

CONTRACTOR ADDENDUM FOR AMERICAN RESCUE PLAN ACT FUNDS

This **ADDENDUM** is entered into by and between _____, (the “Contractor”) and The County Commission of Greenbrier County, West Virginia (the “County”), and forms an integral part of the contract or contracts executed between the parties to effectuate the following project:

RECITALS

WHEREAS, on March 11, 2021, the American Rescue Plan Act (hereinafter “ARPA”) was signed into law and established the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Funds, which together make up the Coronavirus State and Local Fiscal Recovery Funds established pursuant to Sections 602 and 603, respectively, of the Social Security Act, as added by Section 9901 of the American Rescue Plan Act of 2021, Pub. L. No. 117-2 (“ARPA” or “SLFRF”); and

WHEREAS, SLFRF is intended to provide support to state, territorial, local, and tribal governments in responding to the economic and public health impacts of COVID-19 and governments’ efforts to contain impacts on their communities, residents, and businesses; and

WHEREAS, the County is the recipient of federal recovery funds through the US Treasury and the State of West Virginia, and has agreed to provide certain funding through a Contractor agreement to Contractor for the implementation of the County’s federal recovery funds as received directly or through the State of West Virginia; and

WHEREAS, Contractor will undertake completion of the Greenbrier County Courthouse Drainage Project, located at 912 Court St N, Lewisburg, West Virginia, and which is more fully described in the construction documents, (hereinafter “Project”), and enters into aforementioned Contract in furtherance of the Project, and County intends to pay, in part or in whole, for the cost of the Contract using monies received from SLFRF; and

WHEREAS, in using such funds, County and Contractor must comply with the terms of ARPA, regulations issued by the U.S. Department of the Treasury (“Treasury”) governing the expenditure of monies distributed from the Fiscal Recovery Funds (including, without limitation, the Interim Final Rule (86 Fed. Reg. 26,786 (May 17, 2021) and Final Rule (87 Fed. Reg. 4,338 (Jan. 27, 2022)), the Award Terms and Conditions applicable to the Fiscal Recovery Funds, and such other guidance as Treasury has issued or may issue governing the expenditure of monies distributed from the Fiscal Recovery Funds (collectively, the “Regulatory Requirements”); and

WHEREAS, pursuant to the Regulatory Requirements, County and Contractor must comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury has determined or may determine are inapplicable to the Fiscal Recovery Funds; and

WHEREAS, pursuant to 2 C.F.R. § 200.327, County must include within any contract applicable provisions described in Appendix II to 2 C.F.R. Part 200, each of which is intended to be contained in this Addendum; and

WHEREAS, Contractor shall not enter into any subcontract or make any distributions of funds to subcontractor using monies from the Fiscal Recovery Funds absent subcontractor's agreement and adherence to each term and condition contained herein through the execution of the form **SUBCONTRACTOR ADDENDUM FOR AMERICAN RESCUE PLAN ACT FUNDS**, attached hereto and incorporated herein as Exhibit A.

NOW, THEREFORE, based upon the foregoing, the parties mutually agree that the following terms and conditions shall apply to the Contractor which shall incorporate such terms and conditions into each subcontract related to the Project by Contractor as follows:

I. **Equal Opportunity.** Contractor shall comply with all federal and state laws regarding equal employment opportunity, including, but not limited to Executive Order 11246, "Equal Employment Opportunity," as amended by EO 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." Compliance with these provisions shall be required in all subcontracts for the Project to which Contractor is a party or beneficiary.

II. **Minority and Women Owned Business Enterprises.** Contractor agrees to comply with the following when applicable: The requirements of Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise), *when applicable*. Accordingly, Contractor hereby agrees to take affirmative steps to assure that women and minority businesses are utilized when possible as sources of supplies, equipment, construction and services.

III. **Suspension and Debarment.** This contract is a covered transaction for purposes of 2 CFR part 180 and 2 CFR part 3000. As such, the Contractor is required to verify that none of Contractor's principals (as defined at 2 CFR § 180.995) or its affiliates (as defined at 2 CFR § 180.905) are excluded (as defined at 2 CFR § 180.940) or disqualified (as defined at 2 CFR § 180.935). The Contractor shall comply with 2 CFR part 180, subpart C and 2 CFR part 3000, subpart C, and shall include an express requirement to comply with these regulations in any subcontract it enters into. Failure to comply with these provisions may result in, among other things, debarment by the Federal Government.

IV. **Copeland "Anti-Kickback" Act.** Contractor and any subcontractors performing work under the Contract shall comply with 18 U.S.C. § 874. Contractor shall report all suspected or reported violations to Treasury and to Contractor.

V. **Byrd Anti-Lobbying Amendment, 31 U.S.C. §1352, as amended.** Contractor certifies that it will not and has not used federal 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 obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. §1352. Contractor shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from each tier of subcontractor up to the Contractor who in turn will forward a CERTIFICATION REGARDING LOBBYING to the awarding agency.

VI. **Access to Records.** The Contractor agrees to provide the County, the U.S. Department of Treasury, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. The Contractor agrees to permit any of the foregoing parties to reproduce by any means or to copy excerpts and transcriptions as reasonably needed and agrees to cooperate with all such requests at no additional cost to the foregoing parties.

VII. **Rights to Inventions Made Under a Contract or Agreement.** Contracts of agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements," and any applicable implementing regulations.

VIII. **Clean Air Act and Federal Water Pollution Control Act.**

A. ***Clean Air Act.*** Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* Contractor agrees to report each violation to Contractor and understands and agrees that Contractor will, in turn, report each violation as required 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 federal assistance provided by Treasury.

B. ***Federal Water Pollution Control Act.*** Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 *et seq.* Contractor agrees to report each violation to Contractor and understands and agrees that Contractor 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 federal assistance provided by Treasury.

IX. **Prohibition on Certain Telecommunications Equipment and Video Surveillance Services or Equipment.**

A. 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 August 13, 2020, from obtaining or expending grant, cooperative agreement, loan, or

loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

B. Unless an exception in Section IX.C. applies, Contractor and any of its subcontractors may not use federal funds to: Procure or obtain; extend or renew a contract to procure or obtain; or 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 defined by Public Law 115-232, Section 889, as a substantial or essential component of any system, or as critical technology as part of any system. any equipment, system, or service.

C. “Covered Telecommunications Equipment or Services” means (a) telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); (b) for the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); (c) telecommunications or video surveillance services provided by such entities or using such equipment; or (d) telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a Covered Foreign Country.

D. Exceptions. This clause does not prohibit Contractor or subcontractors from providing a service that connects to the facilities of a third party, such as Backhaul, Roaming, or Interconnection Agreements, or 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.

E. Reporting Requirement. Within one business day of knowledge by Contractor of a violation of the provisions of this section by Contractor or its subcontractors, Contractor shall notify County of the violation in accordance with applicable federal law.

F. Adoption by Subcontractor. Contractor shall cause to be inserted into all subcontracts and other contractual instruments relating to the performance of this Contract the substance of this Section IX, including this paragraph F.

X. **Assurances of Compliance with Title VI of the Civil Rights Act of 1964.**

A. Contractor and any subcontractor, or the successor, transferee, or assignee of Contractor or any subcontractor, 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 Contract. 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 Addendum.

XI. Contract Work Hours and Safety Standards Act.

A. *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.

B. *Violation; Liability for Unpaid Wages; Liquidated Damages.* In the event of any violation of the clause set forth in Section XI.A. (Overtime Requirements), above, Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and all of its subcontractors shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) 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 Section XI.A. (Overtime Requirements), above, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in Section XI.A. (Overtime Requirements), above.

C. *Withholding for Unpaid Wages and Liquidated Damages.* Unit 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 Contractor or any of its subcontractors 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 Contractor or subcontractor for unpaid wages and liquidated damages as provided in Section XI.B. (Violation; Liability for Unpaid Wages; Liquidated Damages) of this section.

D. *Subcontracts.* Contractor or subcontractor shall insert in any subcontract the clauses set forth in Sections XI.A. through XI.D. and also a clause requiring subcontractors to include these clauses in any lower-tier subcontracts. Contractor shall be responsible for compliance by any subcontractor with the clauses set forth in Sections XI.A. through XI.D.

E. *Payroll and Records.* Contractor 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. Records to be maintained under this provision shall be made available by Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of the Treasury and the Department of Labor, and Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

F. *Exceptions.* None of the requirements of Section XI of this Addendum shall apply if this Contract is a Contract (1) for transportation by land, air, or water; (2) for the transmission of intelligence; (3) for the purchase of supplies, materials, or articles ordinarily available in the open market; or (4) in an amount that is equal to or less than \$100,000.

XII. Procurement of Recovered Materials.

A. This section shall apply if (1) this Contract involves the purchase of an item designated by the Environmental Protection Agency (“EPA”) in 40 C.F.R. Part 247 that exceeds \$10,000 or (2) the total value of such designated items acquired during Unit’s preceding fiscal year exceeded \$10,000.

B. In the performance of the Contract, Contractor shall make maximum use of products containing recovered materials that are EPA-designated items, unless the product cannot (1) be acquired competitively within a timeframe providing for compliance with the Contract performance schedule, (2) meet Contract performance requirements, or (3) be acquired at a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available on EPA’s website. Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

XIII. Domestic Preferences for Procurements.

A. For purposes of this Section XIII, the terms below are defined as follows:

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

2. “Manufactured Products” means 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.

B. As applicable, 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. Contractor shall cause any subcontractors to include the requirements of this Section XIII in any subcontracts.

XIV. Conflicts of Interest; Gifts and Favors.

A. Contractor understands that (1) Contractor will use Fiscal Recovery Funds to pay for the cost of this Contract and (2) the expenditure of Fiscal Recovery Funds is governed by the

Conflict of Interest Policy of the Contractor, the Regulatory Requirements (including, without limitation, 2 C.F.R. § 200.318(c)(1)), and West Virginia Carolina law.

B. Contractor certifies to County that as of the date hereof, to the best of its knowledge after reasonable inquiry, no employee, officer, or agent of Contractor involved in the selection, award, or administration of this Contract (each a “Covered Individual”); no member of a Covered Individual’s immediate family; no partner of a Covered Individual; and no organization (including Contractor) which employs or is about to employ a Covered Individual has a financial or other interest in, or has received a tangible personal benefit from, Contractor. Should Contractor obtain knowledge of any such interest or any tangible personal benefit described in the preceding sentence after the date hereof, Contractor shall promptly disclose the same to Contractor in writing.

C. Contractor certifies to County that it has not provided, nor offered to provide, any gratuities, favors, or anything of value to an officer, employee, or agent of Contractor. Should Contractor 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 in the preceding sentence after the date hereof, Contractor shall promptly disclose the same to Contractor in writing.

XV. Access to Records.

A. Contractor agrees to provide County, the Department of the Treasury, the Treasury Office of Inspector General, the Government Accountability Office, and the Comptroller General of the United States, or any authorized representatives of these entities, access to any records (electronic and otherwise) of Contractor which are directly pertinent to this Contract to conduct audits or any other investigations. Contractor agrees to provide timely access to and permit any of the foregoing parties to reproduce such records by any means whatsoever or to copy excerpts and transcriptions as reasonably needed without cost to Contractor.

B. Contractor agrees to retain all records covered by this Section XV through December 31, 2031, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit, or other inquiry involving the Contract.

XVI. Miscellaneous.

A. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 Fed. Reg. 19,216 (Apr. 18, 1997), Contractor encourages Contractor to adopt and enforce on-the-job seat belt policies and programs for its employees when operating company-owned, rented, or personally owned vehicles.

B. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 Fed. Reg. 51,225 (Oct. 6, 2009), Contractor encourages Contractor to adopt and enforce policies that ban text messaging while driving.

C. Publications. Any publications produced with ARPA Funds must display the following language: “This project [is being] [was] supported in whole or in part, by federal award number [enter project FAIN] awarded to [name of recipient] by the U.S. Department of the Treasury.”

