governments in Maine.

York County Government Maine

RFQ # YC-2023-5899109 REQUEST FOR QUALIFICATIONS TO PROVIDE COMMISSIONING SERVICES FOR THE YORK COUNTY TRAINING CENTER AND THE YORK COUNTY RECOVERY CENTER FACILITIES IN ALFRED, MAINE.

- j. Ability to perform all services under the requirements imposed by ARPA and all other federal contract requirements, including but not limited to the ARPA Addendum that is attached.
- k. Other factors as deemed pertinent by selection authority.

V. Other Provisions

The County of York reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected. The County of York reserves the right to award a contract to the firm which is perceived to offer the greatest contribution to the success of this project and best fulfills the County of York's needs. The County of York reserves the right to reject any or all proposals, to waive any technicalities in proposals received, to negotiate, and to accept the proposal, which shall be in the County's best interest. The County will offer the successful bidder a single contract or series of contracts to best meet the needs of funding requirements including any subcontractors.

Submission of a proposal indicates acceptance of these conditions contained in the request for proposals.

Commissioning Services (as hereinafter defined) shall be performed pursuant to the AIA document; AIA-C203-2017 Commissioning Agreement. The Owner intends to issue the contract documents as an amendment to this RFQ. The length of the contractual agreement is intended to be the duration of the construction project.



York County Municipal Government, Maine

OFFICE OF THE COUNTY COMMISSIONERS

Request for Qualifications for Construction Commissioning Services

QUESTIONS RELATED TO THE REQUEST FOR QUALIFICATIONS

Pre-emptively we will accept all questions regarding this solicitation, submitted via email, to the Solicitation Coordinator at ycg.procurement@yorkcountymaine.gov . The York County Committee created to review and evaluate the responses will provide written answers for questions received if they are received within the question-and-answer period's deadline date of **September 15, 2023**. Answers will be posted as an amendment, to the same location as the posting of the original solicitation. It is the sole responsibility of the bidder to view and download documents from the same location as the posting of the original solicitation. Verbal responses to questions will not be provided. Both Questions and their corresponding Answers will be compiled into a PDF document and posted as an amendment. Only written answers will be considered official and binding. Bidders will not be identified in the answers. If interpretations or other changes to this Solicitation are required because of inquiries made during the question-and-answer period, the Solicitation may be amended. All amendments are posted to the same location as the posting of the original solicitation. Please use the following text in the SUBJECT area of the email being sent to ycg.procurement@yorkcountymaine.gov the Solicitation Coordinator.

YORK COUNTY PROCUREMENT# YC-2023-5899109



York County Municipal Government, Maine
OFFICE OF THE COUNTY COMMISSIONERS
Bidders/Contractors Compliancy for Federal Grant funded projects

ARPA ADDENDUM

1. DEFINITIONS

- 1.1. Government means the United States of America and any executive department or agency thereof.
- 1.2. Treasury means the Department of the Treasury of the United States of America.
- 1.3. ARPA means the American Rescue Plan Act (Pub. L. No. 117-2 (Mar. 11, 2021)) (codified at Section 601 et seq. of Title VI of the Social Security Act) and related funding and financial assistance programs, including the Coronavirus State Fiscal Recovery Fund (CSFRF) and Coronavirus Local Fiscal Recovery Fund (CLFRF), collectively referred to as the Coronavirus State and Local Fiscal Recovery Funds (CSLFRF) and federal Assistance Listing CFDA 21.027.
- 1.4. Third Party Subcontract means a subcontract at any tier entered into by Contractor or any subconsultant or subcontractor, financed in whole or in part with federal assistance, including ARPA funds under the Agreement.
- 1.5. For purposes of this Exhibit, Contractor shall also mean the Contractor, Subrecipient, Consultant, or other party to the subject Agreement with the County, and may be referred to as such.
- 1.6. Agreement means that certain Agreement between the County of York ("County") and Contractor, and to which this Exhibit is made a part.

As a condition of the Agreement and of the ARPA funding under this Agreement, Contractor shall comply as follows:

2. GENERAL REQUIREMENTS

- 2.1. Contractor shall at all times comply with all applicable federal laws, regulations, executive orders, Office of Budget and Management circulars, Treasury policies, procedures, and directives, and program or grant conditions (as may be amended or promulgated from time to time), including but not limited to those requirements of 2 C.F.R.¹ Part 200, and its Subparts B-General Provisions, C-Pre-Federal Award Requirements and Contents of Federal Awards, D-Post Federal Award Requirements, E-Cost Principles, and F-Audit Requirements; and including the Age Discrimination Act of 1975; the Americans with Disabilities Act of 1990, the Civil Rights Act of 1964 (Title VI); the Civil Rights Act of 1968 (Title VIII); the Drug-Free Workplace Act of 1988; the Drug Abuse Office and Treatment Act of 1972; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970; the Public Health Service Act of 1912; the Education Amendments of 1972 (Title IX); the Equal Opportunity in Education Act; the Energy Policy and Conservation Act; the False Claims Act; the Hotel and Motel Fire Safety Act of 1990; the National Environmental Policy Act; the Rehabilitation Act of 1973; the Whistleblower Protection Act (including 41 USC 4712); the Hatch Act (5 U.S.C.²

¹ Code of Federal Regulations ("CFR"). ² United States Code ("USC").



York County Municipal Government, Maine

OFFICE OF THE COUNTY COMMISSIONERS

Bidders/Contractors Compliancy for Federal Grant funded projects

1501 et seq.); and all related and Treasury-mandated federal regulations, including 31 CFR Part 35.

2.2. Whether or not expressly set forth herein, all contractual provisions and grant conditions or assurances required by Treasury (including as may be amended or promulgated from time to time) are hereby incorporated by reference. This Agreement may be amended to further incorporate and expressly state new, revised, and or subsequent contractual provisions or grant conditions as may be required by ARPA and/or Treasury. In the event of any conflict between any provision of this Agreement, this Exhibit, or any federal or Treasury term, condition, or requirement, the stricter standard shall apply. Contractor shall refer any inconsistency or perceived inconsistency between this Agreement and any federal requirement to County for guidance. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests that would cause County to be in violation of any federal, ARPA, or Treasury term, condition, or requirement.

2.3. The Government shall enjoy the right to seek judicial enforcement of any law, regulation, condition, or provision stated herein.

2.4. Contractor shall attach and apply all terms and conditions stated herein to all Third Party Subcontracts and shall require that all subcontractors of all tiers comply with and attach and apply these terms and conditions as to their subcontracts at all levels. The provisions shall not be modified, except to identify the subcontractor who will be subject thereto. Provided however, that Contractor shall not subcontract any portion of this Contract or transfer or assign any claim arising pursuant to this Contract without the written consent of the County. The County's consent must be sought in writing by the Contractor not less than 15 days prior to the date of any proposed subcontract. The rejection or approval by the County of any subcontractor or the termination of a subcontractor will not relieve Contractor of any of its responsibilities under the Contract, nor be the basis for additional charges to the County. In no event will the existence of the subcontract operate to release or reduce the liability of Contractor to the County for any breach in the performance of Contractor's duties. Contractor understands and agrees that funds provided under this Contract come from a federal source and agrees to comply with any and all additional applicable terms. In general, federal-specific terms are in italics.

2.5. Contractor shall not assign any interest, obligation or benefit under or in this Contract or transfer any interest in the same, whether by assignment or novation, without prior written consent of the County.

2.6. Contractor agrees and confirms that it has the institutional, managerial and financial capacity to ensure proper planning, management and completion of the Contract. If, at any time, changes in key personnel assigned or their responsibilities under the activities of the contract, or Contractor believes its capacity is compromised or Contractor otherwise needs any sort of assistance, it shall immediately notify the County. The County will make best efforts to provide timely technical assistance to the Contractor to bring the Contract into compliance.

2.7. Contractor understands and agrees that funds provided under this Contract may only be used in compliance with section 603(c) of the Social Security Act (the Act), as added by section 9901 of the American Rescue Plan Act, the U.S. Department of Treasury's ("Treasury's") regulations implementing that section, and guidance issued by Treasury regarding the foregoing. Words and terms within this Addendum shall be given their ordinary and usual meanings.

3. FURTHER ARPA REQUIREMENTS

3.1. Contractor acknowledges that all or part of this Agreement will be funded with ARPA financial assistance.

3.2. Contractor shall comply with, and shall not cause the County to be out of compliance with, the requirements of ARPA, the regulations adopted pursuant thereto, all interpretive guidance issued by Treasury, and County's grant assurances related to ARPA funding. Contractor shall also comply with all other applicable federal statutes, regulations, and executive orders, and shall provide for such compliance by other parties in any agreements it enters into with other parties relating to or involving funding under this Agreement.

3.3. Funds, payments, expenses, and procurements under this Agreement shall only be used for eligible ARPA uses and activities in accordance with ARPA and Treasury's implementing regulations (31 CFR Part 35) and related interpretive guidance (including the ARPA Interim Final Rule and Final Rule as applicable), and all other applicable laws and regulations governing the use of ARPA funds. Contractor shall be responsible for any disallowances, questioned costs, or other items, including interest, not allowed under ARPA funding. Contractor shall return to County any funds disallowed within ninety days of notification from County to return such funds.

3.4. Any costs, payments, or expenses allowable under the Agreement must be incurred by December 31, 2024. Any funds not timely used must be returned to County.

3.5. In the event of any violation of any ARPA requirement, any audit exception or disallowance, or of any term or condition of the Agreement, then payments or subawards made under this Agreement shall be subject to recoupment.

3.6. Hatch Act. Contractor agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.

3.7. Uniform Administrative, Cost Principles, And Audit Requirements (2 CFR Part 200). Contractor shall comply with all applicable provisions of the federal Uniform Guidance, 2 CFR Part 200, including applicable Administrative Requirements, Cost Principles, and Audit requirements. Without limitation, all use of funds and procurement of all services (including consultants), supplies, property, or equipment, shall be performed in conformance with 2 CFR 200.318-327 as well as in conformance with all other administrative, costs, and audit requirements under federal laws and regulations. These requirements generally require open and competitive process, with limited exceptions. Contractor shall maintain records sufficient to detail the history of procurement and provide such records upon request. These records shall include, but are not necessarily limited to: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

3.8. Allowable costs and allocations shall be only those permitted under the Agreement and as permitted by federal law and regulation, including pursuant to 2 CFR Subpart E. Contractor must not claim reimbursement under this Agreement for expenditures reimbursed or financed by any other federal, state or local government source.

3.9. Real property, equipment, and intangible property acquired or improved with funds under this Agreement must be held in trust for the beneficiaries of the project or program under which the property was acquired or improved. Liens or other appropriate notices of record may be required to indicate that personal or real property has been acquired or improved with a Federal award and that use and disposition conditions apply to the property.

3.10. If applicable, Contractor shall comply with all program income requirements and restrictions in conformance with 2 CFR 200.307. Any revenue generated by Contractor from Agreement-supported activities or funds shall be reported to County, including for direction as to disposition.

3.11. Government expressly disclaims any and all responsibility or liability to Contractor or any third persons for the actions of County, Contractor, or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the funding or performance of this Agreement, or any other losses resulting in any way from the performance of any contract or subcontract related to this Agreement. Contractor acknowledges and agrees that the federal government is not a party to this Agreement and is not subject to any obligations to or liabilities of the County, Contractor, or any other party (whether or not a party to this Agreement) pertaining to any matter resulting from the Agreement.

3.12. Conflict of Interest. By executing the Agreement, Contractor certifies that is does not know of any fact which constitutes a violation of any conflict of interest law, and agrees to disclose to the County in writing any potential or actual conflict of interest affecting this Agreement or the funding thereof, in accordance with 2 CFR Part 200 (including 2 CFR 200.112 and 2 CFR 200.318(c)). Contractor shall provide all additional information necessary for County to fully assess and address such actual or potential conflict of interest. Prohibited conflicts include as to economic and/or personal interests.

3.13. NONDISCRIMINATION

3.13.1. Contractor (and its sub-grantees, contractors, subcontractors, successors, transferees, and assignees) shall comply with all applicable federal, state, and local nondiscrimination laws, rules, and regulations in its employment practices, delivery of services, and performance under this Agreement, and shall not unlawfully discriminate, harass, or allow harassment against any person on the basis of sex, race, color, ancestry, religious creed, national origin, sexual orientation, gender, gender identity, physical disability (including HIV and AIDS), mental disability, medical condition, age, marital or familial status, denial of family care leave, or on any other basis prohibited by law, including without limitation by Title VI of the Civil Rights Act of 1964 (42 USC §§ 2000d et seq.) and Treasury's implementing regulations at 31 CFR Part 22 (prohibiting discrimination on the basis of race, color, or national origin); the Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 USC 3601 et seq.) (prohibiting discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability); Section 504 of the Rehabilitation Act of 1973, as amended (29 USC 794) and Treasury's implementing regulations at 31 CFR Part 17 (prohibiting discrimination on the basis of disability); the Age Discrimination Act of 1975, as amended (42 USC 6101 et seq.) and Treasury's implementing regulations at 31 CFR Part 23 (prohibiting discrimination on the basis of age); Title II of the Americans with Disabilities Act of 1990, as amended (42 USC 12101 et seq.) (prohibiting discrimination in programs, activities, and services on the basis of disability); and the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

3.13.2. Contractor (and its sub-grantees, contractors, subcontractors, successors, transferees, and assignees) shall ensure that evaluation and treatment of employees and applicants for employment are free from unlawful discrimination and harassment.

3.13.3. Contractor, and all sub-grantees, contractors, subcontractors, successors, transferees, and assignees, shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 USC 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement. Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 USC 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or Agreement.

3.14. Contractor acknowledges, agrees, and shall comply with the following:

3.14.1. Compliance with Title VI of the Civil Rights Act of 1964, as amended (42 USC 2000d et seq.), and as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and all other pertinent executive orders, directives, circulars, policies, memoranda, and guidances.

3.14.2. Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency" seeks to improve access to federally-assisted programs and activities for individuals who, because of national origin, have

Limited English Proficiency (LEP). Denying a person access to programs, services, and activities because of LEP is a form of prohibited national origin discrimination. Contractor shall initiate reasonable steps, and comply with Treasury directives, to ensure that LEP persons have meaningful access to its programs, services, and activities, which may entail providing language assistance services including oral and written translation when necessary. Reasonable steps for meaningful LEP access is available at 70 CFR 6067 and <http://www.lep.gov>.

3.14.3. To consider the need for language services for LEP persons when developing and conducting programs, services, and activities.

3.14.4. If any real property, structure, or personal property is acquired, provided, or improved with regard to this Agreement, the provisions herein shall apply for the duration during which the property is owned or possessed by Contractor or used for a purpose for which ARPA funds have been provided or for any other purpose involving the provision of similar services or benefits.

3.14.5. To maintain a complaint log and inform County of any complaint of prohibited discrimination, and of any administrative agency or court's findings of noncompliance with Title VI, including any related information pertaining thereto as requested by County.

3.14.6. To cooperate in any enforcement or compliance review by Treasury as to any condition herein, including cooperation with information requests, on-site compliance reviews, and reporting requirements.

3.14.7. Compliance with the foregoing constitutes a condition of performance and of continued funding, and is binding on Contractor's successors, transferees, and assignees as may be applicable.

3.15. Publications. Any publications (press releases, social media posts, flyers, project signage) produced under this Agreement must display the following: "This project [is being][was] supported, in whole or in part, by federal award number [as indicated by County] awarded to the County of York by the U.S. Department of the Treasury."

3.16. Whistleblower Protections. Contractor shall comply with 41 U.S.C 4712 and not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities described in 41 U.S.C 4712(a)(2) information that the employee reasonably believes is evidence of gross mismanagement of a federally-funded contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant. Contractor shall inform all its employees in writing, in the predominant native language of the workforce, of the rights and remedies provided under the federal Whistleblower Protection Act, including 41 USC 4712.

3.17. Increasing Seat Belt Use in the United States. Contractor is encouraged to adopt and enforce on-the-job seat belt policies and programs for employees when operating company-owned, rented or personally owned vehicles.

3.18. Reducing Text Messaging While Driving. Contractor is encouraged to adopt and enforce policies that ban text messaging while driving, and establish workplace safety policies to decrease accidents caused by distracted drivers.

4. SUBRECIPIENT TERMS (All subawards, funding transfers, and subrecipient agreements, in accordance with 2 CFR 200.331 and as may otherwise be designated in the Agreement)

4.1. All or part of the funding of this Agreement will be with Federal awards. Contractor is designated as a Subrecipient and the federal funds received under this Agreement are designated as a subaward of CSLFRF funds. Funds under this Agreement must be used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award, including all compliance and reporting requirements for ARPA funds. All terms of this Agreement shall remain in effect during all times that Subrecipient possesses or has control over ARPA funds, including any program income therefrom.

4.2. Contractor warrants and represents that it has, and shall maintain, the institutional, managerial, and financial capability to ensure proper planning, management, auditing, and completion of the subject project, program, and/or Agreement scope.

4.3. Contractor shall comply with, and administer all activity in conformance with, 2 CFR Part 200.300, et seq., and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and to maintain necessary source documentation for all costs incurred. Contractor shall maintain a financial management system which ensures control and documentation over the use and distribution of funds hereunder in accordance with the terms and conditions of this Agreement and with generally-accepted accounting principles.

4.4. Contractor shall maintain procedures for obtaining and recording information evidencing eligibility for any receipt or distribution of funds, including by any given beneficiary or lower-tier subrecipient or contractor.

4.5. Contractor understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. 200.318(c) and that such conflict of interest policy is applicable to each activity using funds under this Agreement.

4.6. Contractor agrees to comply with and support all applicable ARPA reporting requirements and all reporting requirements otherwise stated in the Agreement or requested from time to time by the County. Contractor shall maintain compliance with all other federal reporting requirements, including those pertaining to subaward and executive compensation Information (2 CFR Part 170), and shall maintain processes and systems for proper and timely reporting as required under 2 CFR Part 170 Appendix A (unless exempt).

4.7. Contractor shall comply with and be responsible for all audit requirements required under federal law (including under 2 CFR Part 200) and as deemed necessary by authorized governmental entities, including Treasury. Pre-, interim, and post-award audits and other measures may be required, as determined by County. All subrecipients (other than for-profit entities) who receive federal funding which taken together total over \$750,000 in a single fiscal year are subject to single auditing and other requirements under 2 CFR Part 200, Subpart F. Said subrecipients must have a single or program-specific audit conducted for that fiscal year, as required by and in accordance with the provisions of 2 CFR Part 200, Subpart F. A copy of this audit must be forwarded to the County as soon as it is complete.

4.8. All expenditures of funds under this Agreement shall be reported to the County, as directed and in form indicated by County, including as required by all applicable ARPA requirements. The Contractor shall establish and maintain a system of accounting and internal controls that complies with the generally accepted accounting principles issued by the Financial Accounting Standards Board (FASB), the Governmental Accounting Standards Board (GASB), or both as is applicable to the Contractor's form of doing business.

4.9. Contractor shall maintain all records and financial documents sufficient to evidence compliance with section 603(c) of the Act, Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing. These records shall be maintained for a period of six (6) years after the last date that all funds have been expended or returned to the County, whichever is later, to ensure proper accounting for all funds and compliance with the Contract. The records, include but are not limited to personnel, property, financial, and programmatic records and other such records the County may deem necessary to ensure proper accounting and compliance with this Contract.

4.10. Contractor shall permit County, and all designated auditors, access to all records and financial statements as necessary for County to ensure compliance with this Agreement and all federal laws, regulations, and ARPA requirements.

4.11. Contractor shall cooperate with the County and its agents to assess the Contractor's performance under this Contract, including the submission of reports as may be requested by the County from time to time. At the request of the County, the Contractor shall implement a plan to remedy any items of noncompliance identified during the monitoring process.

4.12. **Mandatory Disclosures.** Contractor must disclose, in a timely manner, in writing to County all violations of Federal criminal law involving fraud, bribery, or gratuity violations. Contractor shall report civil, criminal, and administrative proceedings to SAM, as required by 2 CFP Part 180.

4.13. Contractor shall maintain compliance with the System for Award Management (SAM) and Universal Entity Identifier requirements, pursuant to 2 CFR Part 25, including obtaining a unique entity identifier and completing SAM registration prior to receiving the Federal award unless exempt under 2 CFR 25.110. No entity, including subcontractors, may receive any federal funds through this Agreement unless the entity has provided its Unique Entity Identifier to County. Subrecipients are not required to obtain an active SAM registration, but must obtain a Unique Entity Identifier.

4.14. Contractor shall comply with the Privacy Act of 1974 and 2 CFR 200.335 in the collection, maintenance, use and dissemination of any personally identifiable information such as social security numbers, financial and medical information. Contractor will limit the collection, use and access of information about individuals to that which is relevant and necessary to accomplish its purpose, and such data shall be maintained with appropriate administrative, technical and physical safeguards to protect the information.

4.15. Upon the earlier of either the expiration (or termination of this Agreement) or the completion of the project and/or program funded under this Agreement, Contractor shall closeout its use of the funds and its obligations under this Agreement by complying with all closeout requirements under 2 CFR § 200.344. Contractor shall

complete, to County's satisfaction, all final closeout requirements when and as requested by County. Closeout activities shall include, but are not limited to: closeout certifications, submission of final reports, making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable), and determining the custodianship of records.

4.16. Compliance: Contractor shall take timely and appropriate action on all deficiencies pertaining to the Agreement and use of County-provided funds, as detected through audits, on-site reviews, or as indicated by County. Contractor shall provide written confirmation upon request, highlighting the status of actions planned or taken to address any audit findings or other compliance matters as to the Agreement.

4.17. Contractor agrees that it is financially responsible for and will repay the County any and all indicated amounts following an audit exception which occurs due to Contractor's failure, for any reason, to comply with the terms of this Contract. This duty to repay the County shall not be diminished or extinguished by the termination of the Contract. In the event of a violation of section 603(c) of the Act, the funds shall be subject to recoupment by the County and if not repaid shall constitute a debt to the County.

4.18. Pursuant to the Trafficking Victims Protection Act of 2000 (TVPA), as amended, subrecipients and their employees (and subcontractors and their employees) may not:

- 4.18.1. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
- 4.18.2. Procure a commercial sex act during the period of time that the award is in effect; or
- 4.18.3. Use forced labor in the performance of the award or subawards under the award.

4.19. Remedies for Noncompliance. In addition to any other right or remedy arising under the Agreement or in law or equity, County may impose additional special conditions or take additional measures if Contractor fails to comply with any federal law, regulation, or the terms and conditions of this Agreement, fails to meet expected performance goals, or when such measures are otherwise required to comply with federal law and grant funding. Conditions and measures may include:

- 4.19.1. Withholding cash payments pending correction of the deficiency;
- 4.19.2. Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;
- 4.19.3. Disallowing all or part of the cost of the activity or action not in compliance;
- 4.19.4. Requiring additional or more frequent project status reporting;
- 4.19.5. Requiring additional, more detailed financial reports;
- 4.19.6. Requiring additional project monitoring;
- 4.19.7. Requiring Contractor to obtain technical or management assistance;
- 4.19.8. Establishing additional prior approvals; and
- 4.19.9. Wholly or partly suspending or terminating the award.

Federal Award Identification Details and Other Requirements

<i>Federal Assistance Listing Title</i>	<i>Coronavirus State and Local Fiscal Recovery Funds (CSLFRF)</i>
<i>Federal Assistance Listing Number</i>	21.027
<i>Award Name</i>	County of York
<i>Federal Agency</i>	United States Department of the Treasury
<i>Federal Award Identification Number (FAIN)</i>	SLFRP2119
<i>Pass-through Entity & Contact</i>	County of York; County Manager Greg Zinser
<i>Federal Award Date</i>	May 21, 2021
<i>R&D</i>	This Agreement is not for and no funds shall be used for experimental, research, or development (R&D) purposes, within the meaning of 37 CFR Part 401.

5. RECORDS

5.1. Contractor shall keep and maintain full, complete, and accurate program, client, statistical, financial, and other supporting records pertaining to all services and payments, expenditures or distributions, and/or assistance under this Agreement, as required by applicable laws and regulations and consistent with sound, best, and generally-accepted accounting and grant management principles and practices. Contractor shall provide County, Treasury's Office of Inspector General, the Comptroller General of the United States, and the Government Accountability Office, and any of their authorized representatives, access to and the right to examine and copy, all such books, documents, papers, records, accounts, and other documents and sources of information (electronic and otherwise), and shall permit access to facilities, personnel, and other individuals and information as may be necessary or as required by federal regulations and other applicable laws or program guidance, for the purposes of making audits, examinations, investigations, excerpts, and transcriptions pertinent to this Agreement and as may be needed for County to meet its ARPA and federal requirements. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed, and to provide access to construction or other work sites relating to any Agreement work.

5.2. Contractor agrees to maintain all records that are pertinent to this Agreement, including financial, statistical, property, and participant books, records, accounts, reports, and supporting documentation, for a period of not less than five years after the later of: (a) the date of termination or expiration of this Agreement or (b) the date all projects, programs, and closeouts (including return of any remaining

funding) are completed, except that in the event of audit, litigation, or settlement of claims arising from this Agreement, in which case, Contractor shall maintain same until the County, Treasury, or the Comptroller General (or any of their authorized representatives), have disposed of all such litigation, appeals, claims, or exceptions related thereto. Contractor shall grant County the option of retention of the records, books, papers, and documents in unalterable, electronic form if Contractor elects to dispose of said documents following the mandatory retention period.

6. DEBARMENT AND SUSPENSION

6.1. This Agreement is a covered transaction for purposes of 2 CFR Part 180 and 2 CFR Part 3000, and is subject to 2 CFR Part 180 and Treasury's implementing regulation at 31 CFR Part 19. As such, Contractor is required to verify that none of Contractor's principals (defined at 2 CFR §180.995) or its affiliates (defined at 2 CFR §180.905) are excluded (defined at 2 CFR §180.940) or disqualified (defined at 2 CFR §180.935). Covered transactions shall not be entered into with excluded or disqualified persons or with parties listed on the Government's Excluded Parties List System in the System for Award Management (SAM).

6.2. Contractor must comply with 2 CFR Part 180, subpart C, 2 CFR Part 3000, subpart C, and Treasury's implementing regulation at 31 CFR Part 19, and shall include 1. a term or condition that the funding is subject to, and 2. a requirement to comply with these regulations, in any lower tier covered transaction it enters into.

6.3. Contractor represents, warrants, and certifies that it, and its principals, is and are not debarred, suspended, or otherwise excluded from or disqualified or ineligible for participation in Federal assistance programs or activities, including under Executive Order 12549, "Debarment and Suspension" or Executive Order 12689, and that it (and each of its principals) is not on the Excluded Parties List System in the System for Award Management (SAM) or on any comparable list of precluded persons, entities, or facilities. Contractor agrees that neither Contractor nor any of its third party subcontractors shall enter into any third party subcontracts for any of the work under this Agreement with a third party who is debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under executive Order 12549 or any federal regulation, including 2 CFR Part 180. Unless exempt, Contractor must maintain current information in the SAM, consistent with 2 CFR Part 25.

6.4. This certification is a material representation of fact relied upon by County. If it is later determined that Contractor did not comply with 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C, in addition to remedies available to County, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

6.5. The contractor agrees to comply with the requirements of 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

6.6. Contractor agrees to the provisions of Exhibit 1, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered

Transactions, attached hereto and incorporated herein. For purposes of this Agreement and Exhibit 1, Contractor is the “prospective lower tier participant.”

7. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE (all construction contracts meeting the definition of “federally assisted construction contract” under 41 CFR 60-1.3)

Contractor shall comply with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Part 60). 41 CFR 60-1.4 is hereby incorporated by reference.

During the performance of this Agreement, the contractor agrees as follows:

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

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

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

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

7.5. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

7.6. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

7.7. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other Contract Provisions Guide 12 sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7.8. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

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

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

8. **CONTRACT WORK HOURS AND SAFETY STANDARDS** (all contracts in excess of \$100,000 that involve the employment of mechanics, laborers (including watchmen and guards) (as defined by federal law and regulation), or construction work, but not to purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence)

Contractor and all subcontractors shall comply with the Contract Work Hours and Safety Standards Act, 40 USC 3701 through 3708 (including sections 3702 and 3704), as supplemented by Department of Labor regulations at 29 CFR Part 5, which are incorporated hereto. Contractor and all subcontractors shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is subject to conditions, as stated in the Act and regulations. No laborer or mechanic shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to health or safety.

Compliance with the Contract Work Hours and Safety Standards Act.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each

individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor (and all subcontractors) shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

29 CFR 5.5(a)

(1) *Minimum wages.*

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each

classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) *Withholding.* The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the County may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records.*

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to Treasury if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to Treasury. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to Treasury if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to Treasury, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the County or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) *Apprentices and trainees -*

(i) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered

program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) *Compliance with Copeland Act requirements.* The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) *Subcontracts.* The contractor and all subcontractors shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the County may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) *Contract termination: debarment.* A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) *Compliance with Davis-Bacon and Related Act requirements.* All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) *Certification of eligibility.*

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

To the extent work under this Agreement is not covered by any of the other statutes listed in 29 CFR 5.1, further compliance with the Contract Work Hours and Safety Standards Act shall be required as follows:

(1) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the

completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Government, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

9. LICENSE AND DELIVERY OF WORKS SUBJECT TO COPYRIGHT AND DATA RIGHTS

9.1. Contractor agrees that County and Government do reserve, are granted, and shall otherwise have, jointly and severally, a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes:

9.1.1. The copyright in any work developed with the assistance of funds provided under this Agreement;

9.1.2. Any rights of copyright to which Contractor purchases ownership with the assistance of funds provided under this Agreement.

9.2. Contractor grants to County and Government, jointly and severally, a paid-up, royaltyfree, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this Agreement to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the County or acquire on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this Agreement, the Contractor will deliver to the County data first produced in the performance of this Agreement and data required by the Agreement but not first produced in the performance of this Agreement, in formats acceptable by the County.

10. CLEAN AIR AND WATER POLLUTION REQUIREMENTS (all contracts and subcontracts in excess of \$150,000) : Clean Air Act: Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. (42 USC 7401-7671q). Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to Treasury, and the appropriate Environmental Protection Agency Regional Office. Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with funds under this Agreement. Federal Water Pollution Control Act: Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act,

as amended, 33 U.S.C. § 1251 et seq. (33 USC 1251-1388). Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Treasury, and the appropriate Environmental Protection Agency Regional Office. Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with funds under this Agreement.

11. TERMINATION FOR CONVENIENCE OF COUNTY (all contracts in excess of \$10,000)

See the Termination Article in the Agreement.

12. TERMINATION FOR CAUSE/DEFAULT (all contracts in excess of \$10,000)

Contractor's failure to perform or observe any term, covenant or condition of this Agreement shall constitute an event of default under this Agreement.

See the Termination Article in the Agreement.

13. CHANGES

See the Changes Article in the Agreement.

14. LOBBYING (Byrd Anti-Lobbying Amendment, 31 USC 1352 (as amended)) (all contracts and subcontracts in excess of \$100,000)

14.1. Contractor, and each tier to the tier above, certifies that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with the making or obtaining of any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.

14.2. Contractor shall file the required certification, Exhibit 2, *Certification Regarding Lobbying*, attached hereto and incorporated herein, and shall obtain such certifications for all subcontracts in excess of \$100,000.

15. AFFIRMATIVE SOCIOECONOMIC STEPS (MBE / WBE)

If subcontracts are to be let, Contractor, as prime contractor, is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

16. PROCUREMENT OF RECOVERED MATERIALS

16.1. Contractor shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

16.2. In the performance of this Agreement, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

-Competitively within a timeframe providing for compliance with the contract performance schedule;

-Meeting contract performance requirements; or -

At a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines webpage:

<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

17. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES

(a) *Prohibitions.*

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

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds under this Agreement to:

(i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or (iv) Provide, as

part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) *Exceptions.*

(1) This clause does not prohibit contractors from providing—

(i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements;

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

(2) By necessary implication and regulation, the prohibitions also do not apply to: (i) Covered telecommunications equipment or services that:

i. Are not used as a substantial or essential component of any system; and ii. Are not used as critical technology of any system.

(ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) *Reporting requirement.*

(1) In the event Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or Contractor is notified of such by a subcontractor at any tier or by any other source, Contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

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

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts.* Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

19. DOMESTIC PREFERENCES FOR PROCUREMENTS

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

For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

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

20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Contractor's actions pertaining to this Agreement.

21. DAVIS-BACON ACT AND COPELAND ANTI-KICKBACK ACT (only prime construction, repair, or alteration contracts in excess of \$2,000 if required by federal funding program)

- a. Compliance with the Davis –Bacon Act: If applicable to this contract, the contractor agrees to comply with all provisions of the Davis Bacon Act as amended (40 U.S.C. 3141-3148). Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.

- b. Compliance with the Copeland "Anti-Kickback" Act (required for all construction contracts over \$2,000 where Davis-Bacon requirements also apply): The Contractor agrees that it will comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). As applied to this contract, the Copeland "Anti-Kickback" Act makes it unlawful to induce, by force, intimidation, threat or procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment.

22. BONDS (all construction or facility improvement contracts, or any subcontracts thereof, exceeding \$250,000). As required by 2 CFR § 200.326, for construction or facility improvement contracts or subcontracts exceeding the Federal Simplified Acquisition Threshold, the minimum requirements must be followed:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. **The** "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

23. Independent Contractor and Indemnification: In providing services under this Contract, the Contractor is an independent contractor, and neither it nor its officers, agents, or employees are employees of the County for any purpose. The Contractor shall be responsible for all federal and/or state tax, industrial insurance, and Social Security liability that may result from the performance of and compensation for these services and shall make no claim of career service or civil service rights which may accrue to a County employee under state or local law. The parties intend that an independent contractor relationship shall be created by this Contract. The Contractor shall not make any claim of right, privilege or benefit which ~~would accrue to an employee.~~ The County assumes no responsibility for the payment of any compensation, wages, benefits, or taxes, by, or on behalf of the Contractor, its employees, and/or others by reason of this Contract. The Contractor shall protect, indemnify, defend and save harmless the County, its officers, agents, and employees from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from (1) the Contractor's failure to pay any such compensation, wages, benefits, or taxes, and/or (2) the supplying to the Contractor of work, services, materials, or supplies by Contractor employees or other suppliers in connection with or support of the performance of this Contract. If, for any reason, the Contractor's required licenses or certificates are terminated, suspended, revoked or in any manner modified from their status at the time this Contract becomes effective, the Contractor shall notify the County immediately of such condition in writing. The Contractor and Subcontractor(s) shall maintain and be liable for payment of all applicable taxes (except sales/use taxes), fees, licenses, permits and costs as may be required by applicable federal, state or local laws and regulations as may be required to provide the Work under this Contract. To the maximum extent permitted by law, Contractor shall, at its cost and expense, protect, defend, indemnify and hold harmless the County, its directors, officers, employees, and agents, from and against any and all demands, liabilities, causes of action, costs and expenses (including attorney's fees), claims, judgments, or awards of damages, arising out of

or in any way resulting from the acts or omissions of Contractor, its directors, officers, employees, or agents, relating in any way to the Contractor's performance or nonperformance under the Contract. These indemnification obligations shall survive the termination of the Contract.

24. APPLICABLE LAW AND VENUE: This Contract shall be construed and interpreted in accordance with the laws of the State of Maine. The venue for any action hereunder shall be in York County, Maine. Waiver of any default shall not be deemed to be a waiver of any subsequent default. No action or failure to act by the County shall constitute a waiver of any right or duty afforded to the County under the Contract; nor shall any such action or failure to act by the County modify the terms of the Contract or constitute an approval of, or acquiescence in, any breach hereunder, except as may be specifically stated by the County in writing.

Exhibit 1

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY
AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS**

(Lower Tier refers to the agency or Contractor receiving Federal funds, as well as any subcontractors that the agency or Contractor enters into contract with using those funds)

As required by Executive Order 12549, Debarment and Suspension, and 31 CFR Part 19 and 2 CFR part 180, the County may not enter into contract with any entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal Government from participating in transactions involving Federal funds. Contractor is required to sign the certification below which specifies that neither Contractor nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal agency. It also certifies that Contractor will not use, directly or indirectly, any of these funds to employ, award contracts to, engage the services of, or fund any Contractor that is debarred, suspended, or ineligible under 31 CFR Part 19.

Instruction for Certification

1. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
2. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definition and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
4. The prospective lower tier participant agrees by submitting this agreement that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
5. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension,

Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

7. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

8. Except for transactions authorized under paragraph 4 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion – Lower Tier Covered Transactions

1. Contractor certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statues or commission of embezzlement, theft, forgery, bribery, falsifications or destruction of records, making false statements, or receiving stolen property;

3. Are not presently indicted for, or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with, commission of any of the offenses enumerated in paragraph (b) of this certification, and

4. Have not within a three-year period preceding this application/ proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

5. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation.

Name (Printed)

Title

Organization Name

Signature

Date:

Exhibit 2

APPENDIX A, 31 CFR PART 21 –CERTIFICATION REGARDING LOBBYING
Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person or organization for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining or awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Name (Printed)

Title

Signature

Organization Name

Date: