

**BRUNSWICK COUNTY**

# **INVITATION TO BID**

## **Horizontal Directional Drilling - George II Highway SE, Southport and Holden Beach Road SW, Supply**

ISSUE DATE: **June 24, 2025**

DUE DATE: **August 4, 2025**



**[BRUNSWICKCOUNTYNC.GOV/BID](https://www.brunswickcountync.gov/bid)**

## 1. OVERVIEW

Brunswick County is soliciting informal bids for horizontal directional drilling and associated utility work at the locations listed below. On September 16, 2024, Potential Tropical Cyclone #8 made landfall in North Carolina, resulting in significant flash flooding that caused road washouts and exposed or compromised utility infrastructure at multiple locations in Brunswick County. The scope of work includes horizontal directional drilling of new water lines, installation of all associated appurtenances and tie-ins, and restoration of service. All newly installed piping must be pressure tested, flushed, chlorinated, and pass BAC-T (bacteriological) testing prior to being reconnected to the existing water distribution system to ensure operational integrity and compliance with state regulations.

Project Locations:

- 1225 Holden Beach Road SW, Supply, NC 28462  
– Approximately 300 linear feet of 12-inch waterline via horizontal directional drilling
- 3261 George II Highway SE, Southport, NC 28461  
– Approximately 245 linear feet of 10-inch waterline via horizontal directional drilling

For additional information and maps, please refer to Exhibit A attached hereto.

## 2. PROJECT FUNDING AND REQUIREMENTS

Brunswick County anticipates receiving funding from the Federal Emergency Management Agency (“FEMA”) for this project. Said funding is expected to be a 100% reimbursement of the costs of this Project, based on initial estimates received. In using such FEMA funds, the County must comply with FEMA’s terms and conditions governing the expenditure of the funds. The County must also comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, and other such provisions as FEMA has determined or may determine are applicable, including, without limitation, those contained in the FEMA Contract Provisions Guide.

**In accordance with the foregoing requirements, bidders interested in being considered for this project must agree to strictly adhere to all terms and conditions contained herein, including the Construction or Repair Agreement, and all FEMA terms and conditions, as may be amended from time to time by FEMA. Bidders not agreeing to all terms and conditions are expressly prohibited from submitting a bid for consideration.**

## 3. SCOPE OF WORK

A more detailed Scope of Work includes, but is not necessarily limited to, the following:

- 3.1 Install DR-18 rated piping using horizontal directional drilling methods according to the specified length and size above at each location.
- 3.2 Install approximately two (2) joints of DR-18 piping by open cut methods at each end of the directional drill, fittings, and bends necessary for a complete tie-in

connection to existing waterline piping. The existing valves at each end of the directional drill shall be restrained by thrust block or other approved method.

- 3.3 Perform pressure test, chlorinate and perform BAC-T Test. Ensure required NC Division of Environmental and Brunswick County standards for chlorination and bacteriological testing have been met. Work will not be considered complete until passing bacteriological tests have been received.
- 3.4 Establish traffic control during the performance of the work, ensuring measures are in place for safety and all compliance requirements.
- 3.5 The contractor shall endeavor to not disturb the existing roadway. Any disturbance shall be restored as required to meet NCDOT requirements.
- 3.6 The contractor shall seed and mulch site to NCDOT standard specifications and shall establish sufficient vegetation to stabilize the disturbed areas.
- 3.7 The work includes the cost of all mobilization, overhead, insurance, clean up, and all ancillaries necessary for a complete service.
- 3.8 No debris will be left at the site.
- 3.9 All materials, restoration, and debris disposal costs must be included in the submitted bid.
- 3.10 All necessary permits for the work are the responsibility of the contractor.
- 3.11 The selected contractor shall attend a meeting at a mutually agreeable time, but within two (2) weeks of notification, with the owner to determine setup, staging area, storage, and appropriate work hours prior to commencing services under the awarded contract. The contractor to submit a forecasted timeline of work and anticipated completion date.

Any changes to the specifications or Scope of Work contained herein will be made in the form of an Addendum to this Invitation to Bid and will be supplied to all known prospective bidders and posted on the Brunswick County website. Notwithstanding the foregoing, bidders will be responsible for ensuring that they have all addenda. Brunswick County may negotiate and refine final specifications and Scope of Work with the selected bidder.

#### **4. SPECIFICATIONS**

The contractor shall adhere to all applicable Brunswick County Technical Specification and Standard Details, located on the Brunswick County website. <https://www.brunswickcountync.gov/245/Engineering-Design-Manual>. This includes but is not necessarily limited to the following:

- TS 002 Existing Underground Utility lines
- TS 009 Erosion and Sediment Control

- TS 012 Trench Boxes, Sheeting and Shoring
- TS 013 Excavating, Grading, Trenching, and Backfilling
- TS 015 Directional Drilling
- TS 017 Asphalt Paving
- TS 018 Water Distribution System
- TS 021 Low Pressure Sewer and Grinder Pumps
- TS 022 Wastewater Force Mains
- Brunswick County Water Details - Sheet 1
- Brunswick County Water Details - Sheet 2
- Brunswick County Water Details - Sheet 3
- Brunswick County Water Details - Sheet 4
- Brunswick County Water Details - Sheet 5
- Brunswick County Sewer Details - Sheet 1
- Brunswick County Sewer Details - Sheet 2
- Brunswick County Sewer Details - Sheet 3
- Brunswick County Sewer Details - Sheet 4
- Brunswick County Sewer Details - Sheet 5
- Brunswick County General Water & Sewer Details - Sheet 1
- Brunswick County General Water & Sewer Details - Sheet 2
- Brunswick County General Water & Sewer Details - Sheet 3
- Brunswick County General Water & Sewer Details - Sheet 4
- Brunswick County General Water & Sewer Details - Sheet 5
- Brunswick County General Water & Sewer Details - Sheet 6
- Brunswick County General Water & Sewer Details - Sheet 7

## **5. LICENSING**

All contractors are hereby notified that they must have proper licenses as required under the state laws governing their respective trades. General Contractors are notified that Chapter 87 of the General Statutes of North Carolina, as applicable, will be observed in receiving and awarding general contracts. The contractor will be required to provide proof of applicable licensure. In addition to the foregoing, electrical contractors and subcontractors must hold appropriate North Carolina electrical licenses and certifications.

## **6. SITE VISIT**

A site visit is highly recommended prior to submitting a bid for the work. To schedule a site visit, contact Mario Barron by email [Mario.barron@brunswickcountync.gov](mailto:Mario.barron@brunswickcountync.gov) or by phone 910-253-2627.

## **7. QUESTIONS/ADDENDA**

Questions or requests for further information regarding this Invitation to Bid shall be submitted in writing to the attention of Mario Barron at [mario.barron@brunswickcountync.gov](mailto:mario.barron@brunswickcountync.gov) no later than July 21, 2025, at 3:00 PM ET. A copy of all questions, further clarifications and answers will be made in the form of an Addendum to this Invitation to Bid and will be provided to all known

bidders and posted on the County’s website. Notwithstanding the foregoing, bidders will be responsible for ensuring that they have all addenda.

**Bidders are expressly prohibited from contacting any Brunswick County official or employee regarding this Invitation to Bid, except in the manner noted in this section. A violation of this provision is grounds for the immediate disqualification of the bidder.**

**8. SCHEDULE**

The work shall be completed no later than sixty (60) days from issuance of a Notice to Proceed by Brunswick County. There may be limitations on when the work may be performed based on the operational needs of the facility. The contractor must provide a detailed proposed schedule with its submitted bid.

**9. BID DEADLINE AND SUBMITTAL REQUIREMENTS**

**Bids must be received no later than August 4, 2025, at 4:30 pm ET. Brunswick County will not be responsible for the failure of any mail or delivery service to deliver a bid prior to the stated date and time. Regardless of the manner of submission, any bid received after the stated date and time will not be considered. Incomplete Bids or bids inconsistent with the required format shall be disqualified from consideration.**

Those interested should submit one (1) hard copy or one (1) electronic copy of the bid. Bids may be mailed, hand delivered, or emailed to the following:

**Mail:** Mario Barron  
P.O. Box 249  
Bolivia, NC 28422

**Hand Delivery:** Mario Barron  
250 Grey Water Road  
Supply, NC 28462

**Email:** [mario.barron@brunswickcountync.gov](mailto:mario.barron@brunswickcountync.gov)

**10. EXPENSES**

Brunswick County will not be responsible for any costs or expenses incurred by the contractor in submitting a bid or for any other activities associated with this procurement. Further, Brunswick County reserves the right to cancel the procurement described herein prior to issuance and acceptance of any contractual agreement even if the Board of Commissioners has formally accepted the recommendation.

## **11. RIGHT TO SUBMITTED BIDS AND SUPPORTING DOCUMENTS**

All written correspondence, bids, and supporting documents received by Brunswick County in connection with this Invitation to Bid will become the property of Brunswick County. Brunswick County reserves the right to use any ideas in a bid or supporting documents regardless of whether the bid is selected.

## **12. FORM OF AGREEMENT**

In addition to the terms and conditions contained in this Invitation to Bid, by submitting a bid, contractor, if selected, agrees to enter into and be bound by the provisions of a Construction or Repair Agreement in substantially the form attached hereto and incorporated herein by reference. To the extent that any of the terms of this Invitation to Bid and the terms of the Construction or Repair Agreement conflict, the terms of the Construction or Repair Agreement shall prevail. No agreement will be valid until it has been fully executed by the parties. **The contractor may not perform any services until the Construction or Repair Agreement is fully executed by both parties.**

## **13. INSURANCE**

To the extent applicable, contractor must procure and maintain in full force and effect during the term of any agreement with Brunswick County, or the renewal of any agreement with Brunswick County, the insurance coverage set forth in the Minimum Insurance Requirements attached hereto and incorporated herein by reference.

## **14. BID CONDITIONS**

Submission of a bid indicates explicit acceptance by the contractor of the terms and conditions contained in this Invitation to Bid and any attachments hereto. Brunswick County reserves the right to reject, without prejudice or explanation, any or all bids. Brunswick County reserves the right to waive informalities or to amend the specifications of this Invitation to Bid and request new bids at any time prior to the award of a contract. All decisions of Brunswick County shall be final and binding.

## **15. AWARD**

Brunswick County reserves the right to award a contract, based on initial bids received from contractors, without discussion and without conducting further negotiations. Award shall be made to the lowest responsive, responsible bidder unless otherwise specified. Brunswick County may also, in its sole discretion, initiate further discussions with contractors that it deems to fall within a competitive range. Brunswick County shall not be deemed to have finally selected a contractor until a contract has been successfully negotiated and signed by both parties.

**16. NON-DISCLOSURE OF INFORMATION**

The contractor and its agents shall treat all data and information associated with this Invitation to Bid, including, without limitation, the Invitation to Bid, all reports, recommendations, specifications and other data as confidential. The contractor and its agents shall not disclose or communicate any information to a third party or use such information in advertising, propaganda and/or in another job or jobs, unless prior written consent is obtained from Brunswick County.

**17. NORTH CAROLINA PUBLIC RECORDS**

All bids received by Brunswick County shall be considered public information subject to lawful disclosure under North Carolina Public Records Law. Any proposal material deemed by the contractor to constitute either proprietary or trade secret material shall be designated as such, and each page or section of a page containing such material shall be so marked by the contractor. In addition, it shall be the sole responsibility of the contractor to demonstrate to a court of competent jurisdiction that their designation is proper. Brunswick County shall not make public any material determined by a court of competent jurisdiction to be proprietary or trade secret. The contractor hereby agrees to indemnify and hold Brunswick County harmless from any and all claims, suits, damages, penalties or expenses arising out of contractor's proprietary or trade secret designation.

**18. DISCLAIMER OF FEDERAL GOVERNMENT OBLIGATIONS OR LIABILITY**

If applicable, the bidder, and any subcontractors, acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of a contract in connection with this Invitation to Bid, absent the express written consent by the federal government, the federal government is not a party to this solicitation or any subsequent agreement and shall not be subject to any obligations or liabilities to the bidder, or any other party (whether or not a party to this solicitation or subsequent agreement) pertaining to any matter resulting from the solicitation or subsequent agreement. It is further agreed that this clause shall be included in each subcontract, if applicable, and shall not be modified, except to identify the subcontractor who will be subject to its provision.

**19. COMPLIANCE WITH FEDERAL LAWS, REGULATIONS, AND EXECUTIVE ORDERS**

Bidder hereby acknowledges that federal financial assistance will be used to fund all or a portion of this procurement. As such, bidder will comply with all applicable federal laws, regulations, executive orders, federal government policies, procedures, directives, and the terms and conditions of the funding award. Bidder further acknowledges that funding is contingent upon compliance with the foregoing.

**20. FEDERAL UNIFORM GUIDANCE**

Funding for this procurement is from a federal source, whether in whole or in part; therefore, the following provisions also apply pursuant 2 C.F.R. Part 200, Appendix II (as applicable). These provisions are incorporated by reference to the extent permitted by applicable statute. They may

also be set forth in more detail in the attached Form of Agreement. Additional provisions may also be set forth in more detail in the attached Form of Agreement, as may be required by the federal grantor agency, on a case-by-case basis. Contractors must also agree to enter into and be bound by the provisions of the Form of Agreement in substantially the form provided.

- Equal Employment Opportunity (41 C.F.R. Part 60)
- Davis-Bacon Act (40 U.S.C. 3141-3148; 29 C.F.R. Part 5)
- Copeland “Anti-Kickback” Act (40 U.S.C. 3145; 29 C.F.R. Part 3)
- Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708; 29 C.F.R. Part 5)
- Clean Air Act (42 U.S.C. 7401 *et seq.*)
- Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*)
- Debarment and Suspension (2 C.F.R. § 200.214; 2 C.F.R. Part 3000; Executive Orders 12549 and 12689)
- Byrd Anti-Lobbying Amendment (31 U.S.C. 1352 *et seq.*)
- Domestic Preference for Procurements (2 C.F.R. § 200.322)
- Build America, Buy America Act (2 C.F.R. Part 184; Pub. L. 117-58 §§ 70901-52)
- Procurement of Recovered Materials (2 C.F.R. § 200.323)
- Record Retention Requirements (2 C.F.R. § 200.334; 2 C.F.R. § 200.337)
- Prohibition on Contracting for Covered Telecommunications Equipment or Services (2 C.F.R. § 200.216)
- No Obligation by Federal Government (2 C.F.R. § 200.318(k))
- Program Fraud and False or Fraudulent Statements or Related Acts (31 U.S.C. §§ 3729-3733)
- Socioeconomic Contracting (2 C.F.R. § 200.321)
- Providing Good, Safe Jobs to Workers (FEMA Information Bulletin No. 520)
- Buy Clean (Inflation Reduction Act)
- Copyrights (2 C.F.R. § 200.315)
- Title VI of the Civil Rights Act of 1964
- Section 504 of the Rehabilitation Act of 1973
- The Age Discrimination Act of 1975

## **21. SAM.GOV REGISTRATION**

Interested bidders must have an active registration in the federal System for Award Management (SAM.gov). Interested bidders must provide proof of such registration with the submitted bid.

## **22. UTILIZATION OF SMALL BUSINESS CONCERNS**

Pursuant to 48 C.F.R. § 52.219-8:

- “(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including

contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime bidders establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran- owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

- (b) The Bidder hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Bidder further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Bidder's compliance with this clause.
- (c) *Definitions.* As used in this contract –

*HUBZone small business concern* means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

*Service-disabled veteran-owned small business concern* –

- (1) Means a small business concern -
  - (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
  - (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.
- (2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

*Small business concern* means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

*Small disadvantaged business concern* means a small business concern that represents, as part of its offer that—

- (1)
  - (i) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, subpart B;
  - (ii) No material change in disadvantaged ownership and control has occurred since its certification;

- (iii) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
  - (iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the CCR Dynamic Small Business Search database maintained by the Small Business Administration, or
- (2) It represents in writing that it qualifies as a small disadvantaged business (SDB) for any Federal subcontracting program, and believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals and meets the SDB eligibility criteria of 13 CFR 124.1002.

*Veteran-owned small business concern* means a small business concern –

- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
- (2) The management and daily business operations of which are controlled by one or more veterans.

*Women-owned small business concern* means a small business concern –

- (1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- (2) Whose management and daily business operations are controlled by one or more women.

(d)

- (1) Bidders acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a small disadvantaged business concern, or a women-owned small business concern.
- (2) The bidder shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the System for Award Management database or by contacting the SBA. Options for contacting the SBA include –
  - (i) HUBZone small business database search application Web page at [http://dsbs.sba.gov/dsbs/search/dsp\\_searchhubzone.cfm](http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm) or <http://www.sba.gov/hubzone>;

- (ii) In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC 20416; or
- (iii) The SBA HUBZone Help Desk at *hubzone@sba.gov*.”

### **23. ENERGY CONSERVATION REQUIREMENTS**

Pursuant to 42 U.S.C. 6321 et seq., the bidder agrees to comply with 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.

### **24. AMERICANS WITH DISABILITIES ACT (ADA)**

The bidder agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC § 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; 49 USC § 5301(d); and any implementing requirements of the federal government. These regulations provide that no handicapped individual, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this bid.

### **25. PRIVACY ACT**

The bidder agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. The bidder agrees to obtain the express consent of the federal government before the bidder or its employees operate a system of records on behalf of the federal government. The bidder understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

The bidder also agrees to include these requirements in each subcontract, if applicable, to administer any system of records on behalf of the federal government financed, in whole or in part, with federal assistance.

### **26. DRUG-FREE WORK PLACE**

The bidder shall adhere to the federal Drug Free Workplace requirements as outlined in 2 C.F.R. § 182. Bidder shall make good faith efforts to maintain a drug-free workplace, publish a workplace statement and establish drug-free awareness programs for employees. Bidder should take action concerning employees who are convicted of violating drug statutes in the workplace. Bidder shall contact Brunswick County if bidder cannot adhere to the requirements of the federal regulations noted above. Failure to comply with said provisions shall be considered a breach of contract.

### **27. CERTIFICATION**

**Bidder hereby certifies that it has carefully examined this Invitation to Bid and all attachments hereto, including, without limitation, the Form of Agreement. Bidder certifies**

**that it understands and accepts all terms and conditions contained in the Invitation to Bid, including, without limitation, the Form of Agreement, and that it has knowledge and expertise to fulfill the obligations of the Invitation to Bid. By submitting a bid, bidder certifies that its bid is fair in all respects and without collusion or fraud.**

**NORTH CAROLINA**

**CONSTRUCTION OR REPAIR AGREEMENT**

**[Federal, with FEMA Clauses]**

**BRUNSWICK COUNTY**

**THIS CONSTRUCTION OR REPAIR AGREEMENT** (hereinafter referred to as the “Agreement” or “Contract”) is made and entered into by and between Brunswick County, a body politic and corporate of the State of North Carolina, (hereinafter referred to as the “County” or the “Owner”), party of the first part, and {Vendor Name}, (hereinafter referred to as the “Contractor”), party of the second part.

**WITNESSETH:**

**1. PROJECT**

The Contractor shall furnish and deliver all materials and perform all work in the manner and form as provided by enumerated plans, specifications and documents, including, without limitation and as applicable: the Invitation to Bid; Notice to Bidders; Instructions to Bidders; General Conditions of the Contract; Supplementary General Conditions; Specifications; Addenda; Accepted Proposal; Notice to Proceed; Performance Bond; Payment Bond; MBE forms; Power of Attorney; Workers’ Compensation, Public Liability, Property Damage and Builder’s Risk Insurance Certificates; Approval by the Board of Commissioners; Tax Statement and Certification; Notice of Substantial Completion; Notice of Final Completion and Acceptance; and Drawings (hereinafter referred to collectively as the “Bid Documents”) titled:

**Project: {Project Title}**

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Consisting of the following sheets **{Sheet Labels}**

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dated **{Sheet Date or Dates}**

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And the following addenda:

Addendum No. <u>{Addendum No. 1}</u>	Dated: <u>{Date of Addendum No. 1}</u>
Addendum No. <u>{Addendum No. 2}</u>	Dated: <u>{Date of Addendum No. 2}</u>
Addendum No. <u>{Addendum No. 3}</u>	Dated: <u>{Date of Addendum No. 3}</u>
Addendum No. <u>{Addendum No. 4}</u>	Dated: <u>{Date of Addendum No. 4}</u>
Addendum No. <u>{Addendum No. 5}</u>	Dated: <u>{Date of Addendum No. 5}</u>
Addendum No. <u>{Addendum No. 6}</u>	Dated: <u>{Date of Addendum No. 6}</u>

The Bid Documents are incorporated by reference and made an integral part of this Agreement. To the extent the terms of such documents conflict with the terms of this Agreement, the terms of this Agreement shall prevail.

## 2. TERM OF AGREEMENT; TIME OF COMPLETION; LIQUIDATED DAMAGES

- (1) *Term.* The term of this Agreement begins one (1) business day after approval by the Brunswick County Board of Commissioners (the “Effective Date”) and continues in effect until Final Completion of the Project, as more particularly set forth in the Bid Documents, unless the Agreement is sooner annulled or terminated as provided for herein or in the Brunswick County General Conditions of the Contract or Supplementary General Conditions, as applicable.
- (2) *Time of Completion.* Notwithstanding the foregoing, the duration of the Project is **{Project Duration Number of Days - Alpha} ({Project Duration Number of Days - Numeric})** consecutive calendar days from issuance of a Notice to Proceed by Brunswick County (the “Time of Completion”), unless extended as provided for in the Brunswick County General Conditions of the Contract or Supplementary General Conditions, as applicable. **No work may commence under this Agreement until the Agreement has been fully executed by both parties and the County issues a Notice to Proceed.**
- (3) *Liquidated Damages.* There are Liquidated Damages, as defined in the General Conditions of the Contract, associated with this Project. Liquidated Damages shall be in the amount of **{Liquidated Damages Amount - Alpha} Dollars (\$ {Liquidated Damages Amount - Numeric})** per day for each calendar day beyond the Time of Completion.

## 3. TERMINATION

This Agreement may be annulled or terminated as set forth herein or in the General Conditions of the Contract or Supplementary General Conditions, as applicable.

## 4. BRUNSWICK COUNTY GENERAL/SUPPLEMENTARY CONDITIONS OF THE CONTRACT

This Agreement, in addition to any construction documents prepared hereunder, shall be subject to the Brunswick County, North Carolina General Conditions of the Contract (for construction contracts) and any Supplementary General Conditions, as applicable, unless the County directs otherwise. In the event of a conflict between the General Conditions of the Contract, the Supplementary General Conditions, and this Agreement, this Agreement shall govern in all respects.

## 5. NONAPPROPRIATION

If the Board of County Commissioners does not appropriate the funding needed by the County to make payments under this Agreement for a given fiscal year, the County will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the County will promptly notify the Contractor of the non-appropriation, and this Agreement will be terminated at the end of the last fiscal year for which

funds were appropriated. No act or omission by the County which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.

## **6. COMPENSATION**

The County agrees to pay the Contractor the total amount of **{Contract Amount - Alpha} Dollars (\$ {Contract Amount - Numeric})** for the Project. Payment shall be subject to additions and deductions as provided in the specifications or Bid Documents. The County shall make monthly progress payments to the Contractor on the basis of a duly certified and approved estimate of work performed during a given calendar month, less five percent (5%) of the amount of such estimate which is to be retained by the County until all work has been performed strictly in accordance with this Agreement and such work has been accepted by the County. The County shall not require further retainage after fifty percent (50%) of the work has been satisfactorily completed on schedule as more fully set forth in the General Conditions of the Contract or any Supplementary General Conditions, as applicable, included with the Bid Documents. The County shall make full and final payment to the Contractor within thirty (30) days after completion of the Project and acceptance of such work by the County and upon the Contractor's submittal of satisfactory evidence that all payrolls, material bills and other costs incurred in connection with the Project have been paid in full. Notwithstanding the foregoing, the County will not pay late fees on any charges under this Agreement. If the County disputes any portion of the charges, the County shall inform the Contractor in writing of the disputed charges.

## **7. INDEPENDENT CONTRACTOR**

Both the County and the Contractor agree that the Contractor shall act as an independent contractor and shall not represent itself as an agent or employee of the County for any purpose in the performance of its duties under this Agreement. The Contractor represents that it has or will secure, at its own expense, all personnel required in performing the work under this Agreement. Accordingly, the Contractor shall be responsible for payment of all federal, state, and local taxes arising out of its activities in accordance with this Agreement, including, without limitation, federal and state income tax, social security tax, unemployment insurance taxes and any other taxes or business license fees as required. The Contractor shall not be entitled to participate in any plans, arrangements, or distributions by the County pertaining to or in connection with any pension, stock, bonus, profit sharing or other benefit extended to County employees.

In the event the Internal Revenue Service should determine that the Contractor is, according to Internal Revenue Service guidelines, an employee subject to withholding and social security contributions, then the Contractor hereby acknowledges that all payments hereunder are gross payments, and the Contractor is responsible for all income taxes and social security payments thereon.

## **8. CONTRACTOR REPRESENTATIONS**

- (1) The Contractor is a duly organized entity or corporation qualified to do business and in good standing under the laws of the State of North Carolina;

- (2) The Contractor has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
- (3) No approval, authorization, or consent of any governmental or regulatory authority is required to be obtained or made by it in order for the Contractor to enter into and perform its obligations under this Agreement;
- (4) The Contractor shall not violate any agreement with any third party by entering into or performing the work under this Agreement;
- (5) The Contractor will perform all work in conformity with the specifications and requirements of this Agreement;
- (6) Unless otherwise agreed by the parties, the Contractor agrees that all materials will be new and of good quality;
- (7) The work provided by the Contractor under this Agreement will not violate, infringe, or misappropriate any patent, copyright, trademark, or trade secret rights of any third party, or any other third-party rights (including without limitation non-compete agreements);
- (8) The Contractor will perform the work in a professional and workmanlike manner exercising reasonable care and diligence and will ensure that it adheres to the highest generally accepted standards in the industry when performing said work;
- (9) The Contractor acknowledges that if any specific licenses, certifications, or related credentials are required in its performance of the work, it will ensure that such credentials remain current and active and not in a state of suspension or revocation; and
- (10) The Contractor shall ensure that whenever its employees or agents are on County property, they will strictly abide by all instructions and directions issued by the County with respect to rules, regulations, policies, and security procedures applicable to work on County's premises. Such rules, regulations, policies, and security procedures shall include, but not be limited to: (i) not possessing any controlled substances; (ii) smoking only in designated smoking areas, if any; and (iii) not possessing weapons, except for weapons possessed by law enforcement officials.

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

This is an acknowledgment that FEMA financial assistance will be used to fund all or a portion of the Agreement. The Contractor will comply with all applicable federal laws, regulations, executive orders, FEMA policies, procedures, and directives.

## **10. NON-ENDORSEMENT AND PUBLICITY**

The County is not endorsing the Contractor or its work, and the Contractor is not permitted to reference this Agreement or the County in any manner without the prior written consent of the County. Notwithstanding the foregoing, the parties agree that the Contractor may list the County as a reference in response to requests for proposals and may identify the County as a customer in presentations to potential customers.

## **11. NON-EXCLUSIVITY**

The Contractor acknowledges that the County is not obligated to contract solely with the Contractor for the work covered under this Agreement.

## **12. DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL**

The Contractor hereby certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. § 147-86.80 *et seq.*

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

Contractors who apply or bid for an award of more than \$100,000 shall file a required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with 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 federal awarding agency.

## **14. PROCUREMENT OF RECOVERED MATERIALS**

- (1) The provisions of this section shall apply if: (1) this Agreement involves the purchase of an item designated by the Environmental Protection Agency (“EPA”) in 40 C.F.R. Part 247 that exceeds \$10,000, or (2) the total value of such designated items acquired during the County’s preceding fiscal year exceeded \$10,000.
- (2) In the performance of this Agreement, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items, as set forth in 40 C.F.R. Part 247, that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, unless the product cannot be acquired –
  - i. Competitively within a timeframe providing for compliance with the Agreement performance schedule;
  - ii. Meeting Agreement performance requirements; or

- iii. At a reasonable price.
- (3) The Contractor shall establish an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. Information about this requirement, along with the list of EPA-designated items, is available on EPA's website and in 40 C.F.R. Part 247.
- (4) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6962). This shall include, without limitation, procuring solid waste management services in a manner that maximizes energy and resource recovery.
- (5) The Contractor should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products. See Executive Order 14057, section 101, Policy.

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

- (1) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause –
- (2) *Prohibitions.*
  - i. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after August 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
  - ii. Unless an exception in paragraph (3) of this clause applies, the Contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
    - a. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
    - b. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or

services as a substantial or essential component of any system, or as critical technology of any system;

- c. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- d. Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(3) *Exceptions.*

- i. This clause does not prohibit contractors from providing –
  - a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
  - b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- ii. By necessary implication and regulation, the prohibitions also do not apply to:
  - a. Covered telecommunications equipment or services that:
    - 1. *Are not used* as a substantial or essential component of any system;  
*and*
    - 2. *Are not used* as critical technology of any system.
  - b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(4) *Reporting requirement.*

- i. In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (4)ii. of this section to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
- ii. The Contractor shall report the following information pursuant to paragraph (4)i. of this section:

- a. Within one (1) business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
- b. Within ten (10) business days of submitting the information in paragraph (4)ii.a. of this section: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(5) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (5), in all subcontracts and other contractual instruments.

## **15. DOMESTIC PREFERENCE FOR PROCUREMENTS**

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

For purposes of this clause:

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

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

## **16. BUILD AMERICA, BUY AMERICA ACT**

Contractor and its subcontractors who apply or bid for an award for an infrastructure project subject to the domestic preference requirement in the Build America, Buy America Act (“BABAA”) shall file a required certification to the County with each bid or offer for an infrastructure project, unless a domestic preference requirement is waived by FEMA. Contractor and its subcontractors certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. BABAA, Pub. L. No. 117-58, §§ 70901-52.

Contractor and its subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that does not ensure compliance with BABAA domestic preference requirements. Such disclosures shall be forwarded to the County who, in turn, will forward the disclosures to FEMA or other federal agency. Subrecipients will forward disclosures to the pass-through entity, who will, in turn, forward the disclosures to FEMA.

## **17. ACCESS TO RECORDS**

The following access to records requirements apply to this Agreement:

- (1) The Contractor agrees to provide the County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The Contractor 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 Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the Agreement.
- (4) In compliance with Section 1225 of the Disaster Recovery Act of 2018, the County and the Contractor acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

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

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

## **19. LICENSE AND DELIVERY OF WORKS SUBJECT TO COPYRIGHT**

If the Contractor or its subcontractors produce copyrightable subject matter for the County under this Agreement, the Contractor and its subcontractors shall comply with the obligations set forth in 2 C.F.R. § 200.315(b) and (d). If applicable, the Contractor grants to the County a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this Agreement to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the Agreement but not first produced in the performance of this Agreement, the Contractor will identify such data and grant to the County, or acquire on its behalf, a license of the same scope as for data first produced in the performance of this Agreement. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example,

any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the termination or expiration of this Agreement, the Contractor will deliver to the County data first produced in the performance of this Agreement and data required by the Agreement but not first produced in the performance of this Agreement in formats acceptable to the County.

## **20. SUSPENSION AND DEBARMENT**

- (1) This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor'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 Contractor 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 the County. If it is later determined that the Contractor 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 FEMA and the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

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

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

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

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

## **23. SOCIOECONOMIC CONTRACTING**

The Contractor is encouraged to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms are considered when possible.

## **24. WORKERS' COMPENSATION**

To the extent required by law, the Contractor shall comply with the North Carolina Workers' Compensation Act and shall provide for the payment of workers' compensation to its employees in the manner and to the extent required by such Act. In the event the Contractor is excluded from the requirements of such Act and does not voluntarily carry workers' compensation coverage, the Contractor shall carry or cause its employees to carry adequate medical/accident insurance to cover any injuries sustained by its employees or agents while fulfilling the Contractor's obligations under this Agreement. The Contractor agrees to furnish the County proof of compliance with said Act or adequate medical/accident insurance coverage upon request.

## **25. REMEDIES**

- (1) *Right to Cover.* If the Contractor fails to commence work on the Project within the time specified, fails to meet any completion date or resolution time specified, fails to perform the work with sufficient workmen, equipment and materials, discontinues the prosecution of the work, performs the work unsuitably, or if the Contractor is otherwise in default under this Agreement, the County may take any of the following actions with or without terminating this Agreement, and in addition to, and without limiting, any other remedies it may have:
  - i. Require the surety to promptly take over and complete the Project in the manner and within the timeframe specified.
  - ii. If the surety fails to promptly take over and complete the Project in the manner specified and within fifteen (15) days of being notified by the County to do so, the County may employ such means as it may deem advisable and appropriate to perform itself or obtain the work from a third party until the matter is resolved and the Contractor is again able to resume performance under this Agreement.
  - iii. Deduct any and all expenses incurred by the County in obtaining or performing the work from any money then due or to become due the Contractor and, should the County's cost of obtaining or performing the work exceed the amount due the Contractor, collect the amount due from the Contractor and surety.
- (2) *Right to Withhold Payment.* The County reserves the right to withhold any portion, or all, of a scheduled payment if the Contractor fails to perform under this Agreement until such breach has been fully cured.

- (3) *Setoff*. Each party shall be entitled to set off and deduct from any amounts owed to the other party pursuant to this Agreement all damages and expenses incurred or reasonably anticipated as a result of the other party's breach of this Agreement.
- (4) *Other Remedies*. Upon breach of this Agreement, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently in addition to any other available remedy.
- (5) *No Suspension*. In the event that the County disputes in good faith an allegation of breach by the Contractor, notwithstanding anything to the contrary in this Agreement, the Contractor agrees that it will not terminate this Agreement or suspend or limit any work or warranties, unless: (i) the parties agree in writing; or (ii) an order of a court of competent jurisdiction determines otherwise; provided, however, this dispute period shall be limited to ninety (90) days.

## **26. TAXES**

The Contractor shall be responsible for paying all taxes, fees, assessments, and premiums of any kind payable on its employees and operations. The Contractor shall substantiate, on demand by the County, that all taxes and other charges are being properly paid.

## **27. EQUAL EMPLOYMENT OPPORTUNITY**

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

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant

or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

- (4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

*Provided*, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the

administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

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

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

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

## **28. COMPLIANCE WITH THE COPELAND "ANTI-KICKBACK" ACT**

- (1) *Contractor.* The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3, as may be applicable, which are incorporated by reference into this Agreement.
- (2) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

- (3) *Breach.* A breach of the Agreement clauses above may be grounds for termination of the Agreement, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

## 29. COMPLIANCE WITH THE DAVIS-BACON ACT

If applicable, the Contractor shall comply with the provisions of 40 U.S.C. §§ 3141-3144 and 3146-3148, as amended, which are set forth below.

### *Davis-Bacon Act*

“(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, Provided, That such modifications are first approved by the Department of Labor):

#### (1) *Minimum wages.*

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

the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

- (A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - (2) The classification is utilized in the area by the construction industry; and
  - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify

the contracting officer within the 30-day period that additional time is necessary.

- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
  - (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
  - (iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (2) *Withholding.* The federal agency or loan or grant recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
- (3) *Payrolls and basic records.*
- (i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly

rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

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

- (B) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
  - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
  - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (a)(3)(ii)(B) of this section.
- (D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- (iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) *Apprentices and trainees* -

- (i) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (ii) *Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the

Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (iii) *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
- (5) *Compliance with Copeland Act requirements.* The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- (6) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- (7) *Contract termination: debarment.* A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) *Compliance with Davis-Bacon and Related Act requirements.* All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (9) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this

contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) *Certification of eligibility.*

- (i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001."

**30. COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

Compliance with the Contract Work Hours and Safety Standards Act:

- (1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) 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 (40) hours in such workweek.
- (2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor 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 paragraph (1) of this section, in the sum of \$32 or the current amount statutorily required by 29 C.F.R. § 5.5(b)(2) as may be amended from time to time, for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.*

- (i) *Withholding Process.* The recipient or subrecipient may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section, any other federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2 thereof). The necessary funds may be withheld from the Contractor under this Agreement, any other federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the Contractor liability for which the funds were withheld.
  - (ii) *Priority to withheld funds.* The Department of Labor has priority to funds withheld or to be withheld in accordance with this section, over claims to those funds by:
    - (A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
    - (B) A contracting agency for its reprocurement costs;
    - (C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
    - (D) A contractor's assignee(s);
    - (E) A contractor's successor(s); or
    - (F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.
- (4) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section. In the event of any violations of these clauses, the prime contractor, and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.
- (5) *Anti-retaliation.* It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to

cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- (i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;
- (ii) Filing any complaint, initiating, or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;
- (iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or
- (iv) Informing any other person about their rights under CWHSSA or this part.

Further Compliance with the Contract Work Hours and Safety Standards Act, as applicable:

- (1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
- (2) Records to be maintained under this provision shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

### **31. CREATING GOOD JOBS**

Pursuant to FEMA Information Bulletin No. 520, the Contractor will comply with all applicable federal labor and employment laws. To maximize cost efficiency and quality of work, the Contractor commits to strong labor standards and protections for the project workforce by creating an effective plan for ensuring high-quality jobs and complying with federal labor and employment laws. The Contractor acknowledges applicable minimum wage, overtime, prevailing wage, and health and safety requirements, and will incorporate Good Jobs Principles wherever appropriate and to the greatest extent practicable.

### **32. CLEAN AIR ACT**

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.*
- (2) The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the County, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

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

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.*
- (2) The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the County, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

### **34. BUY CLEAN**

The County encourages the use of environmentally friendly construction practices in the performance of this Agreement. In particular, the County encourages that the performance of this Agreement include considering the use of low-carbon materials which have substantially lower levels of embodied greenhouse-gas emissions associated with all relevant stages of production, use, and disposal, as compared to estimated industry averages of similar materials or products as demonstrated by their environmental product declaration.

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

Pursuant to N.C.G.S. § 143-133.3, the Contractor understands that it is a requirement of this Agreement that the Contractor and its subcontractors must comply with the provisions of Article 2 of Chapter 64 of the North Carolina General Statutes. In doing so, the Contractor agrees that, unless it is exempt by law, it shall verify the work authorization of its employees utilizing the federal E-Verify program and standards as promulgated and operated by the United States Department of Homeland Security, and the Contractor shall require its subcontractors to do the same. Upon request, the Contractor agrees to provide the County with an affidavit of compliance or exemption.

### **36. CONFIDENTIAL INFORMATION**

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

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

- (1) in the public domain through no fault of the Recipient;
- (2) within the legitimate possession of the Recipient, with no confidentiality obligations to a third party;
- (3) lawfully received from a third party having rights in the information without restriction, and without notice of any restriction against its further disclosure;
- (4) independently developed by the Recipient without breaching this Agreement or by parties who have not had, either directly or indirectly, access to or knowledge of the Confidential Information;
- (5) disclosed with the prior written consent of the Discloser; or
- (6) required to be disclosed by law, regulation or court or governmental order, specifically including requests pursuant to the Public Records Laws of North Carolina contained in Chapter 132 of the North Carolina General Statutes. In the event Recipient receives such a request, it shall notify Discloser and Discloser shall have the opportunity to defend against production of such records at Discloser’s sole expense.

### **37. NO ASSIGNMENT WITHOUT CONSENT**

Neither party shall assign this Agreement (or assign any right or delegate any obligation contained herein whether such assignment is of service, of payment or otherwise) without the prior written consent of the other party hereto. Any such assignment without the prior written consent of the other party hereto shall be void. An assignee shall acquire no rights, and the County shall not recognize any assignment in violation of this provision.

### **38. GOVERNING LAW AND VENUE**

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

### **39. DISPUTE RESOLUTION**

Should a dispute arise as to the terms of this Agreement, both parties agree that neither may initiate binding arbitration. The parties may agree to non-binding mediation, as more fully set forth in the General Conditions of the Contract.

### **40. GOVERNMENTAL IMMUNITY**

The County, to the extent applicable, does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

### **41. NON-WAIVER**

Failure by the County at any time to require the performance by the Contractor of any of the provisions of this Agreement shall in no way affect the County's right hereunder to enforce the same, nor shall any waiver by the County of any breach be held to be a waiver of any succeeding breach or a waiver of this Section.

### **42. ENTIRE AGREEMENT**

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

### **43. HEADINGS**

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

### **44. SEVERABILITY**

The invalidity of one or more of the phrases, sentences, clauses, or sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of this Agreement can be determined and effectuated. If a provision of this Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising

under such provision, but only to the extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

#### 45. AMENDMENTS

Amendments or changes to this Agreement shall not be valid unless in writing and signed by authorized agents of both the Contractor and the County.

#### 46. NOTICES

(1) *Delivery of Notices.* Unless otherwise specified in the General Conditions of the Contract or any Supplementary General Conditions, as applicable, any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by facsimile to the intended recipient at the address set forth below.

(2) *Effective Date of Notices.* Any notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by facsimile or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier.

(3) *Notice Address.*

- a. Communications that relate to any breach, default, termination, amendment, or waiver of any provision of this Agreement shall be sent to:

For the County: Brunswick County Attorney  
P.O. Box 249  
Bolivia, NC 28422

With a copy to: {County Contact for Notices}  
{County Contact Title}  
{Contact Address}  
{Contact City}, {Contact State} {Contact Zip}

- b. Communications that relate to any delay in performance, prevention of performance, modification or extension of this Agreement shall be sent to:

For the County: {County Contact for Notices}  
{County Contact Title}  
{Contact Address}  
{Contact City}, {Contact State} {Contact Zip}

c. All communications to the Contractor shall be sent to:

For the Contractor: {Vendor Name}  
{Vendor Address}  
{Vendor City}, {Vendor State or Territory} {Vendor Zip}

**47. SIGNATURES**

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

ATTEST:

**BRUNSWICK COUNTY**

\_\_\_\_\_  
Clerk to the Board /  
Deputy Clerk to the Board

By: \_\_\_\_\_  
Chairman, Board of Commissioners

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

[SEAL]

**{VENDOR NAME}**

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

\_\_\_\_\_  
Aaron C. Smith, Finance Director  
Brunswick County, North Carolina

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

APPROVED AS TO FORM

\_\_\_\_\_  
Bryan W. Batton, County Attorney /  
Ryan S. King, Assistant County Attorney

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

**EXHIBIT "A"**  
**SCOPE OF PROJECT/FEES AND COSTS**

## BRUNSWICK COUNTY MINIMUM INSURANCE COVERAGE REQUIREMENTS

At contractor's expense, contractor shall procure and maintain the following recommended lines of insurance according to the scope of work. The County may choose to elect higher or lower coverage according to the work performed. Contractors must be insured by a licensed agent in North Carolina and rated A-VII or better by A.M. Best.

### A. COMMERCIAL GENERAL LIABILITY

Covering all operations involved in this Agreement.

\$2,000,000	General Aggregate
\$2,000,000	Products/Completed Operations Aggregate
\$1,000,000	Each Occurrence
\$1,000,000	Personal and Advertising Injury Limit
\$ 5,000	Medical Expense Limit

### B. WORKERS' COMPENSATION

Statutory limits covering all employees, including Employer's Liability with limits of:

\$500,000	Each Accident
\$500,000	Disease - Each Employee
\$500,000	Disease - Policy Limit

### C. COMMERCIAL AUTOMOBILE LIABILITY

\$1,000,000 Combined Single Limit – Any Auto

### D. PROFESSIONAL LIABILITY

\$1,000,000 Per Occurrence

### E. POLLUTION LIABILITY INSURANCE

\$1,000,000 Per Occurrence

When a contractor is required to bind pollution/environmental coverage, the contractor must provide evidence of continuation or renewal of liability insurance for a period of three (3) years following termination of the agreement.

## ADDITIONAL INSURANCE AND INDEMNIFICATION REQUIREMENTS

- A. Contractor agrees to defend, indemnify, and hold harmless Brunswick County, its officers, employees, and agents from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees, or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind in connection with or arising out of this Agreement and/or the performance hereof that are due in part or in the entirety of Contractor, its employees or agents. Contractor further agrees to investigate, handle, respond to, defend and dispose of same at its sole expense and agrees to bear all other costs and expenses related thereto.

The Contractor's General Liability policy shall be endorsed, specifically or generally, to include the following as Additional Insured:

BRUNSWICK COUNTY, ITS OFFICERS, AGENTS AND EMPLOYEES ARE INCLUDED AS ADDITIONAL INSURED UNDER CONTRACTOR'S GENERAL LIABILITY INSURANCE.

- B. Before commencement of any work or event, Contractor shall provide a Certificate of Insurance in satisfactory form as evidence of the insurances required above.
- C. Contractor shall have no right of recovery or subrogation against Brunswick County (including its officers, agents and employees), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.
- D. Brunswick County shall have no liability with respect to Contractor's personal property whether insured or not insured. Any deductible or self-insured retention is the sole responsibility of Contractor.
- E. All certificates of insurance must provide that the policy or policies shall not be changed or cancelled without at least thirty (30) days prior written notice.
- F. The Certificate of Insurance should not in the Description of Operations the following:  
Department: \_\_\_\_\_  
Contract #: \_\_\_\_\_
- G. Insurance procured by Contractor shall not reduce nor limit Contractor's contractual obligation to indemnify, hold harmless and defend Brunswick County for claims made or suits brought which result from or are in connection with the performance of this Agreement.
- H. In the event Contractor receives Notice of Cancellation of Insurance required pursuant to this Agreement, Contractor shall immediately cease performance of all services and shall provide Notice to Brunswick County's Legal/Risk Management personnel within twenty-four (24) hours.
- I. Certificate Holder shall be listed as follows:  
ATTENTION: Brunswick County Risk Management  
30 Government Center Dr. NE  
P.O. Box 249  
Bolivia, NC 28422
- J. If Contractor is authorized to assign or subcontract any of its rights or duties hereunder and in fact does so, Contractor shall ensure that the assignee or subcontractor satisfies all requirements of this Agreement, including, but not limited to, maintenance of the required insurances coverage and provision of certificate(s) of insurance and additional insured endorsement(s), in proper form prior to commencement of service.

**BID FORM**

**Contractor shall provide a firm, fixed price for all work described in the Invitation to Bid. All costs are to be inclusive of all expenses, including, but not necessarily limited to, labor, general overhead, field overhead, materials, equipment, incidentals, food, water, any travel and lodging facilities, etc. necessary to complete the Scope of Work.**

**Project Name: PTC #8: Horizontal Directional Drilling -  
Holden Beach Road and George II Highway**

**Name of Company** \_\_\_\_\_

**Address** \_\_\_\_\_  
\_\_\_\_\_

**Phone No.** \_\_\_\_\_

**Email** \_\_\_\_\_

**Federal I.D. No.** \_\_\_\_\_

**SDBE, Minority or Woman Owned Business Enterprise - Yes or No** \_\_\_\_\_

**Addendum Acknowledgement if applicable: (yes/no)**

**No. 1** \_\_\_\_\_ **No. 2** \_\_\_\_\_ **No. 3** \_\_\_\_\_ **No. 4** \_\_\_\_\_

**Proposal Submitted By** \_\_\_\_\_

(Printed Name)

\_\_\_\_\_

(Signature)

**Title** \_\_\_\_\_

**Date** \_\_\_\_\_

**Firm, Fixed Price for all work and conditions noted in the Invitation to Bid**

**\$** \_\_\_\_\_

EXHIBIT A

1225 Holden Beach Rd SW, Supply, NC 28462  
Approximately 300' drill 12" waterline



3261 George II Hwy SE, Southport, NC 28461  
Approximately 245' Drill 10" waterline

