

TOWN OF WILKESBORO



STATEMENTS OF QUALIFICATIONS

ENGINEERING SERVICES

Tuckerhole Creek Restoration

FEMA Building Resilient Infrastructure and Communities (BRIC) Program

Town of Wilkesboro
203 West Main Street
Wilkesboro, NC 28697

SOQ Issue Date: Monday June 15, 2026

Submission Deadline: Friday June 26, 2026 @ 2:00 pm

Contact: Ken Noland – Town Manager

Email: townmanager@wilkesboronc.org

Phone: 336-838-3951 ext.1050

Advertisement

The Town of Wilkesboro is requesting Statements of Qualifications from professional Engineering firms licensed in the State of North Carolina to provide Engineering Services for the **Tuckerhole Creek Restoration** project.

This project is anticipated to be funded, or proposed for funding, through the **FEMA Building Resilient Infrastructure and Communities (BRIC) Program**. The Town is seeking qualified firms with demonstrated experience in

- stream restoration,
- stormwater mitigation,
- flood hazard reduction,
- resilient infrastructure,
- FEMA Hazard Mitigation Assistance programs,
- benefit-cost analysis,
- environmental permitting, design, bidding, and construction administration.

Qualifications will be received on or before, but **no later than 2:00 pm local time, on Friday June 26, 2026**. Any proposal received after the designated time will be deemed late and will not be considered by the Town of Wilkesboro. Faxed or emailed submissions will not be accepted unless otherwise authorized by written addendum.

The envelope shall be labeled:

Statement of Qualifications – Engineering Services – Tuckerhole Creek Restoration and addressed to:

Town of Wilkesboro
Attn: Ken Noland – Town Manager
203 West Main Street
Wilkesboro, NC 28697

Submittals shall include **six** (6) hard copies and one (1) electronic PDF copy on flash drive. Please contact Ken Noland at 336-838-3951 ext. 1050 or townmanager@wilkesboronc.org with any questions regarding this Statement of Qualifications.

PROJECT BACKGROUND AND OBJECTIVES

The Town of Wilkesboro is seeking to qualify Vendors to provide qualifications from experienced professional Engineering Firms registered and authorized to practice in the State of North Carolina. The purpose of this solicitation is to select a qualified firm according to NC [§ 143-64.31](#) to provide engineering services for the **Tuckerhole Creek Restoration project** using State and/or Federal funds.

This Request for Qualification of Vendors is not a contract. Responses to this SOQ shall be submitted in accordance with this SOQ. Any contract negotiated shall comply with this SOQ and any addenda issued.

The project is intended to support hazard mitigation, flood resiliency, stream restoration, and related infrastructure improvements. The selected firm will assist the Town with preliminary engineering, technical analysis, FEMA BRIC subapplication support, final design, permitting, bidding, and construction-phase services as authorized by the Town.

This solicitation is intended to support a single, phased procurement process. The selected firm will complete Phase 1 services related to preliminary engineering and pre-award subapplication support. If the project is awarded funding and authorized by the Town, the selected firm may proceed with Phase 2 services related to final design, permitting, bidding, and construction administration.

The Town reserves the right to authorize all, part, or none of the subsequent phases based on funding availability, **FEMA/NCEM** approval, project feasibility, and the best interests of the Town.

PROJECT DESCRIPTION

The Tuckerhole Creek Restoration project is anticipated to include Professional Engineering Services related to stream restoration, stormwater mitigation, flood resiliency, and hazard mitigation planning and design.

The selected firm may be asked to evaluate existing site conditions, identify project alternatives, prepare preliminary engineering documentation, support the FEMA BRIC subapplication process, complete hydrologic and hydraulic analysis as needed, prepare benefit-cost analysis documentation, assist with environmental and historic preservation documentation, develop cost estimates, prepare final design plans and specifications, secure

required permits, assist with bidding, and provide construction administration or inspection services.

The final project scope will be refined through the preliminary engineering process and any **FEMA/NCEM** review requirements.

SCOPE OF WORK

To facilitate completion of the project, the Consultant will serve as the Primary Engineering Consultant to the Town of Wilkesboro and/or its assigned representatives. The Consultant will provide:

- Technical assistance,
- Planning,
- Engineering analysis,
- Design,
- Permitting,
- Bid support,
- Contractor coordination,
- Construction administration,
- Inspection, and
- Project close-out services as authorized by the Town.

The anticipated scope of work is divided into two (2) phases.

PHASE 1: PRELIMINARY ENGINEERING AND PRE-AWARD SUBAPPLICATION SUPPORT

The selected firm will perform the technical, engineering, environmental, and analytical work necessary to support a complete FEMA BRIC subapplication for the Tuckerhole Creek Restoration project.

1.1 Preliminary Engineering Report

The Consultant shall prepare a Preliminary Engineering Report or equivalent technical memorandum suitable for FEMA BRIC and NCEM review. The report shall document existing conditions, project need, alternatives considered, recommended mitigation approach, anticipated project benefits, preliminary design considerations, permitting considerations, implementation schedule, and estimated project costs.

The preliminary engineering effort may include field review, available data collection, site reconnaissance, evaluation of stream and drainage conditions, review of flood hazard

information, evaluation of resilient infrastructure opportunities, and coordination with the Town.

1.2 Hydrologic and Hydraulic Analysis

The Consultant shall perform hydrologic and hydraulic analysis as necessary to support the project purpose, evaluate existing and proposed conditions, and support FEMA BRIC documentation. This may include drainage area evaluation, stream flow assessment, flood risk evaluation, modeling, and review of project alternatives.

1.3 FEMA Benefit-Cost Analysis Support

The Consultant shall gather and organize available damage history, risk information, cost information, project benefit documentation, and related technical data necessary to support the FEMA Benefit-Cost Analysis process.

The Consultant shall assist with preparing or supporting the FEMA Benefit-Cost Analysis documentation required to demonstrate project eligibility and cost-effectiveness.

1.4 Environmental and Historic Preservation Support

The Consultant shall assist with environmental and historic preservation documentation required for FEMA, NCEM, and other applicable agency reviews. This may include coordination and documentation related to wetlands, streams, floodplains, threatened and endangered species, cultural resources, and other environmental compliance considerations.

1.5 Cost Estimating

The Consultant shall prepare preliminary and itemized project cost estimates suitable for FEMA BRIC subapplication support. Cost estimates shall include appropriate contingencies and shall be based on available project information, field observations, preliminary design assumptions, and current construction cost data.

1.6 Grant and Subapplication Support

The Consultant shall support the Town and its grant representatives in preparing technical components of the FEMA BRIC subapplication. This may include narratives, exhibits, cost estimates, maps, technical memoranda, benefit-cost support, environmental documentation, and responses to agency comments or requests for additional information.

PHASE 2: FINAL DESIGN, PERMITTING, BIDDING, AND CONSTRUCTION SUPPORT

Phase 2 services are **contingent upon** formal project award, funding availability, FEMA/NCEM approval, and written authorization by the Town of Wilkesboro.

2.1 Final Engineering and Design

The Consultant shall prepare final engineering plans, specifications, and bid documents for the Tuckerhole Creek Restoration project. Final design may include stream restoration plans, grading, drainage improvements, stabilization measures, erosion and sediment control, stormwater improvements, access considerations, utility coordination, and related resilient infrastructure improvements.

2.2 Permitting and Regulatory Approval

The Consultant shall prepare and submit required permit applications and supporting documentation for applicable local, state, and federal approvals. Anticipated permitting coordination may include, but is not limited to, NCDEQ, USACE, FEMA, NCEM, NCDOT, and local permitting authorities, as applicable to the final project scope.

2.3 Bid Phase Services

The Consultant shall assist the Town with bidding and procurement support. Services may include preparation of bid documents, attendance at a pre-bid meeting, response to contractor questions, preparation of addenda, review of bids, bid tabulation, and recommendation of award.

2.4 Construction Administration and Inspection

The Consultant shall provide construction administration and inspection services as authorized by the Town. Services may include construction meetings, review of shop drawings and submittals, responses to requests for information, review of contractor pay applications, periodic site inspections, documentation of construction progress, punch list preparation, final inspection, and project close-out support.

2.5 Project Close-Out

The Consultant shall assist with project close-out documentation, final reporting, record drawings or as-built documentation as applicable, final certifications, and any technical documentation required by the Town, FEMA, NCEM, or other funding and regulatory agencies.

Minimum Engineering Credentials

Licensure is required for professional engineers, architects, landscape architects, and other professional services. The architects and engineers performing the work must be licensed

architects or professional engineers in the state of North Carolina and must have good ethical and professional standing. Any Consultant proposing to use corporate subsidiaries or subconsultants must include a statement that these companies will be properly licensed in like fashion. It will be the responsibility of the prime Consultant to verify licenses of any corporate subsidiary or sub-consultant prior to contract negotiations.

Manpower Support

The Consultant must provide a qualified Project Manager to serve as the primary point of contact for the Town of Wilkesboro. Personnel assignments shall be subject to Town review and approval. The Consultant shall maintain sufficient staffing levels to meet project deadlines, respond to federal and state agency review requirements, and support both preliminary and final design phases if authorized.

The Consultant's project team should include personnel with experience in the following areas:

- Civil Engineering
- Water Resources Engineering
- Stream Restoration
- Stormwater Management
- Floodplain Analysis
- Hydrologic and Hydraulic Modeling
- FEMA Hazard Mitigation Assistance Programs
- FEMA BRIC Subapplication Support
- Benefit-Cost Analysis
- Environmental Permitting
- Erosion and Sediment Control
- Construction Administration
- Grant-Funded Public Infrastructure Projects

Statement of Qualifications

The Town of Wilkesboro seeks Statements of Qualifications from firms with demonstrated knowledge and experience in:

- Stream restoration and stabilization
- Flood mitigation and resilient infrastructure
- Stormwater and drainage improvements

- FEMA Hazard Mitigation Assistance and BRIC-funded projects
- Preliminary Engineering Reports and grant support
- Hydrologic and hydraulic analysis
- FEMA Benefit-Cost Analysis documentation
- Environmental and historic preservation documentation
- NCDEQ, USACE, FEMA, NCEM, and local permitting coordination
- Public sector engineering design and construction administration
- Grant-funded project documentation and close-out

All Engineering Firms must be properly licensed in accordance with North Carolina [§ 89C-3](#). Chapter 89C (Engineering and Land Surveying): The primary legislative act that establishes the [NC State Board of Examiners for Engineers and Surveyors \(NCBELS\)](#), defines the scope of engineering, and dictates penalties for unlicensed practice.

Any surveying, engineering, or other professional services requiring [licensure](#) shall be performed by properly licensed professionals.

SUBMISSION REQUIREMENTS AND FORMAT

Interested firms must submit **six** hard copies and one (1) electronic PDF copy on flash drive of their Statement of Qualifications.

Submissions shall not exceed **15** pages, excluding front and back covers, tabs, and required forms unless otherwise stated.

Submissions shall be organized in the following order:

1. Cover Letter and Firm Overview
2. Prime Firm Experience
3. Associated Firm Profile
4. Key Personnel
5. Project Understanding
6. Project Approach and Schedule
7. Federal Compliance Certification
8. Availability of Personnel
9. References
10. Required Forms or Certifications, if applicable
11. Cost or pricing information shall not be submitted with the Statement of Qualifications.

Each of the submission items are have in depth descriptions are located in section: Requirements for Responses.

REQUIREMENTS FOR RESPONSES

Responses shall provide, at a minimum, the following information.

Cover Letter and Firm Overview

Provide a cover letter identifying the firm, managing office location, primary contact person, Unique Entity Identifier, and a statement certifying that the firm is licensed and authorized to perform Professional Engineering Services in the State of North Carolina.

Prime Firm Experience

Provide at least three similar projects completed within the last five years. Relevant projects may include stream restoration, stormwater mitigation, flood hazard education, FEMA Hazard Mitigation Assistance projects, BRIC or HMGP projects, water resources Engineering, resilient infrastructure, or public infrastructure projects.

For each project, provide:

- Project name and location
- Client name
- Brief description of scope
- Project size and complexity
- Role of the firm
- Funding source, if applicable
- Project status
- Client reference with contact information

Associated Firm Profile

Identify all subconsultants proposed for the project and describe their roles. Provide firm information, contact details, relevant experience, and applicable professional licenses.

Key Personnel

Provide an organizational chart identifying the proposed project team, including:

- Principal-in-Charge
- Project Manager
- Lead Engineer
- Water Resources Engineer

- Stream Restoration Specialist
- Environmental Permitting Lead
- Benefit-Cost Analysis / FEMA Grant Support Lead
- Construction Administration Lead
- Subconsultants and specialty personnel
- Provide resumes for key personnel and describe each person's role, relevant experience, licenses, and availability.

Changes in Personnel

Changes to personnel on project teams, particularly a project manager, are to be avoided wherever possible. If during the contract negotiation phase the Consultant requests to make a change to any personnel listed within the Consultant's submitted proposal, the request to the Town must be made in writing and detailing the proposed replacement personnel, resume, and reasons as to why the poor replacement is Needed. The Town will consider the request and may, or may not, accept the new personnel changes. If the Town denies the Consultant's request for a change in personnel, the consultant will be required to confirm in writing that the personnel submitted within the Consultant's original proposal will perform the work, or the Town will no longer consider the Consultant as the best qualified Firm, and may enter into contract negotiations with the next most qualified Consultant.

Project Understanding

Provide a statement of understanding of the Town's project needs, the purpose of the Tuckerhole Creek Restoration project, and the requirements associated with FEMA BRIC-funded or FEMA BRIC-proposed hazard mitigation work.

Project Approach and Schedule

Describe the firm's approach to delivering both phases of the project. The approach should address preliminary engineering, FEMA BRIC subapplication support, benefit-cost analysis support, environmental and historic preservation documentation, final design, permitting, bidding, construction administration, and project close-out.

Provide a preliminary schedule showing how the firm would complete Phase 1 services in a timely manner to support federal and state grant deadlines.

Federal Compliance Certification

Provide a statement certifying that the firm is not debarred, suspended, or otherwise excluded from receiving federal contracts or participating in federally funded work.

Availability of Personnel

Provide estimated availability of key personnel and the firm's ability to respond quickly to Town needs, agency review comments, grant deadlines, and project milestones.

References

Provide at least three references for similar projects. References should include the client name, contact person, title, phone number, email address, and project name.

Required Forms or Certifications

- Engineering License #
- Location of Workers Utilized by Vendor
- Certificate of Financial Condition
- Historically Underutilized Business information
- Conflict of Interest
- Certification Regarding Debarment, Suspension, and other responsibility matters primary Covered Transactions
- Town of Wilkesboro Terms & Conditions
- NC Terms & Conditions
- Federal Contracting Provisions
- 2026 Vendor Information Form
- IRS W-9 Form

Cost or pricing

No work, product, or design may be solicited, submitted, or considered as part of the selection process under this Article; and no costs or fees, other than unit price information, may be solicited, submitted, or considered as part of the selection process under this Article.

Examples of prior completed work may be solicited, submitted, and considered when determining demonstrated competence and qualification of professional services; and discussion of concepts or approaches to the project, including impact on project schedules, is encouraged.

INSURANCE REQUIREMENTS

The selected firm shall procure and maintain insurance in amounts acceptable to the Town of Wilkesboro. The firm shall cause the Town of Wilkesboro to be listed as an additional insured on any applicable general liability insurance policy carried by the firm.

The anticipated limits of liability for required insurance are as follows:

- Workers' Compensation: Statutory
- Employer's Liability: \$1,000,000
- General Liability: \$1,000,000 per occurrence / \$2,000,000 aggregate
- Umbrella Liability: \$1,000,000
- Automobile Liability: \$1,000,000
- Professional Liability: \$2,000,000

SOQ SCHEDULE

Event	Responsibility	Date and Time
Issue SOQ	Town	Monday June 15, 2026
Submit written Questions	Vendor	Friday June 19, 2026
Provide Response to Questions	Town	Monday June 22, 2026
Submission of SOQ	Vendor	Friday June 26, 2026
Negotiations, as applicable	State/Vendor	Friday July 3, 2026
Contract Award	Town	Tuesday July 7, 2026

SOQ QUESTIONS

If Vendors have questions or issues regarding any component of this SOQ, those must be submitted in writing via email to SOQ contact in the time frame mentioned in the SOQ Schedule.

If the Town determines that any changes will be made as a result of the questions asked, then such decisions will be communicated in the form of an SOQ addendum.

SELECTION PROCESS

The Town of Wilkesboro will review all timely submitted Statements of Qualifications and may develop a shortlist of qualified firms. Interviews may be conducted at the Town's discretion.

The Town will select the firm deemed most qualified based on the evaluation criteria contained in this SOQ. Following selection, the Town may negotiate contract terms and a fair and reasonable price with the selected firm.

If a satisfactory contract cannot be negotiated with the selected firm, the Town reserves the right to terminate negotiations and proceed to the next most qualified firm.

EVALUATION CRITERIA

In compliance with North Carolina [§ 143-64.31](#), cost or pricing details must not be submitted with the Statement of Qualifications. Selection will be based on qualifications.

The Town anticipates using the following **100-point scale**:

- **Firm and Team Qualifications — 25 Points**
Technical expertise, professional qualifications, licensing, and capacity of the assigned project team to complete preliminary engineering, grant support, final design, permitting, and construction-phase services.
- **FEMA HMA / BRIC Experience — 30 Points**
Demonstrated experience with FEMA Hazard Mitigation Assistance programs, FEMA BRIC or similar federal mitigation programs, NCEM coordination, benefit-cost analysis, environmental and historic preservation documentation, and federal grant compliance.
- **Past Performance and References — 20 Points**
Successful completion of similar stream restoration, stormwater mitigation, flood resiliency, or public infrastructure projects, including performance on schedule, budget, agency coordination, and client satisfaction.
- **Project Understanding and Approach — 25 Points**
Demonstrated understanding of the Tuckerhole Creek Restoration project, the phased procurement structure, FEMA BRIC requirements, anticipated project risks, schedule constraints, and the relationship between preliminary engineering and final design.

FEDERAL CONTRACTING PROVISIONS

The contract resulting from this SOQ will be governed by applicable federal contracting provisions required under [2 C.F.R. 200, Appendix II](#), and any additional provisions required by FEMA, NCEM, the Town of Wilkesboro, or other applicable funding agencies.

Federal provisions may include, but are not limited to:

1. Access to Records and Record Retainage
2. Age Discrimination Act of 1975
3. Americans with Disabilities Act of 1990
4. Byrd Anti-Lobbying Amendment
5. Civil Rights Act of 1964 – Title VI
6. Civil Rights Act of 1968
7. Clean Water Act
8. Conflict of Interest Provisions

9. Contract Work Hours and Safety Standards
10. Copeland "Anti-Kickback" Act
11. Davis-Bacon Act
12. Debarment and Suspension
13. Domestic Procurement Preference
14. Drug-Free Workplace Regulations
15. Education Amendments of 1972
16. Energy Policy and Conservation Act
17. Environmental reviews/assessments
18. Equal Employment Opportunity
19. Fly America Act of 1974
20. Hotel and Motel Fire Safety Act of 1990
21. Limited English Proficiency
22. Patents and Intellectual Property Rights
23. Procurement of Recovered Materials
24. Rehabilitation Act of 1973
25. Remedies
26. Rights to Inventions Made Under a Contract or Agreement
27. Telecommunications Huawei / ZTE Ban
28. Termination
29. Terrorist Financing
30. Trafficking Victims Protection Act of 2000
31. Universal Identifier and System of Award (SAM)
32. USA Patriot Act of 2001
33. Whistleblower Protection Act

The selected firm shall comply with all applicable federal procurement, contracting, reporting, and documentation requirements associated with the project funding source.

The selected firm shall comply with all federally funded grants or use federal assistance to support procurements must comply with the applicable provisions of the Federal procurement standards [2 C.F.R. 200](#). As result, firms awarded federally funded contracts by Town of Wilkesboro, in addition to contract clauses required by North Carolina law and other applicable federal regulations specific to a federal award, must comply with the following contract provisions set forth herein, unless a particular award term or condition specifically indicates otherwise. These terms and conditions are hereby incorporated into any resulting contract.

The Town of Wilkesboro is an Equal Opportunity Employer and encourages participation by historically underutilized businesses, minority-owned firms, women-owned business enterprises, veteran-owned businesses, and other qualified firms.

SUBMISSION INSTRUCTIONS

Sealed submissions must be clearly marked:

SOQ – Engineering Services – Tuckerhole Creek Restoration

Deliver submissions no later than Friday June 26, 2026 @ 2:00 pm to:

Town of Wilkesboro

Attn: Ken Noland – Town Manager

203 West Main Street

Wilkesboro, NC 28697

Email: townmanager@wilkesboronc.org

Phone: 336-838-3951 ext.1050

Questions regarding this SOQ shall be submitted in writing to Ken Noland at townmanager@wilkesboronc.org no later than **Friday June 19, 2026 @ 2:00 pm.**

Responses to questions, clarifications, or changes to this SOQ may be issued by addendum. It is the responsibility of submitting firms to ensure they have received and reviewed all addenda prior to submission.

Award of Contract

The Town of Wilkesboro reserves the right to:

- Reject any or all proposals
- Request additional information
- Waive informalities or minor irregularities
- Conduct interviews
- Select the firm deemed most qualified
- Negotiate contract terms with the selected firm
- Authorize services by phase
- Reissue the SOQ if necessary
- Cancel the SOQ process at any time

The Town shall not be deemed to have selected a firm until a contract has been successfully negotiated, approved, and executed.

LOCATION OF WORKERS UTILIZED BY VENDOR

In accordance with N. C. Gen. Stat. § 143-59.4, the Vendor shall detail the location(s) at which performance will occur, as well as the manner in which it intends to utilize resources or workers outside of the United States in the performance of this Contract. The State will evaluate the additional risks, costs, and other factors associated with such utilization prior to making an award. Please complete items a, b, and c below.

a) Will any work under this Contract be performed outside the United States?

YES NO

If the Vendor answered "YES" above, Vendor shall complete items 1 and 2 below:

1. List the location(s) outside the United States where work under this Contract will be performed by the Vendor, any subcontractors, employees, or other persons performing work under the Contract:	
2. Describe the corporate structure and location of corporate employees and activities of the Vendor, its affiliates or any other sub-Contractors that will perform work outside the U.S.:	

b) The Vendor agrees to provide notice, in writing to the State, of the relocation of the Vendor, employees of the Vendor, sub-Contractors of the Vendor, or other persons performing services under the Contract outside of the United States.

YES NO

NOTE: All Vendor or sub-Contractor personnel providing call or contact center services to the State of North Carolina under the Contract **shall** disclose to inbound callers the location from which the call or contact center services are being provided.

c) Identify all U.S. locations, outside of North Carolina, if any, at which performance will occur:

CERTIFICATION OF FINANCIAL CONDITION

The undersigned hereby certifies that: [check all applicable boxes]

- The Vendor is in sound financial condition and, if applicable, has received an unqualified audit opinion for the latest audit of its financial statements.

Date of latest audit: _____
(If no audit within past 18 months, explain reason below.)

- The Vendor has no outstanding liabilities, including tax and judgment liens, to the Internal Revenue Service or any other government entity.
- The Vendor is current in all amounts due for payments of federal and state taxes and required employment-related contributions and withholdings.
- The Vendor is not the subject of any current litigation or findings of noncompliance under federal or state law.
- The Vendor has not been the subject of any past or current litigation, findings in any past litigation, or findings of noncompliance under federal or state law that may impact in any way its ability to fulfill the requirements of this Contract.
- He or she is authorized to make the foregoing statements on behalf of the Vendor. **Note:** This shall constitute a continuing certification, and Vendor shall notify the Contract Lead within 30 days of any material change to any of the representations made herein.

If any one or more of the foregoing boxes is NOT checked, Vendor shall explain the reason(s) in the space below. Failure to include an explanation may result in Vendor being deemed non-responsive and its submission rejected in its entirety.

Signature

Date

Printed Name

Title

This Certification must be signed by an individual authorized to speak for the Vendor

HISTORICALLY UNDERUTILIZED VENDOR INFORMATION

Solicitation: _____

Vendor Name: _____

Historically Underutilized Businesses (HUBs) consist of minority, women, and disabled business firms that are at least fifty-one percent owned and operated by an individual(s) from one of these categories. Also included in this category are disabled business enterprises and non-profit work centers for the blind and severely disabled.

Pursuant to G.S. [143B-1361\(a\)](#), [143-48](#), and [143-128.4](#), the State invites and encourages participation in this procurement process by businesses owned by minorities, women, the disable, disabled business enterprises, and non-profit work centers for the blind and severely disabled. This includes utilizing individual(s) from these categories as subcontractors to perform the functions required in this Solicitation.

The Vendor shall respond to questions below, as applicable.

PART I: HUB CERTIFICATION

Is Vendor a NC-certified HUB entity? Yes No

If **yes**, provide Vendor #: _____

If **no**, does Vendor qualify for certification as HUB? Yes No

Vendors that check “**yes**” will be referred to the HUB Office for assistance in acquiring certification.

PART II: PROCUREMENT OF GOODS - SUPPLIERS

For Goods procurements, are you using Tier 2 suppliers? Yes No

If **yes**, then provide the following information:

Company Name	Company Address	Website Address	Contact Name	Contact Email	Contact Phone	NC HUB certified?	Percent of total bid price

PART III: PROCUREMENT OF SERVICES - SUBCONTRACTORS

For Services procurements, are you using Subcontractors to perform any of the services being procured under this solicitation? Yes No

If **yes**, then provide the following information:

Company Name	Company Address	Website Address	Contact Name	Contact Email	Contact Phone	NC HUB certified?	Percent of total bid price

Questions concerning NC HUB certification, contact the [North Carolina Office of Historically Underutilized Businesses](#) at (984) 236-0130 or huboffice.doa@doa.nc.gov

CONFLICT OF INTEREST

An actual or potential conflict of interest exists when financial or personal considerations compromise an individual's objectivity, professional judgment, professional integrity, or ability to fulfill an employee's responsibilities to Town of Wilkesboro.

Covered Individuals as defined by the Town's Conflict of Interest Policy are required to disclose any actual or potential conflict of interest. Failure to do so will result in disciplinary action up to and including termination.

This Conflict-of-Interest Form should be completed to include any covered individuals, or a family member of the covered individual has an economic interest in, or acts as an officer, or director of, any outside entity which does business with Town of Wilkesboro.

The covered individual should also disclose any personal, business, or volunteer affiliations that may give rise to an actual or potential conflict of interest.

Name: _____

Position: _____

Date: _____

Describe any relationships, transactions, positions you or your family member hold (volunteer or otherwise), or circumstances that you believe could constitute a conflict of interest:

I certify that the information set forth above is true and complete to the best of my knowledge.

Signature: _____

Date: _____

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY
MATTERS PRIMARY COVERED TRANSACTIONS**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 13 CFR Part 145. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations are available from local offices of the U.S. Small Business Administration.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

- (1) The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense 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 statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.
- (2) The prospective primary participant certifies to the best of its knowledge and belief that it and its principals: Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.

Business Name _____ Date _____

Name and Title of Authorized Representative _____

Signature of Authorized Representative _____

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. 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 meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations (13 CFR Part 145).
6. The prospective primary participant agrees by submitting this proposal 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 debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. 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 debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the ineligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
9. 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.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

All recipients of federally funded grants or use federal assistance to support procurements must comply with the applicable provisions of the Federal procurement standards 2 CFR pt. 200. As result, firms awarded federally funded contracts by Town of Wilkesboro, in addition to contract clauses required by **North Carolina law and other applicable federal regulations specific to a federal award**, must comply with the following contract provisions set forth herein, unless a particular award term or condition specifically indicates otherwise. These terms and conditions are hereby incorporated into any resulting contract.

1. **Access to Records and Record Retainage.** In general, all official project records and documents must be maintained during the operation of this project and for a period of five years following close out. The Town of Wilkesboro, the comptroller General of the United States, or any of their duly authorized representatives shall have access to any books documents papers and records of the of the Administering Agency which are pertinent to the execution of the Agreement for the purpose of making audits, examinations, excerpts and transcriptions.
2. **Age Discrimination Act of 1975.** All suppliers, contractors, subcontractors, consultants, and sub- consultants must comply with the requirements of the Age Discrimination Act of 1975 (Title 42 U.S. Code, § 6101 et seq.), which prohibits discrimination on the basis of age in any program or activity receiving Federal financial assistance.
3. **Americans with Disabilities Act of 1990.** All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, which prohibits discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities. (42 U.S.C. §§ 12101–12213).
4. **Byrd Anti-Lobbying Amendment.** All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Suppliers, contractors, subcontractors, consultants, and sub-consultants who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above 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 an 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. 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.
5. **Civil Rights Act of 1964 – Title VI.** All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
6. **Civil Rights Act of 1968.** All suppliers, contractors, subcontractors, consultants, and sub- consultants must comply with Title VIII of the Civil Rights Act of 1968, which prohibits discriminating in the sale, rental,

financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (42 U.S.C. § 3601 et seq.), as implemented by the Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)—be designed and constructed with certain accessible features (See 24 C.F.R. § 100.201).

7. **Clean Air Act and Federal Water Pollution Control Act (Clean Water Act).** All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended—when contract amounts exceed \$150,000 and agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387).
8. **Conflict of Interest Provisions.** Interest of Members, Officers, or Employees of the Recipient Members of Local Governing Body or Other Public Officials. No member officer or employee of the recipient or its agent no member of the governing body of the locality in which the program is situated and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year thereafter shall have any financial interest direct or indirect in any contract or subcontract or the proceeds under this agreement. Immediate family members of said member’s officers, employees and officials similarly barred from having any financial interest in the program. The recipient shall incorporate or cause to be incorporated in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purpose of this section.
9. **Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333).** [Where applicable] All contracts awarded by the City in excess of \$100,000 for contracts that involve the employment of mechanics or laborers shall include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to 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 permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
10. **Copeland “Anti-Kickback” Act.** All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the with the Copeland “Anti- Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Sub- contractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he

or she is otherwise entitled.

11. **Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).** When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146- 3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be 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. The City must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The City must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The City must report all suspected or reported violations to the Federal awarding agency.
12. **Debarment and Suspension.** All suppliers, contractors, subcontractors, consultants, and sub- consultants are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, and 2 C.F.R. Part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.
13. **Domestic Procurement Preference.** As appropriate and to the extent consistent with law, the Town of Wilkesboro’s supplier should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to iron, aluminum, steel, cement, and other manufactured products).” For purposes of this clause, (i) “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, and (ii) “manufactured products” means items and construction materials composed in whole or in part of nonferrous materials such as aluminum; plastics and polymer based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
14. **Drug-Free Workplace Regulations.** All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 et seq.), which requires agreement to maintain a drug-free workplace.
15. **Education Amendments of 1972 (Equal Opportunity in Education Act) – Title IX.** All suppliers, contractors, subcontractors, consultants, and sub- consultants must comply with the requirements of Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to

discrimination under any educational program or activity receiving Federal financial assistance.

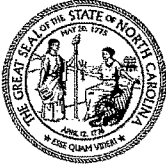
16. **Energy Policy and Conservation Act.** All Suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the requirements of 42 U.S.C. § 6201 which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.
17. **Environmental reviews/assessments.** When required by Federal program legislation, awarded contractors must conduct and complete federally approved process of reviewing a project and its potential environmental impacts to determine whether it meets federal, state, and local environmental standards. The environmental review process is required for most federally assisted projects to ensure that the proposed project does not negatively impact the surrounding environment and that the property site itself will not have an adverse environmental or health effect on end users. Not every project is subject to a full environmental assessment (i.e., every project's environmental impact must be examined, but the extent of this examination varies), but every project must be in compliance with the National Environmental Policy Act (NEPA), and other related Federal and state environmental laws.
18. **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964- 1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
19. **Fly America Act of 1974.** All suppliers, contractors, subcontractors, consultants, and sub- consultants must comply with Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 U.S.C. § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.
20. **Hotel and Motel Fire Safety Act of 1990.** In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. § 2225a, all suppliers, contractors, subcontractors, consultants, and sub-consultants must ensure that all conference, meeting, convention, or training space funded in whole or in part with Federal funds complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974, as amended, 15 U.S.C. § 2225.
21. **Limited English Proficiency (Civil Rights Act of 1964, Title VI).** All suppliers, contractors, subcontractors, consultants, and sub- consultants must comply with the Title VI of the Civil Rights Act of 1964 (Title VI) prohibition against discrimination on the basis of national origin, which requires taking reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services.
22. **Patents and Intellectual Property Rights.** Unless otherwise provided by law, suppliers, contractors, subcontractors, consultants, and sub-consultants are subject to the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and codified in 35 U.S.C. § 200 et seq. All suppliers, contractors, and subcontractors, consultants, sub-consultants are subject to the specific requirements governing the development, reporting, and

disposition of rights to inventions and patents located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. § 401.14.

23. **Procurement of Recovered Materials.** All suppliers, contractors, and subcontractors, consultants, sub-consultants must 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 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.
24. **Rehabilitation Act of 1973.** All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, as amended, which provides that no otherwise qualified handicapped individual in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
25. **Remedies.** All contracts in excess of the small purchase threshold fixed at 41 U.S.C. 403(11) (currently \$250,000) shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms.
26. **Rights to Inventions Made Under a Contract or Agreement.** Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the City 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 implementing regulations issued by the awarding agency.
27. **Telecommunications Huawei / ZTE Ban.** 2 C.F.R. 200.216 prohibits non-federal entities receiving federal grant funds from entering into a contract (or extend or renew a contract) to procure or obtain equipment, services, or system 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 from the Chinese manufacturers Huawei and ZTE.
28. **Termination.** All contracts shall contain suitable provisions for termination by the City, including how termination shall be affected and the basis for settlement. In addition, such contracts shall describe the conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated due to circumstances beyond the control of the contractor. All contracts in excess of \$10,000 must address termination for cause and for convenience by the City, including the manner by which it will be given legal effect, and the basis for settlement. See [2 CFR Appendix II to Part 200\(B\)](#).
29. **Terrorist Financing.** All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with E.O. 13224 and U.S. law that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism.
30. **Trafficking Victims Protection Act of 2000.** All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the requirements of the government-wide award term which implements Section 106(g) of the Trafficking Victims Protection Act of 2000, (TVPA) as amended (22 U.S.C. § 7104). The

award term is located at 2 CFR § 175.15, the full text of which is incorporated here by reference in the standard terms and conditions for federally funded procurements.

31. **Universal Identifier and System of Award Management (SAM).** All suppliers, contractors, subcontractors, consultants, and sub- consultants are required to comply with the requirements set forth in the government-wide Award Term regarding the System for Award Management and Universal Identifier Requirements located at 2 C.F.R. Part 25, Appendix A, the full text of which is incorporated here by reference in the standard terms and conditions for federally funded procurements.
32. **USA Patriot Act of 2001.** All suppliers, contractors, subcontractors, consultants, and sub- consultants must comply with requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), which amends 18 U.S.C. §§ 175–175c.
33. **Whistleblower Protection Act.** All suppliers, contractors, subcontractors, consultants, and sub- consultants must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C § 2409, 41 U.S.C. 4712, and 10 U.S.C. § 2324, 41 U.S.C. §§ 4304 and 4310.



NORTH CAROLINA GENERAL TERMS & CONDITIONS

1. PERFORMANCE:

- a) It **is** anticipated that the tasks and duties undertaken by the Vendor under the contract which results from the State solicitation in this matter (Contract) shall include Services, and/or the manufacturing, furnishing, or development of goods and other tangible features or components, as deliverables.
- b) Except as provided herein, and unless otherwise mutually agreed in writing prior to award, any deliverables **not** subject to an agreed Vendor license and provided by Vendor in performance of this Contract shall be and remain property of the State. During performance, Vendor may provide proprietary components as part of the deliverables that **are** identified in this Contract. Vendor grants the State a personal, permanent, non-transferable license to use such proprietary components of the deliverables and other functionalities, as provided under this Contract. Any technical and business information owned by Vendor or its suppliers or licensors made accessible or furnished to the State **shall** be and remain the property of the Vendor or such other party, respectively. Vendor **agrees** to perform under the Contract in at least the same or similar manner provided to comparable users and customers. The State **shall** notify the Vendor of any defects or deficiencies in performance or failure of deliverables to conform to the standards and specifications provided in this Contract. Vendor **agrees** to timely remedy defective performance or any nonconforming deliverables on its own or upon such notice provided by the State.
- c) Vendor **has** a limited, non-exclusive license to access and use State Data provided to Vendor, but solely for performing its obligations under and during this Agreement and in confidence as further provided for herein or by law.
- d) Vendor or its suppliers, as specified and agreed in the Contract, **shall** provide support assistance to the State related to all Services performed or other deliverables procured hereunder during the State's normal business hours. Vendor warrants that its support, customer service, and assistance **will be performed** at a minimum in accordance with generally accepted and applicable industry standards.
- e) The State may document and take into account in awarding or renewing future procurement contracts the general reputation, performance and performance capabilities of the Vendor under this Contract as provided by G.S. 143-52 and 143-135.9 (a) and (b) (Best Value).

2. DEFAULT AND TERMINATION:

- a) In the event of default by the Vendor, the State may, as provided by NC law, procure goods and services necessary to complete performance hereunder from other sources and hold the Vendor responsible for any excess cost occasioned thereby. See, G.S. 25-2-712. In addition, and in the event of default by the Vendor under the Contract, or upon the Vendor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Vendor, the State may immediately cease doing business with the Vendor, terminate the Contract for cause, and take action to recover relevant damages, and if permitted by applicable law, debar the Vendor from doing future business with the State. 01 NCAC 05B.1520.
- b) If, through any cause, Vendor **shall** fail to fulfill in a timely and proper manner the obligations under the Contract, including, without limitation, in these North Carolina General Terms and Conditions, the State **shall** have the right to terminate the Contract by giving thirty days written

notice to the Vendor and specifying the effective date thereof. In that event, any or all finished or unfinished deliverables that **are** prepared by the Vendor under the Contract shall, at the option of the State, become the property of the State (and under any applicable Vendor license to the extent necessary for the State to use such property), and the Vendor **shall** be entitled to receive just and equitable compensation for any acceptable deliverable completed (or partially completed at the State's option) as to which such option **is** exercised. Notwithstanding, Vendor **shall not** be relieved of liability to the State for damages sustained by the State by virtue of any breach of the Contract, and the State may withhold any payment due the Vendor for the purpose of setoff until such time as the exact amount of damages due the State from such breach **can** be determined. The State, if insecure as to receiving proper performance or provision of goods deliverables, or if documented Vendor Services performance issues exist, under this Contract, may require at any time a performance bond or other alternative performance guarantees from a Vendor without expense to the State as provided by applicable law. G.S. 143-52(a); 01 NCAC 05B.1521; G.S. 25-2-609.

- c) If this Contract contemplates deliveries or performance over a period of time, the State may terminate this Contract for convenience at any time by providing 60 days' notice in writing from the State to the Vendor. In that event, any or all finished or unfinished deliverables prepared by the Vendor under this Contract shall, at the option of the State, become its property, and under any applicable Vendor license to the extent necessary for the State to use such property. If the Contract is terminated by the State for convenience, the State **shall** pay for those items or Services for which such option **is** exercised, less any payment or compensation previously made.

3. INTERPRETATION, CONFLICT OF TERMS:

- a) The definitions in the Instructions to Vendors in the relevant solicitation for this Contract, and in 01 NCAC 05A.0112 **are** specifically incorporated herein.
- b) If **federal funds are involved** in the transactions under this Contract, the Vendor **shall** comply with all applicable state and federal requirements and laws, **except where State requirements are more restrictive**. See the additional federal requirements included in the "Federal Funds Provisions" section below.
- c) "Purchasing Agency" herein **is** as defined in 01 NCAC 05A.0112, except that if this Contract **has** been entered into by the NC Department of Administration, Division of Purchase and Contract (P&C) as indicated in the Contract (e.g., a State Term Contract), then P&C will then be a Purchasing Agency for the purposes herein and in the Federal Funds Provisions, below.
- d) Contracts made in contravention of General Statutes, Chapter 143, Article 3 and the Rules in 05 NCAC Chapter 5, **are** void. G.S. 143-58.
- e) In cases of conflict between specific provisions in this Contract and any other referenced documents, the Order of Precedence shall be (high to low) (1) any special terms and conditions specific to this Contract, including any negotiated terms; (2) requirements, specifications and administrative terms; (3) these NORTH CAROLINA GENERAL TERMS AND CONDITIONS, including the Federal Funds Provisions; (4) Definitions and other provisions in INSTRUCTIONS TO VENDORS in this solicitation, which is specifically incorporated in this Contract; (5) PRICING, and (6) Vendor's Bid, to the extent specifically and mutually incorporated into this Contract.
- f) In the event of conflict of terms between applicable provisions of the Federal Funds Provisions and the other provisions of these North Carolina General Contract Terms and Conditions, the **more restrictive provision will govern**.

- 4. GOVERNMENTAL RESTRICTIONS:** In the event any Governmental restrictions **are** imposed which necessitate alteration of the goods, material, quality, workmanship, or performance of the Services offered, prior to acceptance, it **shall** be the responsibility of the Vendor to notify the State Contract Lead or Administrator indicated in the Contract at once, in writing, indicating the specific regulation which requires such alterations. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.

5. **AVAILABILITY OF FUNDS:** Any and all payments to the Vendor **shall** be dependent upon and subject to the availability of funds appropriated or allocated to the agency for the purpose set forth in the Contract.
6. **TAXES:** Any applicable taxes shall be invoiced as a separate item.

Town of
Wilkesboro
pays NC
sales and
use tax.

- a) G.S. 143-59.1 bars the Secretary of Administration from entering into Contracts with Vendors if the Vendor or its affiliates meet one of the conditions of G.S. 105-164.8(b) and refuses to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G.S. 105-164.8(b) include:
(1) Maintenance of a retail establishment or office,
(2) Presence of representatives in the State that solicit sales or transact business on behalf of the Vendor and
(3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the proposal document the Vendor certifies that it and all of its affiliates, (if it **has** affiliates), collect(s) the appropriate taxes.
- b) The agency(ies) participating in the Contract **are** exempt from Federal Taxes, such as excise and transportation. Exemption forms submitted by the Vendor will be executed and returned by the using agency.
- c) Prices offered **are not** to include any personal property taxes, nor any sales or use tax (or fees) unless required by the North Carolina Department of Revenue.

7. **SITUS AND GOVERNING LAWS:**

- a) This Contract **is** made under and **shall** be governed by and construed in accordance with the laws of the State of North Carolina, including, without limitation, the relevant provisions of G.S. Chapter 143, Article 3, and the Rules in 01 NCAC Chapter 05, and any applicable successor provisions, without regard to its conflict of laws rules, and within which State all matters, whether sounding in Contract, tort or otherwise, relating to its validity, construction, interpretation and enforcement shall be determined. G.S. 22B-3.
- b) Vendor **shall** comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that **are** applicable to the conduct of its business and its performance in accordance with the Contract, including those of federal, state, and local agencies having jurisdiction and/or authority, and including, without limitation, the applicable requirements in the Federal Funds Provisions, below.
- c) Non-resident Vendor corporations **not** formed under NC law **must be domesticated** in the Office of the NC Secretary of State in order to contract with the State of North Carolina. G.S. 55A-15-01.

8. **NON-DISCRIMINATION COMPLIANCE:**

Wholly State Funded Contracts.

- a) The Vendor will take affirmative action in complying with all State requirements and laws concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or disability or rights, such as preserved by Governor Roy Cooper Order E.O. 24 or 25, and will take necessary action to ensure that its internal employee policies and procedures **are** consistent with Executive Order #82 (Roy Cooper, December 6, 2018), which extends workplace protections and accommodations to pregnant employees.
- b) Federal Law, such as the following, applies as provided for therein: Titles VI and VII of the Civil Rights Act of 1964 (PL 88-352), and the regulations issued pursuant thereto (prohibiting discrimination on the basis race, color, national origin and ensuring that individuals **are** employed, and that employees **are** treated during employment, without regard to their race, color, creed, national origin, sex, or age); Title IX of the Education Amendments of 1972 (codified as amended at 20 U.S.C. § 1681 et seq.) (prohibiting discrimination on the basis of sex); Titles I, II, III, IV, and V of the Americans with Disability Act of 1990 (prohibiting discrimination on the basis of disability); Section 504 of the Rehabilitation Act of 1973 (codified as amended at 29 U.S.C. § 794) (prohibiting discrimination on the basis of handicap); the Age Discrimination Act of 1975 (codified as amended

at 42 U.S.C. § 6101 et seq.) (prohibiting age discrimination); Executive Order 11063 as amended by Executive Order 2259; and Section 109 of the Housing and Community Development Act of 1974, as amended.

Contracts Partially or Wholly Federally Funded.

To the extent federal funding is involved in this procurement, in whole or in part, compliance with the following is required:

- c) The Vendor **shall** comply with all Federal Funds Provisions requirements (below) and **not** discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Vendor **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 Vendor **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.
- d) The Vendor **shall**, in all solicitations or advertisements for employees placed by or on behalf of the Vendor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin:
- e) The Vendor **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 Vendor's legal duty to furnish information.
- f) The Vendor **will** send to each labor union or representative of workers with which it **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 Vendor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- g) In the event of the Vendor'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 Vendor may be declared ineligible for further Government contracts or federally assisted construction Contracts.
- h) The Vendor **shall** include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted, so that such provisions will be binding upon each subcontractor or vendor. The Vendor **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 Vendor (or herein "applicant," as applicable in context within these Federal Funds Provisions) becomes involved in, or **is** threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Vendor may request the United States to enter into such litigation to protect the interests of the United States.
- i) The Vendor further agrees that it shall 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 Vendor 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.

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

9. **PAYMENT TERMS:** Payment terms **are** net **not** later than 30 days after receipt of a correct invoice or acceptance of goods, whichever **is** later. The Procuring Agency **is** responsible for all payments to the Vendor under the Contract. ~~Payment by some agencies may be made by procurement card. If the Vendor accepts Visa, MasterCard, etc., from other customers, it shall accept procurement card payment by the State under the terms provided for the procurement card. 01 NCAC 05B.1523. If payment is made by procurement card, then payment for amounts then due may be processed immediately by the Vendor.~~

The State **does not** agree in advance, in contract, pursuant to Constitutional limitations, to pay costs such as interest, late fees, penalties or attorney's fees. This Contract **will not** be construed as an agreement by the State to pay such costs and will be paid only as ordered by a court of competent jurisdiction.

10. **CONDITION AND PACKAGING:** Unless otherwise expressly provided by special terms and conditions or specifications in the Contract or by express, specific federal law or rule, it is understood and agreed that any item offered or shipped **has not** been sold or used for any purpose, **is newly** manufactured, and shall be in first class condition. All containers/packaging **shall** be suitable for handling, storage or shipment.

11. **INTELLECTUAL PROPERTY WARRANTY AND INDEMNITY:** Vendor **shall** hold and save the State, its officers, agents and employees, harmless from liability of any kind, including costs and expenses, resulting from infringement of the rights of any third party in any Services or copyrighted material, patented or patent-pending invention, article, device or appliance delivered in connection with the Contract.

a) Vendor warrants to the best of its knowledge that:

1. Performance under the Contract **does not** infringe upon any intellectual property rights of any third party; and
2. There **are no** actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.

b) Should any deliverables supplied by Vendor become the subject of a claim of infringement of a patent, copyright, trademark or a trade secret in the United States, the Vendor, **shall** at its option and expense, either procure for the State the right to continue using the deliverables, or replace or modify the same to become non-infringing. If neither of these options **can** reasonably be taken in Vendor's judgment, or if further use **shall** be prevented by injunction, the Vendor **agrees** to cease provision of any affected deliverables and refund any sums the State **has** paid Vendor for such deliverables and make every reasonable effort to assist the State in procuring substitute deliverables. If, in the sole opinion of the State, the cessation of use by the State of any such deliverables due to infringement issues makes the retention of other items acquired from the Vendor under this Agreement impractical, the State **shall** then have the option of terminating the Agreement, or applicable portions thereof, without penalty or termination charge; and Vendor agrees to refund any sums the State paid for unused Services or other deliverables.

c) The Vendor, at its own expense, **shall** defend any action brought against the State to the extent that such action **is** based upon a claim that the deliverables supplied by the Vendor, their use or operation, infringe on a patent, copyright, trademark or violate a trade secret in the United

States. The Vendor **shall** pay those costs and damages finally awarded or agreed in a settlement against the State in any such action. Such defense and payment **shall** be conditioned on the following:

1. That the Vendor **shall** be notified within a reasonable time in writing by the State of any such claim; and
 2. That the Vendor **shall** have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that the State shall have the option to participate in such action at its own expense.
- d) Vendor **will not** be required to defend or indemnify the State to the extent any claim by a third party against the State for infringement or misappropriation results solely from the State's material alteration of any Vendor-branded deliverables or Services, or from the continued use of the Services or other deliverables after receiving written notice from the Vendor of the claimed infringement.

12. **ADVERTISING:** Vendor **agrees not** to use the existence of the Contract or the name of the State of North Carolina as part of any commercial advertising or marketing of products or Services except as provided in 01 NCAC 05B.1516. A Vendor may inquire whether the State **is** willing to be included on a listing of its existing customers.

13. **ACCESS TO PERSONS AND RECORDS:**

- (a) During, and after the term hereof during the relevant period required for retention of records by State law (G.S. 121-5, 132-1 *et seq.*, typically five years), the State Auditor and any Purchasing Agency's internal auditors **shall** have access to persons and records related to the Contract to verify accounts and data affecting fees or performance under the Contract, as provided in G.S. 143-49(9). However, if any audit, litigation or other action arising out of or related in any way to this project **is** commenced before the end of such retention of records period, the records **shall** be retained for one (1) year after all issues arising out of the action **are** finally resolved or until the end of the record retentions period, whichever **is** later.
- (b) The following entities may audit the records of this contract during and after the term of the contract to verify accounts and data affecting fees or performance:
 1. The State Auditor.
 2. The internal auditors of the affected department, agency or institution.
 3. The Joint Legislative Commission on Governmental Operations and legislative employees whose primary responsibility **is** to provide professional or administrative services to the Commission.
- (c) The Joint Legislative Commission on Governmental Operations **has** the authority to:
 1. Study the efficiency, economy and effectiveness of any non-State entity receiving public funds.
 2. Evaluate the implementation of public policies, as articulated by enacted law, administrative rule, executive order, policy, or local ordinance, by any non-State entity receiving public funds.
 3. Investigate possible instances of misfeasance, malfeasance, nonfeasance, mismanagement, waste, abuse, or illegal conduct by officers and employees of a non-State entity receiving, directly or indirectly, public funds, as it relates to the officer's or employee's responsibilities regarding the receipt of public funds.
 4. Receive reports as required by law or as requested by the Commission.

5. Access and review

- a. Any documents or records related to any contract awarded by a State agency, including the documents and records of the contractor, that the Commission determines will assist in verifying accounts or will contain data affecting fees or performance; and
 - b. Any records related to any subcontract of a contract awarded by a State agency that **is** utilized to fulfill the contract, including, but **not** limited to (i) records related to the drafting and approval of the subcontract, and (ii) documents and records of the contractor or subcontractor that the Commission determines will assist in verifying accounts or will contain data affecting fees or performance.
- (d) The Joint Legislative Commission on Governmental Operations **has** the power to:
1. Compel access to any document or system of records held by a non-State entity receiving, directly or indirectly, public funds, to the extent the documents relate to the receipt, purpose or implementation of a program or service paid for with public funds.
 2. Compel attendance of any officer or employee of any non-State entity receiving public funds, provided the officer or employee **is** responsible for implementing a program or providing a service paid for with public funds.
- (e) Unless prohibited by federal law, the Commission and Commission staff in the discharge of their duties under this Article **shall** be provided access to any building or facility owned or leased by a non-State entity receiving public funds provided (i) the building or facility is used to implement a program or provide a service paid for with public funds and (ii) the access **is** reasonably related to the receipt, purpose, or implementation of a program or service paid for with public funds.
- (f) Any confidential information obtained by the Commission **shall** remain confidential and **is not** a public record as defined in G.S. 132-1.
- (g) Any document or information obtained or produced by Commission staff in furtherance of staff's duties to the Commission **is** confidential and **is not** a public record as defined in G.S. 132-1.
- (h) A person who conceals, falsifies, or refuses to provide to the Commission any document, information, or access to any building or facility as required by this Article with the intent to mislead, impede, or interfere with the Commission's discharge of its duties under this Article **shall** be guilty of a Class 2 misdemeanor.

14. ASSIGNMENT OR DELEGATION OF DUTIES:

- a) As a convenience to the Vendor, the State **may** include any person or entity designated by the Vendor in writing as a joint payee on the Vendor's payment check. In **no** event **shall** such approval and action obligate the State to anyone other than the Vendor.
- b) If Vendor requests any assignment, or delegation of duties, the Vendor **shall** remain responsible for fulfillment of all Contract obligations. Upon written request, the State **may**, in its unfettered discretion, approve an assignment or delegation to another responsible entity acceptable to the State, such as the surviving entity of a merger, acquisition or a corporate reorganization if made as part of the transfer of all or substantially all of the Vendor's assets. 01 NCAC 05B.1507. Any purported assignment or delegation made in violation of this provision **shall** be void and a material breach of the Contract. G.S. 143-58.

- 15. INSURANCE:** This section provides minimum insurance coverage rates that **are** applicable to most moderate risk solicitations. Agency Risk Analysis will determine if higher insurance coverage amounts **are** needed based on the likelihood and severity of exposure to the State. The analysis **is** documented in writing in the official file and considers the following non-exclusive factors:

1. Potential for damage to State property or property of a third party,
2. Potential for bodily injury to State employees or third parties,
3. Whether Vendor will transport State property, clients, or employees,
4. Use of a vehicle to accomplish the work or to travel to or from State locations,
5. Anticipated physical contacts of the Vendor with the State,
6. Anticipated number and activity of Vendor personnel within the State, and
7. Any other unique considerations that could result in harm, bodily injury, or property damage.

The Purchasing Agency **has** specified elsewhere in this Contract any increase in the minimum insurance coverage requirements below if the risk from the above factors **is** high.

- a) **REQUIREMENTS - Providing and maintaining** adequate insurance coverage **is** a material obligation of the Vendor and **is** of the essence of the Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage **shall** be obtained from companies that **are** authorized to provide such coverage and that **are** authorized by the NC Commissioner of Insurance to do business in North Carolina. The Vendor **shall** at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or the Contract. The limits of coverage under each insurance policy maintained by the Vendor **shall not** be interpreted as limiting the Vendor's liability and obligations or the indemnification requirements under the Contract. As provided above, a State agency is authorized, upon written evaluation and substantiation in the official file of the significant risk of bodily injury and/or property or other damage in the contract, to require and enforce higher coverage limits to mitigate the potential risk of liability to the State.
- b) **COVERAGE** - During the term of the Contract, the Vendor at its sole cost and expense **shall** provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. At a minimum, the Vendor **shall** provide and maintain the following coverage and limits, subject to **higher requirements** by an agency after the risk analysis indicated above:
 1. **For Small Purchases** as defined under North Carolina Administrative Code 01 NCAC 05A.0112 (35) and 05B.0301 (1), the minimum applicable insurance requirements for Worker's Compensation and Automobile Liability **will** apply as required by North Carolina law. The Purchasing Agency **may** require Commercial General Liability coverage consistent with the assessed risks involved in the procurement.
 2. **For Contracts valued in excess of the Small Purchase threshold, but up to \$1,000,000.00 the following limits shall apply:**
 - i. **Worker's Compensation** - The Vendor **shall** provide and maintain Worker's Compensation Insurance, as may be required by the laws of North Carolina, as well as employer's liability coverage, with minimum limits of \$250,000.00, covering all of Vendor's employees who **are** engaged in any work under the Contract in North Carolina. If any work **is** sub-contracted, the Vendor **shall** require the sub-contractor to provide the same coverage for any of its employees engaged in any work under the Contract within the State.
 - ii. **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$500,000.00 Combined Single Limit. Defense costs shall be in excess of the limit of liability.
 - iii. **Automobile** - Automobile Liability Insurance, to include liability coverage covering all owned, hired and non-owned vehicles, used within North Carolina in connection with the Contract. The minimum combined single limit shall be \$250,000.00 bodily injury and property damage; \$250,000.00 uninsured/under insured motorist; and \$2,500.00 medical payment.
 3. **For Contracts valued in excess of \$1,000,000.00 the following limits shall apply:**
 - i. **Worker's Compensation** - The Vendor **shall** provide and maintain Worker's Compensation Insurance, as may be required by the laws of North Carolina, as well as employer's liability coverage, with minimum limits of \$500,000.00, covering all of Vendor's employees who **are** engaged in any work under the Contract in North

Carolina. If any work **is** sub-Contracted, the Vendor shall require the sub-contractor to provide the same coverage for any of its employees engaged in any work under the Contract within the State.

- ii. **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$1,000,000.00 Combined Single Limit. Defense costs shall be in excess of the limit of liability.
- iii. **Automobile** - Automobile Liability Insurance, to include liability coverage covering all owned, hired and non-owned vehicles, used within North Carolina in connection with the Contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$5,000.00 medical payment.

16. GENERAL INDEMNITY:

- a) The Vendor **shall** indemnify, defend and hold and save the State, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, Services, materials, or supplies in connection with the performance of the Contract, and also from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Vendor in the performance of the Contract that **are** attributable to the negligence or intentionally tortious acts of the Vendor, provided that the Vendor **is** notified in writing within 30 days from the date that the State **has** knowledge of such claims.
- b) The Vendor, at its own expense **shall** defend any action brought against the State, under this section. The Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that the State shall have the option to participate in such action at its own expense.
- c) The Vendor represents and warrants that it **shall** make no claim of any kind or nature against the State's agents who **are** involved in the delivery or processing of Vendor deliverables or Services as part of this Contract with the State.
- d) As part of this provision for General indemnity, if **federal funds are involved in this procurement**, the Vendor warrants that it **will** comply with all relevant and applicable federal requirements and laws, and **will** indemnify, defend and hold and **save** the State harmless from any claims or losses resulting to the State from the Vendor's noncompliance with such federal requirements or law in the performance of this Contract. The representations and warranties in the preceding two sentences shall survive the termination or expiration of the Contract.
- e) The State **does not** participate in indemnification due to Constitutional restrictions, or arbitration, which effectively and unacceptably waives jury trial. See, G.S. 22B-3, -10.

17. ELECTRONIC PROCUREMENT: (G.S. 143-48.3)

GENERALLY APPLICABLE TO GOODS AND SERVICES PURCHASES:

- a) ~~Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third-party agent shall serve as the Supplier Manager for this E-Procurement Service. The Vendor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this Contract.~~
- b) ~~The Supplier Manager will capture an order from a State approved user, including the shipping and payment information, and submit the order in accordance with E-Procurement Service procedures. Subsequently, the Supplier Manager will send those orders to the appropriate Vendor on State Contract. The State or State approved user, not the Supplier Manager, shall be responsible for the solicitation, bids received, evaluation of bids received, award of Contract, and the payment for goods delivered.~~

- e) ~~Vendor shall at all times maintain the confidentiality of its username and password for the Statewide E-Procurement Services. Vendor shall be responsible for all activity and all charges by its agents or employees. Vendor agrees not to permit a third party to use its E-Procurement Services account. If there is a breach of security through the Vendor's account, Vendor shall immediately change its password and notify the Supplier Manager of the security breach by email. Vendor shall cooperate with the State and the Supplier Manager to mitigate and correct any security breach.~~

E-PROCUREMENT FEES — APPLICABLE ONLY TO GOODS PURCHASES

- d) ~~THE SUCCESSFUL BIDDER(S) SHALL PAY A TRANSACTION FEE, CURRENTLY 1.75% (.0175), ON THE TOTAL DOLLAR AMOUNT (EXCLUDING SALES TAXES) FOR THE AMOUNT OF ANY GOODS INCLUDED ON EACH PURCHASE ORDER ISSUED THROUGH THE STATEWIDE E-PROCUREMENT SERVICE (OR ANY OFFICIAL REPLACEMENT SERVICE). G.S. 66-58.12; See, NC E-Procurement Terms of Use.~~ This applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. The transaction fee shall not be stated or included as a separate item on the invoice. Vendor will receive a credit for transaction fees they paid for the purchase of any item(s) if an item(s) is returned through no fault of the Vendor. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the Vendor's failure to perform or comply with specifications or requirements of the Contract.

- e) ~~Vendor or its Authorized Reseller, as applicable, will be invoiced monthly for the State's transaction fee by the E-Procurement Supplier Manager (Supplier Manager), based on a) purchase activity for the prior month, or b) purchases for which the supplier invoice has been paid. Unless the Supplier Manager receives written notice from the Vendor identifying with specificity any errors in an invoice for the transaction fee within thirty (30) days of the receipt of invoice, such invoice shall be deemed to be correct and Vendor shall have waived its right to later dispute the accuracy and completeness of the invoice. Payment of the transaction fee by the Vendor is due to the account designated by the State within thirty (30) days after receipt of the invoice for the transaction fee, or it shall be considered a material breach of Contract.~~

~~Pursuant to G.S. 147-86.23, the service will charge 1) interest on past due balances at the rate set by the Secretary of Revenue pursuant to G.S. 105-241.21 as of the date the balances are past due, and, 2) late payment penalties, currently ten percent (10%) of the account receivable. No interest shall be charged on disputed and overdue amounts to the extent the State agrees to reduce or adjust the amount in dispute. The Supplier Manager shall provide, whenever reasonably requested by the Vendor in writing (including electronic documents), supporting documentation from the E-Procurement Service that accounts for the amount of the invoice.~~

18. **SUBCONTRACTING:** Performance under the Contract by the Vendor **shall not** be subcontracted without prior written approval of the State's assigned Contract Lead. Unless otherwise agreed in writing, acceptance of a Vendor's proposal shall include approval to use the subcontractor(s) that have been specified therein.
19. **CONFIDENTIALITY:** Vendor information that **cannot** be shown to be, e.g., a trade secret, **may** be subject to public disclosure under the terms of the State Public Records Act (SPRA), beginning at G.S. 132.1. Blanket assertions of confidentiality **are not** favored, but confidentiality of specific material meeting one or more exceptions in the SPRA **will** be honored. Vendors **are** notified that if the confidentiality of material **is** challenged by other parties, the Vendor **has** the responsibility of defending the assertion of confidentiality. G.S. 143-52(a).
20. **CARE OF STATE DATA AND PROPERTY:** Any State property, information, data, instruments, documents, studies or reports given to or prepared or assembled by or provided to the Vendor under the Contract **shall** be kept as confidential, used only for the purpose(s) required to perform the Contract and **not** divulged or made available to any individual or organization without the prior written approval of the State.

The State's data and property in the hands of the Vendor **shall** be protected from unauthorized disclosure, loss, damage, destruction by a natural event or another eventuality. The Vendor **agrees** to reimburse the State for loss or damage of State property while in Vendor's custody. Such State Data

shall be returned to the State in a form acceptable to the State upon the termination or expiration of this Agreement.

The Vendor **shall** notify the State of any security breaches within 24 hours as required by G.S. 143B1379. For further information, see, G.S. 75-60 *et seq.* **Notice is given** to the Vendor that the NC Department of Information Technology (DIT) **has** requirements relating to the security of the State network, and rules relating to the use of the State network, IT software and equipment, that the Vendor must comply with, as applicable. See, e.g., G.S. 143B-1376.

21. **OUTSOURCING:** Any Vendor or subcontractor providing call or contact center services to the State of North Carolina or any of its agencies **shall disclose** to inbound callers the location from which the call or contact center services **are** being provided.

If, after award of a Contract, and consistent with any applicable NC DIT security provisions, the Contractor wishes to relocate or outsource any portion of performance to a location outside the United States, or to contract with a subcontractor for any such performance, which subcontractor and nature of the work **has not** previously been disclosed to the State in writing, *prior written approval must be obtained from the State Purchasing Agency*. Vendor **shall** give notice to the Purchasing Agency of any relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons providing performance under a State Contract to a location outside of the United States. See, G.S. 14359.4.

22. **ENTIRE AGREEMENT:** The Contract (including any documents mutually incorporated specifically therein) resulting from a relevant solicitation represents the entire agreement between the parties and supersedes all prior oral or written statements or agreements. All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein **shall** survive the Contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.

23. **ELECTRONIC RECORDS:** The State will digitize all Vendor responses to the relevant solicitation, if **not** received electronically, as well as any awarded Contract together with associated procurement related documents. These electronic copies **shall** constitute a preservation record and **shall** serve as the official record of this procurement with the same force and effect as the original written documents comprising such record. Any official electronic copy, printout or other output readable by sight shown to reflect such record accurately **shall** constitute an "original."

24. **AMENDMENTS:** This Contract may be amended only by a written amendment duly executed by the State and the Vendor.

25. **NO WAIVER:** Notwithstanding any other language or provision in the Contract or in any Vendor supplied material, nothing herein **is** intended nor **shall** be interpreted as a waiver of any right or remedy otherwise available to the State under applicable law. The waiver by the State of any right or remedy on any one occasion or instance **shall not** constitute or be interpreted as a waiver of that or any other right or remedy on any other occasion or instance.

26. **FORCE MAJEURE:** Neither party **shall** be deemed to be in default of its obligations hereunder if and so long as it **is** prevented from performing such obligations as a result of events beyond its reasonable control, including, without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, other catastrophic epidemic or pandemic, natural event or Act of God.

27. **SOVEREIGN IMMUNITY:** Notwithstanding any other term or provision in the Contract, nothing herein **is** intended nor **shall** be interpreted as waiving any claim or defense based on the principle of sovereign immunity or other State or federal constitutional provision or principle that otherwise would be available to the State under applicable law.

28. **FEDERAL FUNDS PROVISIONS:**

Where federal funds are utilized in connection with this procurement, and to the extent applicable and absent stricter or controlling State provisions, the following federal provisions (in addition to the North Carolina General Terms and Conditions above) may apply consistent

with Uniform Guidance in 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, and its Appendix II. Relevant federal authorities may require additional provisions depending on the scope and context of the Contract. Failure or unwillingness of the Vendor to continually meet any of these requirements, as applicable, may result in Contract termination.

Any links to websites not maintained by the State are provided as a courtesy. The State or Town of Wilkesboro does not warrant or guarantee the accuracy of the hyperlink or the information contained therein.

- a) **No governmental non-competes.** Vendor shall not impose or enforce any non-competition agreement upon the employees included in Vendor's bid that would prevent those employees from accepting any offer of employment from the State of North Carolina outside of the first Term of the Contract. By executing this Contract, the Vendor affirms this condition. This affirmation is a material condition for the State's award of any work under this Contract.
- b) **Program Monitoring.** Vendor agrees to assist and cooperate with the Federal grantor or funding agency and the relevant Purchasing Agency or their duly designated representatives in the monitoring of the project or projects to which this Contract relates, and to provide in form and manner approved by the Purchasing Agency such monitoring reports, progress reports, and the like as may be required and to provide such reports at the times specified.
- c) **Remedies and Termination.** For purposes of this section the State Remedies and Termination provisions above apply as written.
- d) **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).**

Compliance with the Contract Work Hours and Safety Standards Act.

1. **Overtime requirements.** No Vendor 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 29 C.F.R. §5.5(b)(1) the Vendor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Vendor and subcontractor 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 29 C.F.R. §5.5(b)(1), in the sum of \$26 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 29 C.F.R. §5.5(b)(1).
3. **Withholding for unpaid wages and liquidated damages.** The Purchasing Agency 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 Vendor or subcontractor under any such contract or any other Federal contract with the same prime Vendor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Vendor, such sums as may be determined to be necessary to satisfy any liabilities of such Vendor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in 29 C.F.R. §5.5(b)(2).
4. **SubContracts.** The Vendor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of 29 C.F.R. §5.5 and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Vendor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in 29 C.F.R. §5.5(b)(2) through (4).

e) **CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT.**

Clean Air Act

1. The Vendor **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.
2. The Vendor **agrees** to report each violation to the Purchasing Agency and understands and agrees that the Purchasing Agency will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Vendor **agrees** to include these requirements in each subcontract exceeding **\$150,000** financed in whole or in part with Federal assistance.

Federal Water Pollution Control Act

1. The Vendor **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.
2. The Vendor **agrees** to report each violation to the Purchasing Agency and understands and agrees that the Purchasing Agency will, in turn, report each violation as required to assure notification to the federal agency providing funds hereunder, and the appropriate Environmental Protection Agency Regional Office.
3. The Vendor **agrees** that these requirements will be included in each subcontract exceeding **\$150,000** financed in whole or in part with Federal assistance.

f) **Debarment and Suspension.**

1. This Contract, if **federal funding is used**, is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Vendor **is** required to verify that none of the Vendor's 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).
2. The Vendor **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 it enters into.
3. This certification **is** a material representation of fact relied upon by a federal agency providing federal funds herein and the Purchasing Agency. If it **is** later determined that the Vendor **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 federal agency providing federal funds herein and the Purchasing Agency, the Federal Government may pursue available remedies, including but **not** limited to suspension and/or debarment.
4. The Vendor **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 the Contract resulting from a relevant solicitation herein. The Vendor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

g) **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)** (as Amended).

To the extent applicable, Vendors that apply or bid for an award of **\$100,000 or more shall** file the required certification. Each tier certifies to the tier above 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. 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 awarding agency.

Required Certification. If applicable, Vendors must sign and submit to the Purchasing Agency the certification. See the latest version of "Certification for Contracts, Grants, Loans, and Cooperative Agreements" found at <https://ncadmin.nc.gov/documents/vendor-forms>.

h) **Procurement of Recovered Materials.**

1. Unless specified otherwise in the Contract, in the performance of this Contract, the Vendor **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.
2. 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>
3. The Vendor also **agrees to comply** with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

i) **Access to Records.** In addition to the North Carolina General Contract Terms & Conditions section entitled "**ACCESS TO PERSONS AND RECORDS**" included in this Contract, the following access to records requirements apply to this Contract:

1. The Vendor **agrees** to provide the Purchasing Agency, the Administrator of the federal agency providing funds hereunder, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Vendor which **are** directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.
2. The Vendor **agrees** to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. The Vendor **agrees** to provide the Administrator of the federal agency providing funds hereunder or his authorized representative access to construction or other work sites pertaining to the work being completed under the Contract.
4. In compliance with the Disaster Recovery Act of 2018, the Purchasing Agency and the Vendor acknowledge and **agree** that no language in this Contract **is** intended to prohibit audits or internal reviews by the Administrator of the federal agency providing funds hereunder or the Comptroller General of the United States.

j) **Modifications to Contract.** Modifications to the Contract **are** governed by the North Carolina General Contract Terms & Conditions section above entitled "**AMENDMENTS**," except as approval and signature by any federal official may also be required.

k) **Records Retention.** All records required to be kept on the project **shall** be maintained for at least five (5) years after final payments and until all other pending matters under the grant for this project have been closed. However, if any audit, litigation or other action arising out of or related in any way to this project **is** commenced before the end of the five (5) year period, the records **shall** be retained for one (1) year after all issues arising out of the action **are** finally resolved or until the end of the five (5) year period, whichever **is** later.

l) **Energy Efficiency.** All participants in the projects funded hereby **shall** recognize mandatory standards and policies relating to energy efficiency, which **are** contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).

m) **Program Fraud and False or Fraudulent Statements or Related Acts.** Vendor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the Contract.

- n) **No Obligation by Federal Government.** The Federal Government **is not** a party to this Contract and **is not** subject to any obligations or liabilities to the non-Federal entity, Vendor, or any other party pertaining to any matter resulting from the Contract.
- o) **Compliance with Federal Law, Regulations, and Executive Orders.** This **is** an acknowledgement that federal financial assistance will be used to fund all or a portion of the Contract. The Vendor will comply with all applicable Federal law, regulations, executive orders, the policies of the federal agency(ies) providing funding, procedures, and directives.
- p) **Federal Seals, Logos, and Flags.** In addition to the prohibitions of the North Carolina General Contract Terms & Conditions section above entitled "**ADVERTISING,**" the Vendor **shall not** use the seal(s), logos, crests, or reproductions of flags of a federal agency providing funding herein, or likenesses of federal agency officials without specific pre-approval of the relevant federal agency.
- q) **System for Awards Management.** Vendor **shall** be responsible to ensure that it **has** checked the federal System for Awards Management (SAM) <https://www.sam.gov/SAM/> and the State Debarred Vendors Listing, <https://ncadmin.nc.gov/documents/nc-debarred-vendors> to verify that Contractors or sub-Recipients **have not** been suspended or debarred from doing business with federal or State government.

Authorized Signature: _____

Date Signed: _____

Title of Signature: _____

Print Name: _____



TOWN OF WILKESBORO

TERMS & CONDITIONS

Scope of Services - This section provides a detailed description of the services that will be provided by the vendor.

Term (length of time) - This section specifies both beginning and ending dates or a project start and completion schedule.

Maximum Amount Payable - This section specifies the amount that the contract payments cannot exceed the amount payable. Uncertainty as to the amount of the final obligation under a contract does not excuse the contract from containing a maximum amount payable.

Relationship of Parties - This clause clarifies the nature of the relationship between the Town of Wilkesboro and the vendor. This clause confirms that the contract does not and should not be deemed to create a partnership or joint venture.

Purchase Order Required - The Town will not be responsible for any equipment, supplies, and/or services delivered without a purchase order and assumes no obligation for products or services shipped or delivered in excess of the quantity ordered. Any unauthorized products or services are subject to the Town's rejection and shall be returned at the vendor's expense. If an invoice is received without a purchase order listed your invoice will not be processed until a purchase order is obtained by the seller. The seller shall contact the employee placing the order or Department Head for a purchase order before mailing the invoice.

Vendor Failure to Deliver - In the event of the vendor's failure to deliver as and when specified, or to perform as and when specified, the Town reserves the right to cancel the order, or any part thereof, without prejudice to other rights, and vendor agrees that the Town may return part of any shipment so made and may charge vendor with any loss expense sustained as a result of such failure to deliver or perform.

Changes - If the vendor refuses to accept a purchase order exactly as written, the vendor will return it at once with an explanation. Any changes to the Purchase order will be considered a "Change Order" and requires written acceptance of both parties to become effective. This will include product or service substitutions, cost changes, and delivery schedule changes.

Cancellation - This clause gives both parties the right to terminate the contract upon the occurrence of specified conditions or events. The Town reserves the right to cancel or otherwise rescind a purchase order based on the Town's best interest.

Invoices - The vendor will deliver invoices to the Town at the address or electronically at the website shown on the face of each Purchase Order. The vendor will send separate invoices for each purchase number and invoices must be itemized in accordance with the items listed on the purchase order.

NC Sales and Use Taxes - The Town pays all NC sales and use taxes. The vendor shall pay all sales and use taxes that are or become due in connection with any products or services provided hereunder and shall indemnify and save harmless the Town of any damage, costs, fees, expenses, or penalties on account of such taxes. The vendor may charge the Town only those taxes that are set forth as a separate line item on the face of the purchase order. When a contract price is quoted, the sales tax affidavit form should be completed for these contracts along with attaching any invoices associated with the sales tax.

Delivery / Title - Unless otherwise agreed, delivery shall be F. O. B. point of destination and title shall pass to the Town upon acceptance at the final delivery point. Risk of damage or loss following the shipment and prior to acceptance by the Town shall be the responsibility of the vendor.

Right of Inspection and rejection - Equipment, supplies, and services supplied by the vendor shall be received subject to the Town's inspection and approval either during manufacturing or delivery (with prior arrangement), or within a reasonable time after delivery, notwithstanding prior payment. If specifications or warranties are not met, material and equipment may be returned at the vendor's expense. No material or equipment returned to Vendor as defective shall be replaced except for the Town's formal authorization.

Non-assignment - This clause prohibits the assignment of specific rights or of the entire contract to another party without the consent of the Town.

Warranty / Performance - Vendor warrants that the products and services furnished pursuant to this Purchase Order shall: (a) comply with all federal, state and local laws applicable thereto; (b) satisfy all requirements set forth on the face of this purchase order and any applicable documentation incorporated herein; (c) meet industry standards and be suitable for the purpose intended; (d) be of merchantable quality; and (e) be free from defects in title, labor, material or fabrication.

Indemnification - Infringement - The vendor will defend, indemnify, and save the Town harmless from any and all loss, damages, costs, fees, and expenses incurred on account of any and all claims, suits, or judgments alleging that any product or service provided under this purchase order violates any patent, copyright, trade secret, trade name, or any other intellectual property right of any nature.

Indemnification - Damages - If any product provided hereunder is defective in any respect whatsoever, Vendor will defend, indemnify, and save Town harmless from all loss, damages, costs, fees, and expenses incurred by reason of such defect, including without limitation all liability arising from any accidents, injuries, or damages to persons or property that may result in whole or in part from such product.

Indemnification - Consequences of Actions - If Vendor performs services or constructs, erects, inspects, or delivers hereunder, the vendor will indemnify and save harmless the Town from all loss, damages, costs, fees, or expenses incurred in connection with any accidents, injuries, or damages to persons or property that may result in whole or in part from the performance thereof.

Non-appropriation clause - non-appropriation clauses must be included in any Town contract requiring expenditure of Town funds and entered for terms longer than the current fiscal year.

Construction indemnity agreements - NC GS § 22B-1 prohibits a party from insulating itself from its own negligence

Strict Compliance - The Town may at any time insist upon strict compliance with these terms and conditions notwithstanding any previous custom, practice, or course of dealing.

Governing Law - This clause specifies that any dispute resulting from the contract shall be determined in accordance with the laws of North Carolina.

Certificate of Insurance - Vendor shall secure, before delivery of any goods or services hereunder, Commercial General Liability insurance in an amount not less than \$1,000,000 bodily injury each occurrence/ aggregate, \$1,000,000 property damage each occurrence/aggregate, or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate, with the Town as additional insured. The vendor shall produce an insurance certificate evidencing such coverage upon request by the Town identifying the person/office to be notified.

Real property improvement dispute venue - NC GS § 22B-2 prohibits making a contract subject to the laws of another state or setting exclusive venue in another state.

Forum selection - NC GS § 22B-3 prohibits requiring prosecution of an action or arbitration of a dispute in another state

Jury trial waiver - NC GS § 22B-10 prohibits requiring a party to waive its right to a jury trial (does not prohibit mutually agreed to mediation, arbitration, or other alternative dispute resolution processes)

Incurring 3rd party debt - Constitutional limitations on local government indemnifying obligations of other parties (incurring debt), NC Const. Art. V, Sec. 4 Certification that bids were submitted without collusion - NC GS § 143-54 - (a) The Director of Administration shall require bidders to certify that each bid is submitted competitively and without collusion. False certification is a Class I felony.

Organized Labor Restrictions - NC GS § 143-133.5 prohibits discriminating against a bidder or contractor for adhering or not adhering to an organized labor agreement

Employment-related and public accommodation requirements - NC GS § 160A-20.1(a) prohibits cities and counties from imposing employment-related requirements on bidders and contractors as a condition of bidding on a contract NC GS § 160A-20.1(a) for cities); NC GS § 153A20 449(a) for counties.

E-Verify - NC GS § 143-133.3 prohibits local governments from contracting with contractors and subcontractors not compliant with the state's E-Verify hiring requirement NC GS § 143-133.3. The contractor shall verify, by affidavit, compliance with the terms of the section upon request by the Town.

Iran Divestment Act - NC GS § 147-86.60 Prohibits local governments from contracting with an entity that has been identified by the NC State Treasurer's Office as engaging in Iranian investment activities Israel Boycott

Contracting Prohibition - NC GS § 147-86.82 Prohibits local governments from contracting with a company that has been identified by the NC State Treasurer's Office as boycotting Israel NC Department of Administration Debarred Vendor List – NC GS § 143-48 NC Division of Purchase and Contract; Contract Management Section-NC GS § 143-50.1. NC HUB Office - NC GS § 143-48.4

Small Jurisdiction Exception - NC GS § 14-234(d1) If it applies, have all required procedures for contract approval been followed?

Conflicts of Interest - NC GS § 14-234; NC GS § 133-32; NC GS § 160A-415; NC GS § Chapter 138A; NC GS § Chapter 120C; See the Town of Wilkesboro's Conflict of Interest policy and forms.

Pre-Audit - NC GS § 159-28(a) see pre-audit section in this policy.

Material Safety Data Sheets - Current material safety data sheets (MSDS), when applicable to the order, shall be provided by the vendor in accordance with all regulations.

Title VI of the Civil Rights Act of 1964 - "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

Force Majeure - Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by an act of war, hostile foreign actions, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God. COVID-19 is no longer an "unforeseen" event, and going forward, units should be wary of attempts by contractors or vendors to excuse performance due to the disease or its effects. Does the contract comply with applicable local policies, grant rules, and federal regulations?

Signature _____

Print Name & Job Title _____

Date _____



TOWN OF WILKESBORO

2026 Vendor Information Form

Individual/Business Name:			
Doing Business As:	dba		
In Business since:			
Federal Tax Class:	<input type="checkbox"/> Individual/Sole Proprietorship	<input type="checkbox"/> Partnership	<input checked="" type="checkbox"/> Corporation
	<input type="checkbox"/> Other:		
Taxpayer Identification Number (TIN)	Which number you use to file your company's taxes: Social Security Number : _____ - _____ - _____ OR Federal Identification Number: _____ - _____		
Would you like a 10-99 for tax purposes?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	

Physical Address:			
City, State, Zip		County:	
Payment Address:			
City, State, Zip		County:	

Main Company Phone:		Toll Free Phone:	
Fax Number:		Web Address:	

Accounting Contact:		Job Title:	
Direct Telephone:		Direct Fax Number:	
Business cell:		Payment Terms:	
Email:		Email to request invoice(s): (if different)	

Products or Services Offered:	
-------------------------------	--

➤ The Town of Wilkesboro pays NC sales and use tax. Does your organization charge NC sales tax on your invoices? ➤ Is your W-9 attached with this vendor form? <i>Please complete a current W-9 form which may be obtained from website: www.irs.gov</i> ➤ Will you be performing real property contracts? <i>Information about the sales and use tax can be found by visiting website: NC Department of Revenue, Sales and Use Tax</i> ➤ Does your business qualify for NC Historically Underutilized Business (HUB) status? NC § 143-128.4 ➤ Are you registered with the NC Office for Historically Underutilized Businesses? ➤ Are you registered with System for Award Management (sam.gov) as vendor to do business with the federal government, applying for grants, and checking entity compliance?	<table style="width: 100%;"> <tr> <td><input checked="" type="checkbox"/> Yes</td> <td><input type="checkbox"/> No</td> </tr> <tr> <td><input checked="" type="checkbox"/> Yes</td> <td><input type="checkbox"/> No</td> </tr> <tr> <td><input type="checkbox"/> Yes</td> <td><input checked="" type="checkbox"/> No</td> </tr> <tr> <td><input type="checkbox"/> Yes</td> <td><input checked="" type="checkbox"/> No</td> </tr> <tr> <td><input type="checkbox"/> Yes</td> <td><input checked="" type="checkbox"/> No</td> </tr> <tr> <td><input type="checkbox"/> Yes</td> <td><input checked="" type="checkbox"/> No</td> </tr> </table>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No												
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No												
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No												
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No												
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No												
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No												

Which town employee or department sent this form to you, in case we have questions?	
---	--

ACH Bank Type:	<input checked="" type="checkbox"/> Checking <input type="checkbox"/> Savings	Bank Name:	
Routing Number:		Bank Account Number:	
Email for ACH payment(s):			
<i>Attach a check marked "VOID" with preprinted name & current address OR an official BANK FORM, certified & stamped by bank official, which provides bank account number and routing number.</i>			
I authorize ACH payment Authorized Signature:			Date:

I certify the information on this form is correct.

Print Name:		Title:	
Signature:		Date Signed:	

Request for Taxpayer Identification Number and Certification

Go to www.irs.gov/FormW9 for instructions and the latest information.

Give form to the requester. Do not send to the IRS.

Before you begin. For guidance related to the purpose of Form W-9, see *Purpose of Form*, below.

Print or type. See <i>Specific Instructions</i> on page 3.	1 Name of entity/individual. An entry is required. (For a sole proprietor or disregarded entity, enter the owner's name on line 1, and enter the business/disregarded entity's name on line 2.)	
	2 Business name/disregarded entity name, if different from above.	
	3a Check the appropriate box for federal tax classification of the entity/individual whose name is entered on line 1. Check only one of the following seven boxes. <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C corporation <input type="checkbox"/> S corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> LLC. Enter the tax classification (C = C corporation, S = S corporation, P = Partnership) Note: Check the "LLC" box above and, in the entry space, enter the appropriate code (C, S, or P) for the tax classification of the LLC, unless it is a disregarded entity. A disregarded entity should instead check the appropriate box for the tax classification of its owner. <input type="checkbox"/> Other (see instructions)	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from Foreign Account Tax Compliance Act (FATCA) reporting code (if any) _____ <i>(Applies to accounts maintained outside the United States.)</i>
	3b If on line 3a you checked "Partnership" or "Trust/estate," or checked "LLC" and entered "P" as its tax classification, and you are providing this form to a partnership, trust, or estate in which you have an ownership interest, check this box if you have any foreign partners, owners, or beneficiaries. See instructions <input type="checkbox"/>	
	5 Address (number, street, and apt. or suite no.). See instructions.	Requester's name and address (optional) Town of Wilkesboro 203 W. Main St. / PO Box 106 Wilkesboro, NC 28697
	6 City, state, and ZIP code	
	7 List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. See also *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number													
<table style="width:100%; border-collapse: collapse;"> <tr> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> </tr> </table>													
or													
Employer identification number													
<table style="width:100%; border-collapse: collapse;"> <tr> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> </tr> </table>													

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and, generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person	Date
------------------	--------------------------	------

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

What's New

Line 3a has been modified to clarify how a disregarded entity completes this line. An LLC that is a disregarded entity should check the appropriate box for the tax classification of its owner. Otherwise, it should check the "LLC" box and enter its appropriate tax classification.

New line 3b has been added to this form. A flow-through entity is required to complete this line to indicate that it has direct or indirect foreign partners, owners, or beneficiaries when it provides the Form W-9 to another flow-through entity in which it has an ownership interest. This change is intended to provide a flow-through entity with information regarding the status of its indirect foreign partners, owners, or beneficiaries, so that it can satisfy any applicable reporting requirements. For example, a partnership that has any indirect foreign partners may be required to complete Schedules K-2 and K-3. See the Partnership Instructions for Schedules K-2 and K-3 (Form 1065).

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS is giving you this form because they