

**NORTH CAROLINA**  
**BRUNSWICK COUNTY**

**INTERLOCAL AGREEMENT  
FOR SUBAWARD OF ARPA  
FUNDS FOR A UTILITY  
INFRASTRUCTURE PROJECT**

**THIS INTERLOCAL AGREEMENT FOR SUBAWARD OF ARPA FUNDS FOR A UTILITY INFRASTRUCTURE PROJECT** (hereinafter referred to as the “Agreement”) is made and entered into by and between **Brunswick County**, a body politic and corporate of the State of North Carolina (UEI Number: MJBMXLN9NJT5), (hereinafter referred to as “County” or “Subrecipient”), party of the first part, and the **Town of St. James**, a municipal corporation organized and existing pursuant to the laws of the State of North Carolina and located in Brunswick County (UEI Number: SZ8VWXN5PTS6), (hereinafter referred to as “Town” or “Recipient” or “Pass-Through Entity”), party of the second part. County and Town may be collectively referred to hereinafter as “Parties” or singularly as a “Party.”

**WITNESSETH:**

**WHEREAS**, the federal American Rescue Plan Act of 2021 (hereinafter referred to as “ARPA”) was signed into law on March 11, 2021 (Assistance Listing Number and Title: 21.027); and

**WHEREAS**, ARPA authorizes the United States Department of the Treasury (hereinafter referred to as “Treasury”) to make payments to certain recipients, including eligible units of local government, from the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund (hereinafter referred to as “Fiscal Recovery Funds”); and

**WHEREAS**, pursuant to Treasury’s Final Rule issued in January 2022, Fiscal Recovery Funds allocated pursuant to ARPA may be used for approved expenditures, including, without limitation, certain investments in water, sewer, and broadband infrastructure, in compliance with Title VI, Section 603(c), Coronavirus Local Fiscal Recovery Fund, of the Social Security Act, Treasury’s regulations implementing that section, and guidance issued by Treasury regarding the foregoing; and

**WHEREAS**, pursuant to N.C.G.S. 160A-17.1, the governing body of any city or county is authorized to make contracts for and to accept grants-in-aid and loans from the federal and state governments and their agencies for constructing, expanding, maintaining, and operating any project or facility, or performing any function, which such city or county may be authorized by general law or local act to provide or perform; and

**WHEREAS**, as authorized by N.C.G.S. 153A-276 and N.C.G.S. 160A-313, counties and cities, respectively, may use Fiscal Recovery Funds for necessary water and sewer infrastructure projects, as determined by the local government’s governing board; and

**WHEREAS**, pursuant to Sections 602(c)(3) and 603(c)(3) of ARPA, a local government entity may contract with another local government entity and transfer amounts paid from Fiscal Recovery Funds pursuant to those contractual arrangements for eligible uses; and

**WHEREAS**, Town's allocation of Fiscal Recovery Funds is \$1,991,221.63 (Federal Award Identification Number: NC0437) (hereinafter referred to as the "Award"); and

**WHEREAS**, County currently owns and operates the public water service in the incorporated limits of Town; and

**WHEREAS**, County and Town have documented repeated instances of lower water pressure issues within the incorporated limits of Town; and

**WHEREAS**, in order to assess potential inadequacies of the current water supply in the incorporated limits of Town, County and Town desire to explore a cooperative endeavor by which Town will transfer to County its allocation of Fiscal Recovery Funds to be used in conjunction with a specified portion of County's allocated Fiscal Recovery Funds to jointly undertake a Preliminary Engineering Report that will then lead to engineering and construction of a solution to the ongoing water pressure problems; and

**WHEREAS**, County has identified potential improvements to ameliorate the issue but has no definitive date for implementing the same; and

**WHEREAS**, Town would like to accelerate infrastructure improvements; and

**WHEREAS**, County and Town each agree that the cooperative endeavor contemplated hereby will be beneficial to both entities; and

**WHEREAS**, County and Town, in order to set out the provisions and conditions under which said services or resources will be provided, have entered into this Agreement as authorized by Article 20, Part 1 of Chapter 160A and Article 15 of Chapter 153A of the North Carolina General Statutes.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants and promises contained herein, County and Town do hereby agree as follows:

## **1. ALLOCATION AND SUBAWARD OF FISCAL RECOVERY FUNDS**

Town is the recipient of the Award of Fiscal Recovery Funds in the amount of \$1,991,221.63, with the Town's first allocation having been received by the Town on July 23, 2021, in the amount of \$ 995,610.82, and the final allotment to be received by the Town on July 23, 2022. Pursuant to Sections 602(c)(3) and 603(c)(3) of ARPA, Town desires to award a fixed amount subaward to County, and County desires to accept from Town, Town's subaward of Fiscal Recovery Funds for water infrastructure improvements. The subaward will be used in conjunction with a portion of County's award of Fiscal Recovery Funds to jointly undertake a Preliminary Engineering Report followed by engineering and construction of a solution to the ongoing pressure

problems associated with Town's water supply. As its subaward to County, Town agrees to transfer its initial sum of Fiscal Recovery Funds in the amount \$995,610.82 to County within sixty (60) days of the execution of this Agreement. Further, Town agrees to transfer the final allotment of its Award funds within sixty (60) days of receipt, which receipt by Town is anticipated to be on July 23, 2022.

## **2. TERM OF AGREEMENT; PERIOD OF PERFORMANCE**

This Agreement is effective as of the last date a party signs below (the "Effective Date") and continues in effect until December 31, 2026, or completion of the Project, as defined below, whichever occurs first, unless sooner terminated as provided for herein. Notwithstanding the foregoing, pursuant to sections 602(c)(1) and 603(c)(1) of ARPA, all Fiscal Recovery Funds must be obligated or costs incurred for the use of such funds between March 3, 2021, and December 31, 2024, and all Fiscal Recovery Funds must be fully expended by December 31, 2026 (hereinafter referred to as the "Period of Performance"). A cost shall be considered to have been incurred if a contract, agreement, or obligation with respect to such cost has been entered into by December 31, 2024.

## **3. TERMINATION**

- A. **FOR CAUSE.** Either party may terminate this Agreement upon fifteen (15) calendar days' written notice to the other party if the other party is in material breach of any provision herein and fails to cure the breach during the notice period.
- B. **WITHOUT CAUSE.** This Agreement may otherwise be terminated only by mutual, written agreement signed by the parties hereto. A mutually agreeable termination of this Agreement will be on such terms as the parties may agree at the time in question.
- C. **RETURN OF FISCAL RECOVERY FUNDS.** In the event of termination for any reason, County will return to Town all of Town's unused and unencumbered Fiscal Recovery Funds as of the effective date of termination. The effective date of termination may be up to sixty (60) days in the future to allow ample time to complete tasks for which value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, to assemble project materials in orderly files, and/or to ensure all outstanding consultant or contractor invoices have been paid in full.

## **4. RELATIONSHIP OF PARTIES UNDER ARPA**

For purposes of this Agreement, Town is the recipient government body, and County is the subrecipient government body for the Town's ARPA funds for the Project defined hereinbelow. Town is the pass-through entity, and the ARPA funds awarded by Town to County pursuant to this Agreement constitute a subaward of ARPA funds. In its performance of subaward work hereunder, County shall be an independent entity and not an employee or agent of Town.

## **5. KEY PERSONNEL**

The parties agree to allocate the necessary staff and time required to perform their respective duties under this Agreement. Each party will promptly communicate any changes in the key personnel assigned or their general responsibilities to the other party.

## **6. ACKNOWLEDGEMENT OF ARPA COMPLIANCE RESPONSIBILITIES**

A. As the Pass-Through Entity, Town acknowledges that it will monitor County for compliance with all conditions and restrictions applicable to the subaward of the Fiscal Recovery Funds. Town further acknowledges that it will implement necessary policies and procedures to comply with its responsibilities under ARPA, which may include the following:

1. Adopting a Uniform Guidance policy for determining eligibility and allowable costs;
2. Implementing a project tracking system and document collection and retention process;
3. Implementing processes to create and maintain appropriate documents, justifications, financial information, and outcome measures as necessary to ensure reporting and audit compliance; and
4. Reporting to Treasury and any other applicable agency regarding use of the Fiscal Recovery Funds.

B. As Subrecipient, County acknowledges that it will:

1. Collect and provide appropriate financial and progress reports to Town;
2. Be accountable for how it uses the federal funds provided under the subaward; and
3. Follow applicable federal rules regarding financial management, internal controls, cost principles, and audit requirements.

## **7. MAINTENANCE OF AND ACCESS TO RECORDS; REPORTING**

The following access to records requirements apply to this Agreement:

- A. The parties agree to maintain all books, documents, papers, and records which are directly pertinent to this Agreement through December 31, 2031, or such longer period as necessary for the resolution of any litigation, claim, negotiation, audit, or other inquiry involving this Agreement, for the purposes of making audits, examinations, excerpts, and transcriptions.
- B. The parties agree to permit each other, the Treasury Office of Inspector General, the Government Accountability Office, the Pandemic Response Accountability Committee, or any of their authorized representatives to access such records (electronic or otherwise) set forth in preceding Section 7.A., to reproduce the same by any means whatsoever, or to copy excerpts and transcriptions of the same upon advance request and as reasonably needed.

- C. The parties agree to provide the Treasury Office of Inspector General, the Government Accountability Office, or any other authorized representatives of the federal government access to construction or other work sites pertaining to the work being completed under this Agreement.
- D. In compliance with Section 1225 of the Disaster Recovery Act of 2018, the parties acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the federal government or the Comptroller General of the United States.
- E. County shall provide to Town at least quarterly a report, including contractor or consultant invoices, detailing all payments disbursed from Town's Fiscal Recovery Funds under this Agreement. If reasonably requested in advance by Town, County will provide more frequent reports. If it is determined that County made unallowable disbursements from Town's Fiscal Recovery Funds under this Agreement, County agrees to promptly reimburse Town for such amounts.

## **8. AUDIT REQUIREMENTS**

Subrecipient must have a single or program-specific audit conducted for any fiscal year in which it expends \$750,000 or more in federal awards in accordance with the provisions of Title 2, Subtitle A, Chapter II, Part 200, Subpart F of the Code of Federal Regulations, Uniform Administrative Audit Requirements for Federal Awards.

Copies of the audit must be made available for public inspection, ensuring that protected personally identifiable information is not included. Audit reports must be submitted to the Federal Audit Clearinghouse ("FAC"), and all federal agencies, the Pass-Through Entity, and others interested in an audit report must obtain it from the FAC.

## **9. PROGRAM INCOME**

Program income generally means gross income received by Subrecipient that was generated from the use of federal funds, including, but not limited to, (i) payments of principal and interest on loans made using federal funds; (ii) proceeds from the disposition of real property purchased or improved with federal funds; (iii) proceeds from the disposition of equipment purchased with federal funds; or (iv) interest earned on program income pending its disposition. When such program income is generated by an activity that is partially assisted with federal funds, the income shall be pro-rated to reflect the percentage of ARPA funds used.

Program income received before grant closeout may be retained by Subrecipient if the income is treated as additional ARPA funds subject to all applicable requirements governing the use of ARPA funds.

## **10. PROPERTY STANDARDS**

Subrecipient must procure and maintain insurance coverage for Real Property (as defined in 2 C.F.R. §§ 200.1 and 200.311), Supplies (as defined in 2 C.F.R. §§ 200.1 and 200.314), and Equipment (as defined in 2 C.F.R. §§ 200.1 and 200.313) acquired or improved either with the use

of the subaward of ARPA funds hereunder or its own award of ARPA funds with coverages at least equivalent to other property currently owned by it. Notwithstanding the foregoing, Subrecipient is not authorized to acquire Real Property or purchase Equipment under this Agreement with Town's ARPA funds.

Should Subrecipient acquire Supplies with Town's subaward of ARPA funds hereunder, title to Supplies will vest in Subrecipient upon acquisition. If Subrecipient has a residual inventory of unused Supplies exceeding \$5,000 in total aggregate value upon termination or completion of the Project hereunder, and the Supplies are not needed for any other federal award, Subrecipient must retain the Supplies for use on other activities or sell them. If Subrecipient sells any Real Property, Equipment, or Supplies obtained either with the use of the subaward of ARPA funds hereunder, as permitted in this Section, or its own award of ARPA funds, it shall comply with the requirements of 2 C.F.R. § 200.307(e), utilizing the "addition method" required by Treasury for program income during the period of performance of the Award or compensate the federal government for its share according to 2 C.F.R. § 200.313(e)(2), as applicable.

As long as the federal government retains an interest in the Supplies, Subrecipient must not use the Supplies acquired under the federal award to provide services to other organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized.

## **11. PROCUREMENT STANDARDS**

Subrecipient must comply with its own purchasing policies and all procurement standards as described in 2 C.F.R. Part 200 Subpart D.

## **12. SCOPE OF PROJECT**

Upon execution of this Agreement by both parties, County shall prepare a request for qualifications in accordance with applicable statutes and shall proceed to advertise for qualified consultants to prepare a Preliminary Engineering Report for the evaluation of infrastructure improvements to address water pressure issues within the Town and immediate vicinity. Responses shall also include, without limitation, qualifications for design and construction oversight of the potential improvements. A selection committee composed of both County and Town staff members shall select the most qualified consultant for the evaluation. The target timeframe for consultant selection shall be within three (3) months of Agreement execution. County staff shall negotiate and refine a final scope of work and fee with the selected consultant, which shall be subject to approval of the selection committee prior to consideration by the Brunswick County Board of Commissioners.

The Preliminary Engineering Report will evaluate various infrastructure solutions and combinations thereof, including, but not limited to, an elevated water storage tank in the St. James/Middleton Road area, additional transmission water mains around the perimeter and connecting into the existing distribution system within the Town, additional small diameter water mains within the development to address localized areas of low pressure, and pressure sustaining valves installed on the existing 24" potable water main on Highway 211 as well as other options that may be identified by the consultant. The Preliminary Engineering Report shall also provide

associated costs, benefits (increased pressure values), and obstacles for each option and will provide final recommendations.

Based on the Preliminary Engineering Report, the selection committee shall recommend the proposed improvements for County staff to negotiate and refine a final scope of work and fee with the consultant for final design and construction administration services for approval by the Brunswick County Board of Commissioners. Upon an approved agreement by the Brunswick County Board of Commissioners, County staff shall manage the selected consultant's design and construction efforts.

Town acknowledges that some options may require infrastructure construction within the interior of Town and agrees to assist with facilitation of the construction, including, but not limited to, obtaining necessary easements. Where the Town is able, Town shall provide underground utility easements, as needed, to County at no charge to County or the consultant.

Collectively, the foregoing set forth in this Section 12 is referred to herein as the "Project."

Both Town and County shall share equally in the pre-construction costs associated with the Project, including, but not necessarily limited to, the Preliminary Engineering Report, design of the proposed infrastructure improvements, and acquisition of any required easements. Town's pro-rata share of all pre-construction costs shall be deducted from the payments received by County in the eventual amount of \$1,991,221.63. If requested by Town, County shall provide to Town an accurate monthly reporting of all pre-construction costs, including consultant or contractor invoices, denoting Town's pro-rata share.

Construction costs shall be initially funded by the remaining balance of Town's Fiscal Recovery Funds held by County after Town's pro-rata share of pre-construction costs have been paid in full. Once all of Town's Fiscal Recovery Funds have been expended, the remainder of any pre-construction or construction costs shall be funded by County.

### **13. WORK PRODUCT**

All work product created in connection with the Project, including, but not limited to, the Preliminary Engineering Report, studies, design drawings, construction documents, photographs and models, and any derivative works and compilations shall be the exclusive property of County. To the extent applicable, Town shall execute any documents and instruments or obtain such documents from third parties necessary to fully vest such rights in County. County may use all materials for any other purpose and on any other project without limitation and without authorization from Town provided that the County also uses such materials in furtherance of this Project and for the benefit of Town and County as intended by this Agreement.

### **14. OWNERSHIP OF UTILITY INFRASTRUCTURE**

Ownership of any utility infrastructure constructed as part of this Project shall fully vest in County. Town shall execute any documents and instruments or obtain such documents from third parties necessary to fully vest said ownership in County. The Parties specifically agree, however,

that the County shall continue to provide water service to the Town as long as the Town requests the same.

## **15. RELATIONSHIP OF PARTIES**

Both County and Town agree that each is acting as an independent contractor of the other under this Agreement. Control of a party's personnel, standards of performance, discipline, and all other aspects of performance shall be governed entirely by said party. No joint agency is established by this Agreement. This Agreement does not create a partnership, joint venture, other joint endeavor, joint ownership, joint operations, or personnel sharing of any kind. No joint personnel are needed by the parties in order to carry out the obligations under this Agreement. No joint ownership of property is contemplated by this Agreement.

## **16. REPRESENTATIONS**

Each party to this Agreement represents to the other party the following as of the Effective Date of this Agreement and covenants with the other party that each such representation will remain true and correct:

- A. It has all requisite power and authority to execute, deliver, and perform its obligations under this Agreement.
- B. It has by proper action authorized the execution and delivery of this Agreement and is not in default under any provisions of this Agreement.
- C. The execution, delivery, and performance of this Agreement does not violate, conflict with, or require any consent or waiver under any of the terms or conditions in (i) its organizational or governing documents; (ii) any material contract to which it is a party or by which any of its assets are bound or affected; or (iii) any law, rule, regulation, order, writ, judgment, decree, or other legal or regulatory determination applicable to it.
- D. This Agreement constitutes a legal, valid, and binding obligation enforceable at law and in equity in accordance with its terms.
- E. It shall comply with all applicable federal, state, and local laws with respect to any activities conducted by it under or pursuant to this Agreement.
- F. No elected or appointed official or employee has any interest (financial, employment, or other) in the transactions contemplated by this Agreement.
- G. It will take no act (or engage in any failure to act) that will prevent, delay, obstruct, frustrate, or otherwise impair or undermine the activities conducted under or pursuant to this Agreement, except as may be necessary to enforce this Agreement or ensure compliance with applicable laws, regulations, and ordinances.



## **17. COMPLIANCE WITH FEDERAL LAWS, REGULATIONS, AND EXECUTIVE ORDERS**

This is an acknowledgement that federal financial assistance will be used to fund all or a portion of this Agreement. In taking any actions required of them by this Agreement, the parties will comply with all applicable federal laws, regulations, executive orders, policies, procedures, and directives, specifically including, without limitation, those listed in the Award.

## **18. CERTIFICATION REGARDING BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (AS AMENDED)**

By entering into this Agreement, the parties certify, to the best of their knowledge and belief, that no federal appropriated funds have been paid or will be paid 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 obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352.

If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or intending 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 Agreement, grant, loan, or cooperative agreement, Subrecipient shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying," to the Pass-Through Entity, which will, in turn, forward the certification(s) to Treasury. Subrecipient shall cause the language of this section to be included in all subcontracts. If Subrecipient bids or applies for a contract exceeding \$100,000 (including this Agreement), it must also file the required certification with the Pass-Through Entity.

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 31 U.S.C. 1352. 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.

## **19. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES**

Pursuant to 2 C.F.R. § 200.216, Subrecipient shall not obligate or expend funds received under this Subaward to: (1) procure or obtain; (2) extend or renew a contract to procure or obtain; or (3) enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services (as described in Public Law 115-232, section 889) as a substantial or essential component of any system, or as a critical technology as part of any system.

## **20. DOMESTIC PREFERENCE FOR PROCUREMENTS**

As appropriate, and to the extent consistent with law, Subrecipient 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.

## **21. PROCUREMENT OF RECOVERED MATERIALS**

- A. In the performance of this Agreement, Subrecipient shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired –
  - 1. Competitively within a timeframe providing for compliance with the Agreement performance schedule;
  - 2. Meeting Agreement performance requirements; or
  - 3. At a reasonable price.
- B. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- C. The parties also agree to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

## **22. SUSPENSION AND DEBARMENT**

- A. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, Subrecipient is required to verify that none of its principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). If any of the foregoing persons are excluded or disqualified, and the Secretary of the Treasury has not granted an exception pursuant to 31 C.F.R. § 19.120(a), (1) this Agreement shall be void, (2) neither party shall make any payments of federal financial assistance to the other, and (3) neither party shall have any further obligations to the other party under this Agreement.
- B. Subrecipient must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction they enter into.

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

D. To the extent applicable, Subrecipient agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. Subrecipient further agrees to include a provision requiring such compliance in its lower tier covered transactions.

### **23. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

The parties acknowledge that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to all actions pertaining to this Agreement.

### **24. NO OBLIGATION BY FEDERAL GOVERNMENT**

The federal government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-federal entity, the parties hereto, or any other party pertaining to any matter resulting from the Agreement.

### **25. DHS SEAL, LOGO, AND FLAGS**

The parties shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. Subrecipient shall include this provision in any subcontracts.

### **26. MINORITY BUSINESS ENTERPRISES**

To the extent applicable, Subrecipient 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. For purposes of this section, an entity shall qualify (1) as a "minority business" or "women's business enterprise" if it is currently certified as a North Carolina "historically underutilized business" under Chapter 143, Section 128.4(a) of the N.C. General Statutes, and (2) as a "small business" if it is independently owned and operated and is qualified under the Small Business Administration criteria and size standards at 13 C.F.R. Part 21.

### **27. INDEMNITY**

A. To the extent permitted by law, County shall indemnify and hold harmless Town and its officers, agents, and/or employees from and against any and all claims, actions, suits, liabilities, losses, costs, expenses, and damages of any nature whatsoever, by reason of or arising out of any intentional or negligent action or omission of County, its officers,

agents, and/or employees in fulfilling County's obligations pursuant to this Agreement. In the event that any suit based upon such a claim, action, loss, or damage is brought against Town, County shall defend the same at its sole cost and expense; provided that, Town retains the right to participate in said suit if any principle of government or public law is involved. If final judgment is to be rendered against Town and its respective officers, agents, and/or employees or jointly against Town and County and their respective officers, agents, and/or employees, County shall satisfy same.

- B. To the extent permitted by law, Town shall indemnify and hold harmless County and its officers, agents, and/or employees from and against any and all claims, actions, suits, liabilities, losses, costs, expenses, and damages of any nature whatsoever, by reason of or arising out of any intentional or negligent action or omission of Town, its officers, agents, and/or employees in fulfilling Town's obligations pursuant to this Agreement. In the event that any suit based upon such a claim, action, loss, or damage is brought against County, Town shall defend the same at its sole cost and expense; provided that, County retains the right to participate in said suit if any principle of government or public law is involved. If final judgment is to be rendered against County and its respective officers, agents, and/or employees or jointly against County and Town and their respective officers, agents, and/or employees, Town shall satisfy same.
- C. By executing this Agreement, County does not assume liability or responsibility for or in any way release Town from any liability or responsibility which arises in whole or in part from the existence or effect of Town ordinances, rules, or regulations. If any cause, claim, suit, action, or administrative proceeding is commenced in which the enforceability and/or validity of any such Town ordinance, rule, or regulation is at issue, Town shall defend the same at its sole cost and expense, and if judgment is entered or damages are awarded against Town, County, or both, Town shall satisfy the same, including all chargeable costs and attorneys' fees.

## **28. REMEDIES**

Should a party breach this Agreement, the other party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently in addition to any other available remedy.

## **29. CLEAN AIR ACT**

- A. Subrecipient 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.
- B. Subrecipient agrees to report each violation to the other party and understand and agree that the other party will, in turn, report each violation as required to assure notification to the other party, the federal government, and the appropriate Environmental Protection Agency Regional Office.

- C. Subrecipient agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance.

### **30. FEDERAL WATER POLLUTION CONTROL ACT**

- A. Subrecipient 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.
- B. Subrecipient agrees to report each violation to the other party and understand and agree that the other party will, in turn, report each violation as required to assure notification to the other party, the federal government, and the appropriate Environmental Protection Agency Regional Office.
- C. Subrecipient agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance.

### **31. EQUAL EMPLOYMENT OPPORTUNITY**

In performing this Agreement, Subrecipient agrees as follows:

- A. Subrecipient will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Subrecipient 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. Subrecipient 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.
- B. Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of them, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- C. Subrecipient 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 parties' legal duty to furnish information.

- D. Subrecipient will send to each labor union or representative of workers with which they have a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the party's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. Subrecipient 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.
- F. Subrecipient 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 its 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.
- G. In the event of Subrecipient's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the noncompliant party 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 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.
- H. Subrecipient will include the portion of the sentence immediately preceding paragraph (A) and the provisions of paragraphs (A) through (H) 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. Subrecipient 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 Subrecipient becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, Subrecipient may request the United States to enter into such litigation to protect the interests of the United States.

Subrecipient 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 party 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.

Subrecipient 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.

Subrecipient 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, Subrecipient 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.

### **32. CIVIL RIGHTS AND NON-DISCRIMINATION**

Subrecipient and any subcontractor of Subrecipient, or their respective successors, transferees, or 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 U.S.C. §§ 2000d *et seq.*), as implemented by the Department of the Treasury's Title VI regulations, 31 C.F.R. Part 22, which are herein incorporated by reference and made a part of this Agreement. Title VI also provides protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. §§ 2000d *et seq.*, as implemented by Treasury's Title VI regulations, 31 C.F.R. Part 22, and herein incorporated by reference and made a part of this Agreement.

### **33. OTHER NON-DISCRIMINATION STATUTES**

- A. Subrecipient acknowledges that it is bound by and agrees, to the extent applicable, to abide by the provisions contained in the federal statutes enumerated below and any other federal statutes and regulations that may be applicable to the expenditure of Fiscal Recovery Funds:

1. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 *et seq.*), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
2. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
3. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 *et seq.*), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
4. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 *et seq.*), which prohibits discrimination on the basis of disability in programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

#### **34. COMPLIANCE WITH E-VERIFY PROGRAM**

To the extent E-Verify rules apply to this Agreement, Subrecipient agrees to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.

#### **35. CONFIDENTIAL INFORMATION**

For purposes of this Agreement, the party disclosing Confidential Information is the "Disclosing Party," and the party receiving Confidential Information is the "Receiving Party." "Confidential Information" shall mean any nonpublic information concerning the parties' respective businesses including, but not limited to, all tangible, intangible, visual, electronic, present, or future information such as: (a) trade secrets; (b) financial information, including pricing; (c) technical information, including research, development, procedures, algorithms, data, designs, and know-how; (d) business information, including operations, planning, marketing interests, and products; and (e) the terms of any agreement between the parties and the discussions, negotiations, and proposals related to that agreement. Confidential Information disclosed to the other party must be clearly identified. Written Confidential Information must be clearly marked in a conspicuous place with an appropriate legend identifying the information as "Confidential." Confidential Information that is not written must be identified as confidential at the time of disclosure and confirmed in writing delivered to the Receiving Party within fifteen (15) days of disclosure.

The restrictions regarding the use and disclosure of Confidential Information do not apply to information that is:

- a. in the public domain through no fault of the Receiving Party;
- b. within the legitimate possession of the Receiving Party, with no confidentiality obligations to a third party;



- c. lawfully received from a third party having rights in the information without restriction, and without notice of any restriction against its further disclosure;
- d. independently developed by the Receiving Party without breaching this Agreement or by parties who have not had, either directly or indirectly, access to or knowledge of the Confidential Information;
- e. disclosed with the prior written consent of the Disclosing Party; or
- f. required to be disclosed by law, regulation or court or governmental order, specifically including requests pursuant to the Public Records Laws of North Carolina contained in Chapter 132 of the North Carolina General Statutes. In the event the Receiving Party receives such a request, it shall notify the Disclosing Party, and the Disclosing Party shall have the opportunity to defend against production of such records at its expense.

### **36. NO ASSIGNMENT WITHOUT CONSENT**

Neither party shall assign this Agreement (or assign any right or delegate any obligation contained herein whether such assignment is of service, of payment, or otherwise) without the prior written consent of the other party hereto. Any such assignment without the prior written consent of the other party hereto shall be void and the purported assignee shall acquire no rights hereunder.

### **37. GOVERNING LAW AND VENUE**

This Agreement shall be governed by applicable federal law and by the laws of the State of North Carolina, without regard for any choice of law provisions. All actions relating in any way to this Agreement shall be brought in the General Court of Justice of the State of North Carolina in the Superior Court Division for Brunswick County or in the United States Federal District Court for the Eastern District of North Carolina, Wilmington Division, as applicable.

### **38. DISPUTE RESOLUTION**

Should a dispute arise as to the terms of this Agreement, both parties agree that neither may initiate binding arbitration. The parties may agree to non-binding mediation of any dispute prior to the bringing of any suit or action, but they are not obligated to do so.

### **39. GOVERNMENTAL IMMUNITY**

To the extent applicable, neither party waives its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

#### **40. NON-WAIVER**

Failure by a party at any time to require the performance by the other party of any of the provisions of this Agreement shall in no way affect that party's rights hereunder to enforce the same, nor shall any waiver by a party of any breach be held to be a waiver of any succeeding breach.

#### **41. CONFLICTS OF INTEREST; GIFTS AND FAVORS**

Subrecipient must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts, including, without limitation, the requirements set forth in 2 C.F.R. § 200.318(c)(1) and N.C.G.S. §§ 14-234(a)(1) and 234.3(a). Subrecipient certifies that as of the date of this Agreement, to the best of its knowledge after reasonable inquiry, no employee, officer, or agent has participated in the selection, award, or administration of a contract supported by federal funds if such person has a real or apparent conflict of interest. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. If Subrecipient obtains knowledge of such interest in or any tangible personal benefit described herein after the date of this Agreement, such party shall promptly disclose the same to the other party in writing. Subrecipient further certifies that it has not provided, nor offered to provide, any gratuities, favors, or anything of value to an officer, employee, or agent of it. Should Subrecipient obtain knowledge of the provision, or offer of any provision, of any gratuity, favor, or anything of value to an officer, employee, or agent described herein after the date of this Agreement, such party shall promptly disclose the same to the other party in writing.

#### **42. SUBAWARD CLOSEOUT**

Pursuant to 2 C.F.R. § 200.343, Subrecipient's obligation to the Pass-Through Entity shall not end until all closeout requirements are completed. Activities during the closeout period shall include, but are not limited to: Subrecipient closeout certifications, submission of final reports, making final payments, and 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.

Notwithstanding the foregoing, the terms of this Agreement shall remain in full force and effect during any period that Subrecipient has control over ARPA funds, including program income.

#### **43. TIME**

Time is of the essence for this Agreement.

#### **44. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties with respect to the subject matter herein. There are no other representations, understandings, or agreements between the parties with respect to such subject matter. This Agreement supersedes all prior agreements, negotiations, representations, and proposals whether written or oral.

#### **45. HEADINGS**

The headings in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

#### **46. SEVERABILITY**

The invalidity of one or more of the phrases, sentences, clauses, or sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of this Agreement can be determined and effectuated. If a provision of this Agreement is determined by a court of law with jurisdiction over the parties to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Agreement shall, if possible, be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving the intent of the Agreement.

#### **47. AMENDMENTS**

No amendments or changes to this Agreement shall be valid unless in writing and signed by authorized agents of both Town and County.

#### **48. NOTICES**

- A. **DELIVERY OF NOTICES.** Any notice, consent, or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by certified U.S. mail with return receipt requested, or by overnight courier, to the intended recipient at the address set forth below. Courtesy notice sent by facsimile or electronic mail is also encouraged, but must be sent in conjunction with one of the foregoing, accepted methods of service.
- B. **EFFECTIVE DATE OF NOTICES.** Any notice shall be effective upon the date of receipt by the intended recipient.
- C. **NOTICE ADDRESS.** Communications requiring notice under this Agreement, including without limitation notices relating to breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment, or waiver of any provision of this Agreement, shall be sent to:

- i. For the County: Brunswick County  
Attn: County Manager  
P. O. Box 249  
Bolivia, NC 28422

With a contemporaneous copy not constituting notice to:

Robert V. Shaver, Jr., County Attorney  
30 Government Center Drive, Suite 325  
P.O. Box 249  
Bolivia, NC 28422

- ii. For the Town: Town of St. James  
Attn: Town Manager  
4140A Southport-Supply Road  
St. James, NC 28461

With a contemporaneous copy not constituting notice to:

G. Grady Richardson, Jr., Town Attorney  
Law Offices of G. Grady Richardson, Jr., P.C.  
1908 Eastwood Rd., Suite 224  
Lumina Station  
Wilmington, NC 28403

#### **49. SIGNATURES**

This Agreement, together with any amendments or modifications, may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be considered one and the same agreement. This Agreement may also be executed electronically. By signing electronically, the parties indicate their intent to comply with the Electronic Commerce in Government Act (N.C.G.S § 66-58.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S § 66-311 et seq.). Delivery of an executed counterpart of this Agreement by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

ATTEST:

**BRUNSWICK COUNTY**

\_\_\_\_\_  
Clerk to the Board

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

Randell Thompson, Chairman  
Board of Commissioners

[SEAL]

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

ATTEST:

**TOWN OF ST. JAMES**

Saura William  
Town Clerk

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

Jean R. Toner  
Jean R. Toner, Mayor

[SEAL]

Date: July 11, 2022

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

**BRUNSWICK COUNTY**

**TOWN OF ST. JAMES**

\_\_\_\_\_  
Aaron C. Smith, Director of Fiscal Operations

Pauline J. Haran  
Pauline Haran, Finance Director

APPROVED AS TO FORM

APPROVED AS TO FORM

\_\_\_\_\_  
Robert V. Shaver, Jr., County Attorney /  
Bryan W. Batton, Assistant County Attorney

G. Grady Richardson, Jr.  
G. Grady Richardson, Jr., Town Attorney