

## Invitation for Bid



**Bid Title:**  
**Painting**  
(Federal Funded)

**Bid No. 102-24C**

Date of Issue: August 29, 2024  
**Bids Due: September 12, 2024**

*Issued By:*

Onslow County Purchasing Department  
234 NW Corridor Blvd.  
Jacksonville, North Carolina 28540  
Phone: (910) 455-1750

*Issued For:*

Richard Hoffman  
Asset & Facility Management Director  
234 NW Corridor Blvd.  
Jacksonville, NC 28540

## INVITATION TO BID

August 29, 2024

Onslow County  
234 NW Corridor Blvd.  
Jacksonville, NC 28540

**Project Name: Painting  
Onslow County Center Street Facility**

Pursuant to N.C.G.S. 143-131, the County is accepting bids from contractors for painting of interior of building at the following Onslow County Building location: 165 Center Street, Jacksonville, NC 28540.

A contract will be awarded to the contractor for interior painting of a two-story office building under **Bid No. 102-24C**. Bids will be accepted by the County until **2:00 p.m. on September 12, 2024**. No bid will be accepted after this time. There will be no formal bid opening. The County will receive bids and will notify bidders after the award.

Copies of the specifications and bid forms may be obtained by applying to the County's Purchasing Department, phone (910) 455-1750, during regular business hours of 8AM until 5PM.

A **Pre-Bid Conference** will be held on September 4, 2024, at 10:00 AM at 165 Center Street, Jacksonville, NC 28540. A site visit will follow immediately after the meeting. **It is highly recommended that all bidders attend this meeting. Bidders will be allowed to walk through the building to obtain any measurements needed.**

Contract for work under this bid will be governed by all applicable laws, ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the project. This project will be funded by Federal funds therefore bidders will be required to adhere to Federal regulations.

The County encourages participation by small, minority, disabled, and woman-owned businesses. The County of Onslow reserves the right to reject any and/or all bids.

Christina Russell, CLGPO  
Purchasing Division Head

**PRE-BID CONFERENCE AND SITE VISIT:**

A pre-bid conference and site visit will be held at 10AM on September 4, 2024, at 165 Center Street, Jacksonville, NC 28540. Bidders are urged to attend the conference and site visit. The purpose of the meeting is to provide Bidders with the opportunity to discuss the Project with the Owner. Any clarifications, corrections, or changes to the Bidding Documents resulting from the meeting will be included in an Addendum. A site visit will immediately follow the meeting. Bidder's will be allowed to walk through the building. *No other opportunity will be permitted for Bidders to gain access to the building.*

**PREPARATION OF BID:**

Bids shall be submitted on the forms included in the Bidding Documents. The Bid Form shall not be altered in any way.

A Bidder shall prepare its Bid by providing an amount for each floor of building on the Bid Form. Cost will include materials and labor to repair, sand, prime, and paint each floor. Bidder shall compute and enter the computed total amount for floors 1 & 2 as total bid cost in the space provided on the Bid Form. Sums shall be expressed in both words and figures. In case of discrepancy, the amount written in words shall govern.

The Bid shall not contain any unauthorized additions, deletions, or conditional bids.

The Bidder shall not add any provisions reserving the right to accept or reject an award, or to enter into a contract pursuant to an award.

Alternate bids will not be considered unless specifically called for.

**SUBMISSION:**

Bids must be submitted on the forms contained herein. Bids will be received at the Office of the Onslow County Purchasing Department, 234 NW Corridor Blvd., Jacksonville, NC 28540 until **2:00 PM EST, September 12, 2024**. No bid will be accepted after the official time and date.

Bidder shall assume full responsibility for timely delivery at the location designated for receipt of bids. Bids received by mail or otherwise after the date and time specified will not be accepted and will be returned to the Bidder unopened.

Oral, facsimile, email, or other electronic bids will not be considered.

**INTREPRETATIONS AND ADDENDA:**

The Bidder shall carefully study the bidding documents and shall examine the site and local conditions. Any errors, inconsistencies or ambiguities discovered shall be reported. All questions or concerns related to the meaning or intent of the Bidding Documents shall be submitted **in writing** to the Onslow County Purchasing Division Head, Christina Russell, 234 NW Corridor Blvd., Jacksonville, NC 28540.

In order to receive consideration, questions must be received **no later than 12:00 noon, September 6, 2024**. Written questions may be emailed to Christina\_Russell@onslowcountync.gov

Interpretations or clarifications considered necessary by Owner in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by Owner as having received the Bidding Documents. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

Addenda may also be issued to clarify, correct, or change the Bidding Documents as deemed advisable by Owner. All changes in specifications shall be in writing in the form of an addendum and furnished to all bidders recorded by Owner as having received the Bidding Documents.

It shall be the responsibility of the Bidder to ensure that he/she has received all addenda issued prior to submitting a Bid. Acknowledgement of receipt of all addenda shall be made by each bidder in the space provided in the Bid Form.

No allowance will be made after bids are received for oversight by Bidder. Negligence on the part of the Bidder in preparation of their Bid shall not be grounds for the modification or withdrawal of a Bid after the date and time bids are due.

**MODIFICATION OR WITHDRAWAL OF BID:**

Withdrawal Prior to Bid Opening:

- A. A Bidder may withdraw its Bid without penalty at any time before the time and date bids are due. Request to withdraw a bid must be submitted *in writing* to the Owner. Upon receipt of such written notice, the unopened Bid will be returned to the Bidder.

Modification Prior to Bid Opening:

- A. If a Bidder wishes to modify its Bid, Bidder must withdraw its initial Bid in the manner specified above "Withdrawal Prior to Bid Opening" and submit a new Bid.

Withdrawal After Bid Opening:

- A. A Bidder may request that his Bid be withdrawn from consideration without forfeiture of his Bid security (if required) in accordance with the provisions of North Carolina General Statute 143-129.1.

**OPENING OF BIDS:**

Informal bids will be opened in accordance with N.C.G.S. 143-131. This is NOT a public, formal bid opening. The County will keep a record of all bids submitted. This record is not subject to public inspection until the contract(s) has been awarded.

**EVALUATION OF BIDS AND AWARD OF CONTRACT:**

The award of the contract(s) will be made to the lowest responsible and responsive bidder taking into consideration quality, performance, experience, and the time specified in the bidding documents for the performance of the contract. Responsible bidders must have the ability, skill, judgement, and integrity necessary to faithfully perform the contract, and have sufficient financial resources to complete the contract.

Owner reserves the right to reject any or all Bids, including without limitation the right to reject any or all nonconforming, non-responsive, or conditional Bids. Owner further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to be non-responsible. Owner also reserves the right to waive any informality not involving price, time, or changes in the Work. Owner reserves the right to reject any Bid not accompanied by specified documentation.

Owner reserves the right to reject any Bid that, in its sole discretion, is considered to be unbalanced or unreasonable as to the amount bid for any lump sum or unit price item.

In evaluating Bids, Owner will consider the qualifications of Bidders, whether or not their Bids comply with the prescribed requirements, the alternatives, if any, the lump sum and unit prices, and other data as may be requested in the Bid Form or prior to the Notice of Award.

Owner will take into consideration the past performance of the Bidder on construction contracts with particular concern given to completion time, quality of work, cooperation with other contractors, and cooperation with Owner.

Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications and financial ability of the Bidders to perform the Work in accordance with the Contract Documents. Owner reserves the right to reject the Bid of any Bidder who does not pass any such evaluation to Owner's satisfaction.

**QUALIFICATIONS OF BIDDERS:**

To be eligible to respond to the Invitation for Bid, the Bidder certifies, by submission of this Bid, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation of this transaction by any state or federal department or agency.

Bidders shall be experienced in the kind of Work to be performed, shall have the necessary equipment therefore, and shall possess sufficient capital to properly execute the Work within the time allowed. Bids received from Bidders who have previously failed to complete work within the time required, or who have previously performed similar work in an unsatisfactory manner, may be rejected. A Bid may be rejected if Bidder cannot show that Bidder has the necessary ability, resources, and equipment to commence the Work at the time prescribed and thereafter to prosecute and complete the Work at the rate or within the time specified. A Bid may be rejected if Bidder is already obligated for the performance of other work which would delay the commencement, prosecution, or completion of the Work.

**EXAMINATION OF CONDITIONS:**

Each bidder shall, by careful examination, satisfy himself as to the nature and location of the Work, the conformation of the building, ground, the character, quality, and quantity of the facilities needed preliminary to and during the prosecution of the Work, the general and local conditions, and all other matters which can in any way affect the Work or the cost thereof under the Contract.

The failure or omission of any Bidder to thoroughly examine and familiarize himself with the Contract Documents or to receive or examine any form, instrument or document or visit the site and acquaint himself with the conditions there existing shall in no way relieve any Bidder from any obligation in respect to his bid.

**DISQUALIFICATION OF BIDDERS:**

More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.

**BID BOND:**

No bid bond is required for these projects.

**PERFORMANCE AND PAYMENT BONDS:**

A Performance and Payment Bond may be required for this project. Performance and Payment Bonds, issued in accordance with Article 3 of Chapter 44A of the General Statutes, each having a penal sum in the full amount of the contract sum, will be required by the awarded contractor.

**CONTRACT:**

The award of contract under this solicitation will be paid with federal funding. Funding is contingent upon compliance with all terms and conditions of funding award. All prospective contractors shall comply with all applicable Federal laws, regulations, executive orders, FEMA requirements and the terms and conditions of the funding award. In addition, contractors providing submittals shall be responsible for complying with State law and local ordinances. A copy of the county's contract agreement is attached with Federal guidance.

**COMMENCEMENT OF WORK:**

Upon execution and delivery of the Contract and insurance certificates and policies, the Contract will be issued a Purchase Order and a fully executed contract. The Work shall be commenced within 15 days following such notification or as otherwise specified.

**CONTRACT TIME FOR COMPLETION:**

The awarded contractor shall achieve Substantial Completion of the entire Work within 45 calendar days from the date of the contract.

**INSURANCE/SAFETY REQUIREMENTS:**

Bidder is required to submit a Certificate of Insurance showing proof of insurance with their submitted bid. Bidder is responsible for providing their own Safety PPE, required by OSHA, for all employees while on the County job site.

## **Scope of Work:**

### Painting of building:

Bidder is responsible for determining the exact gallons of paint and number of materials needed to complete the work. County will not be responsible for any shortage of materials by Bidder. No Change Order will be allowed at the County's expense in relation to shortage of materials due to incorrect measurements by Bidder. Measurements will be obtained by Bidder during Pre-bid Conference. A dumpster will be provided onsite by County to be used by awarded Contractor. Contractor will be responsible for clean up during the day as well as before leaving job site daily.

The County is requesting bids for covering furnishings within building, repairing, cleaning, sanding, priming, and painting/staining within 1<sup>st</sup> and 2<sup>nd</sup> floor of the building and stairwells.

### **Floors 1 & 2 including Stairwells**

Contractor will begin working on 2<sup>nd</sup> floor of the building. Once complete and approved by County, Contractor can begin working on 1<sup>st</sup> floor. Contractor will be responsible for covering/taping any floors, baseboard, and furnishings within the area of work along with cubicles and any items on walls to prevent any dust or paint applied.

### Walls:

Contractor will repair drywall as necessary throughout the entire building removing any materials that would show imperfections on walls, sanding & smoothing walls, and clean/wipe down walls prior to applying level 5 primer for smooth finish throughout the building, paint walls with eggshell type paint and with color County has selected. County will select the walls that will be painted as an accent wall. Accent walls will be painted with eggshell type paint with color County has selected.

### Trim:

Contractor will repair, sanding & smoothing trim and clean/wipe down trim prior to applying level 5 primer for a smooth finish throughout the building, and paint trim with semi-gloss type paint with color County has selected.

### Cabinets:

Contractor will sand & smooth cabinets, clean/wipe down, apply level 5 primer and stain kitchen cabinets, bathroom cabinets, and (2) office cabinets. One set of kitchen cabinets located on the 2<sup>nd</sup> floor will be painted. Colors for stain and eggshell paint will be selected by County.

### Stairwells:

Contractor will repair drywall in stairwells as necessary removing any materials that would show imperfections on walls or handrails, sand and smooth, clean/wipe down walls and handrails prior to apply level 5 primer, paint walls and handrails with eggshell paint with color County has selected.

Touch Ups:

Contractor will be required to touch up areas of work after HVAC, and Ceiling Grid system has been installed.

Mechanical Room(s), etc.:

Some areas of the building will not require any work from Contractor. County will provide these locations to Contractor.

**Hardware in Kitchens/Restrooms/Offices**

County will remove hardware from kitchen cabinets and County will be responsible for installing once Contractor is finished.

**Wall plates**

County will remove and install wall plates within building after Contractor is finished.

**Paint**

Walls – Eggshell paint

Trim – Semi-gloss paint

Accent Walls – Eggshell paint

Kitchen Cabinets – Stain except for (1) room will be Eggshell paint

\*Colors will be provided to Awarded Contractor.





**Reference Request**  
**Painting**

**Please provide a list of three (3) references from completed jobs similar to this bid.**

Reference 1:

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Type of job completed. \_\_\_\_\_

Reference 2:

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Type of job completed. \_\_\_\_\_

Reference 3:

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Type of job completed. \_\_\_\_\_

NON-COLLUSION AFFIDAVIT

State of North Carolina  
County of Onslow

**Bid 102-24C**

\_\_\_\_\_, being first duly sworn, deposes and says that:

1. He/She is the \_\_\_\_\_ (title) of \_\_\_\_\_ (Contractor's name), the responder that has submitted the attached response;
2. He/She is fully informed respecting the preparation and contents of the attached response and of all pertinent circumstances respecting such response;
3. Such response is genuine and is not a collusive or sham response;
4. Neither the said responder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other responder firm or Person to submit a collusive or sham response in connection with the contract for which the attached response has been submitted or to refrain from responding in connection with such contract, or has in any manner, directly or indirectly sought by agreement or collusion of communication or conference with any other responder, firm or person to fix the price or prices in the attached response, if applicable, or of any other responders, or to fix any overhead, profit or cost element of the response price of the response, if applicable, of any other responder or to secure through collusion, conspiracy, connivance or unlawful agreement any advantage against the County of Onslow or any person interested in the proposed contract; and

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**NOTARIZE**

Subscribed and sworn to before me,

This \_\_\_\_ day of \_\_\_\_\_, 202\_\_

Notary Public \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF ONSLOW

AFFIDAVIT OF COMPLIANCE – E-VERIFY

I, \_\_\_\_\_ (the individual attesting below), being duly authorized by and on behalf of

\_\_\_\_\_ (hereinafter "Contractor") after first being duly sworn hereby swears or affirms as follows:

1. Contractor understands that E-Verify is the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with Article 2 of Chapter 65 of the North Carolina General Statutes; and

2. Contractor understands that "Employer", as defined in NCGS§64-25(4), are required by law to use E-Verify to verify the work authorization of the employee through E-Verify in accordance with NCGS§64-26(a). The term "Employer" does not include State agencies, counties, municipalities, or other governmental bodies.

3. Contractor is a person, business entity, or other organization that transacts business in this State and that employs 25 or more employees in the state of North Carolina. (mark Yes or No)

a. YES \_\_\_\_\_, or

b. NO \_\_\_\_\_

4. Contractor will ensure compliance with E-Verify by any subcontractors subsequently hired by Contractor to perform work under Contractor's contract with Onslow County.

5. Contractor shall keep the County of Onslow informed of any change on its status pursuant to Article 2 of Chapter 64 of the North Carolina Statutes.

This \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature of Affiant

Print or Type Name: \_\_\_\_\_

State of \_\_\_\_\_ County of \_\_\_\_\_

Signed and sworn to (or affirmed) before me, this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

My Commission Expires:

\_\_\_\_\_  
Notary Public

(Affix Official/Notarial Seal)

**CERTIFICATION REGARDING DEBARMENT AND SUSPENSION**

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

- (a) are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal Department or agency;
- (b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) are not presently indicted or otherwise criminally or civilly charged by a governmental entitle (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- (d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

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

Contractor Name: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Signature: \_\_\_\_\_

(Seal if Corporation)

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

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

**NOTARIZE**

SUBSCRIBED AND SWORN TO BEFORE ME,  
This \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_

NOTARY PUBLIC \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

SERVICE CONTRACT

NORTH CAROLINA

ONSLOW COUNTY

**THIS CONTRACT** is made, and entered into this the    day of    2    , by and between the **COUNTY of ONSLOW**, a political subdivision of the State of North Carolina, (hereinafter referred to as "COUNTY"), and    , a corporation company duly authorized to do business in the State of North Carolina, (hereinafter referred to as "CONTRACTOR").

For and in consideration of mutual promises to each as herein after set forth, the parties hereto do mutually agree as follows:

- 1. SCOPE OF SERVICES.** CONTRACTOR hereby agrees to provide the services and/or materials under this Contract pursuant to the provisions and specifications identified in "Attachment 1" (hereinafter collectively referred to as "Services"). Attachment 1 is hereby incorporated herein and made a part of this Contract. Time is of the essence with respect to all provisions of this Contract that specify a time for performance.
- 2. TERM OF CONTRACT.** The Term of this Contract for Services is from    to    unless sooner terminated as provided herein.
- 3. PAYMENT TO CONTRACTOR.** CONTRACTOR shall receive from COUNTY an amount not to exceed (\$    ) as full compensation for the provision of Services during any one fiscal year period beginning July 1, through June 30. COUNTY agrees to pay CONTRACTOR at the rates specified for Services performed to the satisfaction of the COUNTY, in accordance with this Contract, and Attachment 1. Unless otherwise specified, CONTRACTOR shall submit an itemized invoice to COUNTY by the end of the month during which Services are performed. A Purchase Order number may be assigned to encumber the funds associated with this Contract and must appear on all invoices and correspondence mailed to Purchaser. Payment will be processed promptly upon receipt and approval of the invoice by COUNTY.
- 4. SUBSTANTIAL COMPLETION DEADLINE.** CONTRACTOR shall achieve completion of the entire scope of work as outlined in Attachment 1 no later than June 30, 2023. In view of the difficulty of estimating damages to the COUNTY by reason of the failure of the CONTRACTOR to complete the work herein proposed within the time limit herein required, Owner shall be and hereby is authorized to deduct and retain out of the monies which may be due or become due to CONTRACTOR the sum of One Hundred Fifty Dollars & Zero Cents (\$150.00) per day for each and every calendar day that the work may be incomplete beyond the time limit fixed for its completion, which sum per day is hereby agreed upon, fixed and determined by the parties hereto as the ascertained and liquidated damages that the COUNTY will suffer by reason of such default. The above sum shall be held to include the additional expense to the COUNTY for loss of interest or investment, for the employment of architects, engineers, inspectors, and other employees, together with their expenses, and all other damages to the COUNTY by reason of such delay.
- 5. INDEPENDENT CONTRACTOR.** COUNTY and CONTRACTOR agree that CONTRACTOR is an independent contractor and shall not represent itself as an agent or employee of COUNTY for any purpose in the performance of CONTRACTOR's duties under this Contract. Accordingly, CONTRACTOR shall be responsible for payment of all federal, state and local taxes as well as business license fees arising out of CONTRACTOR's activities in accordance with this Contract. For purposes of this Contract taxes shall

include, but not be limited to, Federal and State Income, Social Security and Unemployment Insurance taxes.

CONTRACTOR, as an independent contractor, shall perform the Services required hereunder in a professional manner and in accordance with the standards of applicable professional organizations and licensing agencies.

- 6. INSURANCE AND INDEMNITY.** To the fullest extent permitted by laws and regulations, CONTRACTOR shall indemnify and hold harmless the COUNTY and its officials, agents, and employees from and against all claims, damages, losses, and expenses, direct, indirect, or consequential (including but not limited to fees and charges of engineers or architects, attorneys, and other professionals and costs related to court action or arbitration) arising out of or resulting from CONTRACTOR's performance of this Contract or the actions of the CONTRACTOR or its officials, employees, or contractors under this Contract or under contracts entered into by the CONTRACTOR in connection with this Contract. This indemnification shall survive the termination of this Contract.

In addition, 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. Additionally, CONTRACTOR shall maintain, at its expense, the following minimum insurance coverage:

\$1,000,000 per occurrence /\$2,000,000 aggregate --- Bodily Injury Liability, and  
\$100,000 --- Property Damage Liability, or  
\$1,000,000 per occurrence /\$2,000,000 aggregate---Combined Single Limit Bodily Injury and  
Property Damage  
Automobile Liability \$100,000 Bodily Injury per Person /\$300,000 Bodily Injury per Accident  
/ \$50,000 Property Damage per Accident, or  
\$300,000 Automobile Liability Combined Single Limit Bodily and Property Damage

CONTRACTOR, upon execution of this Contract, shall furnish to the COUNTY a Certificate of Insurance reflecting the minimum limits stated above. The Certificate shall provide for thirty (30) days advance written notice in the event of a decrease, termination, or cancellation of coverage. Providing and maintaining adequate insurance coverage is a material obligation of the CONTRACTOR. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The CONTRACTOR shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Contract. The limits of coverage under each insurance policy maintained by the CONTRACTOR shall not be interpreted as limiting the CONTRACTOR's liability and obligations under the Contract.

- 7. LICENSURE, CERTIFICATION, AND REGISTRATION OF PERSONNEL.** All personnel provided or made available by Contractor to render services hereunder shall be licensed, certified or registered, as appropriate, in their respective areas of expertise as required by applicable North Carolina law.
- 8. CONFIDENTIALITY.** All data and information, both written and verbal, furnished to Contractor by County shall be regarded as confidential, shall remain the sole property of County and shall be held in confidence and safekeeping by Contractor for the sole use of the parties and Contractor under the terms of this Agreement. Contractor agrees that its officers, employees, and agents will not disclose to any person,

firm or entity other than County or County's designated legal counsel, accountants or practice management consultants any information about County, its practice or billing.

- 9. HEALTH AND SAFETY.** CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs required by OSHA and all other regulatory agencies while providing Services under this Contract.
- 10. NON-DISCRIMINATION IN EMPLOYMENT.** CONTRACTOR shall not discriminate against any employee or applicant for employment because of age, sex, race, creed, national origin, or disability. CONTRACTOR shall take affirmative action to ensure that qualified applicants are employed and that employees are treated fairly and legally during employment with regard to their age, sex, race, creed, national origin, or disability. In the event CONTRACTOR is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state, or local law or this provision, this Contract may be canceled, terminated or suspended in whole or in part by COUNTY, and CONTRACTOR may be declared ineligible for further COUNTY contracts.
- 11. GOVERNING LAW.** This Contract shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this Contract shall be brought in the General Court of Justice in the County of Onslow and the State of North Carolina.
- 12. TERMINATION OF CONTRACT.** This Contract may be terminated, without cause and without penalty, by COUNTY upon thirty (30) days written notice to the CONTRACTOR, and such an early termination shall not be deemed to be a breach of this contract. This termination notice period shall begin upon receipt of the notice of termination. Such a termination does not bar either party from pursuing a claim for damages for breach of the contract if such a breach has occurred.

This Contract may be terminated, for cause, by the non-breaching party notifying the breaching party of a substantial failure to perform in accordance with the provisions of this Contract and if the failure is not corrected within ten (10) days of the receipt of the notification. Upon such termination, the parties shall be entitled to such additional rights and remedies as may be allowed by relevant law.

Termination of this Contract, either with or without cause, shall not form the basis of any claim for loss of anticipated profits by either party.
- 13. SUCCESSORS AND ASSIGNS.** CONTRACTOR shall not assign its interest in this Contract without the written consent of COUNTY. CONTRACTOR has no authority to enter into contracts on behalf of COUNTY.
- 14. COMPLIANCE WITH LAWS.** CONTRACTOR represents that it is in compliance with all Federal, State, and local laws, regulations or orders, as amended or supplemented. The implementation of this Contract shall be carried out in strict compliance with all Federal, State, or local laws.
- 15. E-VERIFY.** As a condition of payment for services rendered under this agreement, CONTRACTOR shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Further, if CONTRACTOR provides the services to the County utilizing a subcontractor, CONTRACTOR shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes as well. CONTRACTOR shall verify, by affidavit, compliance of the terms of this section upon request by the County.
- 16. IRAN DIVESTMENT ACT.** CONTRACTOR certifies that they are not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 143-6A-4. Individuals or companies on the Final Divestment List are ineligible to contract or subcontract with Local Government Units. (G.S. 143C-6A-6(a).) It is the responsibility of each vendor or contractor to monitor compliance with this restriction. Contracts valued at less than \$1,000.00 are exempt from this restriction.



**17. DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL.** The vendor or contractor 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. 147-86.81. It is the responsibility of each vendor or contractor to monitor compliance with this restriction. Contracts valued at less than \$1,000.00 are exempt from this restriction.

**18. GOOD STANDING WITH COUNTY.** CONTRACTOR certifies that it is not delinquent on any taxes, fees, or other debt owed by CONTRACTOR to COUNTY. CONTRACTOR covenants and agrees to remain current on any taxes, fees, or other debt owed by CONTRACTOR to COUNTY during the Term of this Contract.

**19. NOTICES.** All notices which may be required by this contract, or any rule of law shall be effective when received by certified mail sent to the following addresses:

**COUNTY OF ONSLOW**

**ATTN:**

**CONTRACTOR:**

**ATTN:**

**20. AUDIT RIGHTS.** For all Services being provided hereunder, COUNTY shall have the right to inspect, examine, and make copies of any and all books, accounts, invoices, records and other writings relating to the performance of the Services. Audits shall take place at times and locations mutually agreed upon by both parties. Notwithstanding the foregoing, CONTRACTOR must make the materials to be audited available within one (1) week of the request for them.

**21. COUNTY NOT RESPONSIBLE FOR EXPENSES.** COUNTY shall not be liable to CONTRACTOR for any expenses paid or incurred by CONTRACTOR, unless otherwise agreed in writing.

**22. ANNUAL APPROPRIATIONS AND FUNDING.** This Agreement may be subject to the annual appropriation of funds by the Onslow County Commissioners. Notwithstanding any provision herein to the contrary, in the event that funds are not appropriated for this Agreement, then County shall be entitled to immediately terminate this Agreement, without penalty or liability, except the payment of all contract fees due under this Agreement up to and through the last day of service.

**23. NO PLEDGE OF TAXING AUTHORITY:** No deficiency judgment may be rendered against COUNTY or any agency of COUNTY in any action for breach of a contractual obligation under this contract. The taxing power of the COUNTY is not pledged directly or indirectly to secure any monies due under this contract.

**24. NO WAIVER OF GOVERNMENTAL IMMUNITY; VIOLATION OF LAW:** Except for waiver of governmental immunity resulting from the execution of a valid contract, COUNTY makes no other waiver of governmental immunity. If any provision of the Contract or Agreement is in violation of any legal, statutory, or state constitutional prohibition, then such provision(s) shall be unenforceable against COUNTY.

**25. EQUIPMENT.** CONTRACTOR shall supply, at its sole expense, all equipment, tools, materials, and/or supplies required to provide Services hereunder, unless otherwise agreed in writing.

**26. ENTIRE CONTRACT.** This Contract, including Attachment 1, shall constitute the entire understanding between COUNTY and CONTRACTOR and shall supersede all prior understandings and agreements relating to the subject matter hereof and may be amended only by written mutual agreement of the parties.

**27. HEADINGS.** The subject headings of the sections are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Contract shall be deemed to have been drafted by both parties and no interpretation shall be made to the contrary.

**28. EXISTENCE.** CONTRACTOR warrants that it is a corporation duly organized, validly existing, and in good standing under the laws of the State of North Carolina and is duly qualified to do business in the State of North Carolina and has full power and authority to enter into and fulfill all the terms and conditions of this contract.

**29. AUTHORITY.** By execution hereof, the person signing for CONTRACTOR below certifies that he/she has read this Contract and that he/she is duly authorized to execute this Contract on behalf of the CONTRACTOR. This Contract, 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 Contract 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 § 66-358.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S § 66-311 et seq.). Delivery of an executed counterpart of this Contract by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

IN TESTIMONY WHEREOF, the parties have expressed their agreement to these terms by causing this Service Contract to be executed by their duly authorized office or agent.

**Reviewed by Department Head**

\_\_\_\_\_  
\_\_\_\_\_

**CONTRACTOR:**

By:

Date Reviewed:

**ONslow COUNTY**

This instrument has been preaudited in the

By:

\_\_\_\_\_  
manner required by the Local Government  
and Fiscal Control Act

\_\_\_\_\_  
Onslow County Finance Officer

“ATTACHMENT 1” to follow  
ATTACHMENT 1  
**Scope of Services**

CONTRACTOR, in exchange for the compensation paid by COUNTY under this Contract, shall provide the following services:

## ATTACHMENT 2

### Federal Contracting Requirements

This *Attachment 2* is incorporated into the Service Contract between the County and the Contractor. Capitalized terms not defined in this Attachment shall have the meanings assigned to such terms in the Contract. All references to the “Contractor” or “Company” or “Contractor” or “Provider” shall be deemed to mean the Contractor.

This Contract will be funded in whole or in part with federal funding. As such, federal laws, regulations, policies and related administrative practices apply to this Contract. The most recent of such federal requirements, including any amendments made after the execution of this Contract shall govern the Contract, unless the federal government determines otherwise. This *Attachment 2* identifies the federal requirements that may be applicable to this contract. The Contractor is responsible for complying with all applicable provisions, updates or modifications that occur in the future relating to these clauses.

To the extent possible, the federal requirements contained in the most recent version of the Uniform Administrative Requirements for federal awards (Uniform Rules) codified at 2.C.F.R., Part 200, including any certifications and contractual provisions required by any federal statutes or regulation referenced therein to be included in this contract are deemed incorporated into this contract by reference and shall be incorporated into any sub-agreement or subcontract executed by the Contractor pursuant to its obligations under this Contract. The Contractor and its subcontractors, if any, hereby represent and covenant that they have complied and shall comply in the future with the applicable provisions of the original contract then in effect and with all applicable federal, state, and local laws, regulations, and rules and local policies and procedures, as amended from time to time, relating to Work to be performed under this contract.

#### **Drug Free Workplace Requirements**

Drug-free workplace required in accordance with Drug Free Workplace Act of 1988 (Pub 100-690, Title V, Subtitle D). All Contractor entering into federal funded contracts over \$100,000 must comply with federal drug free workplace requirements as “Drug Free Workplace Act of 1988.”

#### **Contractor Compliance**

The Contractor shall comply with all uniform administrative requirements, cost principles, and audit requirement for federal awards.

#### **Conflict of Interest**

The Contractor must disclose in writing any potential conflict of interest to the County of Onslow or pass through entity in accordance with federal policy.

#### **Mandatory Disclosures**

The Contractor must disclose in writing all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award.

#### **Energy Conservation**

The Contractor and subcontractors agree to comply with the 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, 42 U.S.C. § 6321, et seq.

#### **Federal Water Pollution Control Act**

**For contracts in excess of \$150,000**, 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.

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 Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include those requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

#### **Clean Air Act**

**For contracts in excess of \$150,000**, 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. and the Federal Water Pollution Act as amended (33 U.S.C. § 1251-1387).

The Contractor agrees to report any violation to the County immediately upon discovery. The Contractor 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 (EPA) Regional Office. 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.

**Access to Records and Reports** (Applies to all contracts regardless of the contract amount)

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the County, the State of North Carolina, the FEMA Administrator, the Comptroller General of the United States, and any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

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 contract.

All Contractors and their successors, transferees, assignees, and subcontractors acknowledge and agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities, and staff.

**No Obligation by Federal Government** (Applies to all contracts regardless of the contract amount)

The County and the Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the federal government, the federal government is not a party to this contract and shall not be subject to any obligations or liabilities to the County, the Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**Program Fraud and False or Fraudulent Statements or Related Acts** (Applies to all contracts regardless of the contract amount)

The Contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the federally assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the federal government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government under a contract connected with a project that is financed in whole or in part with federal assistance, the government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the federal government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with federal assistance. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**Changes** (Applies to all contracts regardless of the contract amount)

Any change in the contract cost, modification, change order, or constructive change must be allowable, allocable, within the scope of its funding, grant or cooperative agreement, and reasonable for the completion of project scope. All changes and/or amendments to the contract will be outlined in detail, formalized in writing, and signed by the authorized representative of each party. Contractor's failure to do so shall constitute a material breach of the contract.

**Termination** (Applies to all contacts over \$10,000)

***Termination Without Cause.*** The County may immediately terminate this Agreement at any time without cause by giving written notice to the Contractor.

***Termination for Default by Either Party.*** By giving written notice to the other party, either party may terminate this Agreement upon the occurrence of one or more of the following events:

The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in this Agreement, provided that, unless otherwise stated in this Agreement, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such default is reasonably susceptible to cure; and (ii) the other party cures such default within thirty (30) days of receipt of written notice of default from the non-defaulting party; or

The other party attempts to assign, terminate or cancel this Agreement contrary to the terms hereof; or

The other party ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Agreement shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of other party's assets or properties.

Any notice of default pursuant to this Section shall identify and state the party's intent to terminate this Agreement if the default is not cured within the specified period.

***Additional Grounds for Default Termination by the County.*** By giving written notice to the Contractor, the County may also terminate this Agreement upon the occurrence of one or more of the following events (which shall each constitute grounds for termination without a cure period and without the occurrence of any of the other events of default previously listed):

The Contractor makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Agreement, Contractor's Proposal, or any covenant, agreement, obligation, term or condition contained in this Agreement; or

The Contractor takes or fails to take any action which constitutes grounds for immediate termination under the terms of this Agreement, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by this Agreement, or failure to provide the proof of insurance as required by this Agreement.

***Cancellation of Orders and Subcontracts.*** In the event this Agreement is terminated by the County for any reason prior to the end of the term, the Contractor shall upon termination immediately discontinue all service in connection with this Agreement and promptly cancel all existing orders and subcontracts, which are chargeable to this Agreement. As soon as practicable after receipt of notice of termination, the Contractor shall submit a statement to the County showing in detail the services performed under this Agreement to the date of termination.

***No Effect on Taxes, Fees, Charges, or Reports.*** Any termination of the Agreement shall not relieve the Contractor of the obligation to pay any fees, taxes or other charges then due to the County, nor relieve the Contractor of the obligation to file any daily, monthly, quarterly or annual reports covering the period to termination nor relieve the Contractor from any claim for damages previously accrued or then accruing against the Contractor.

***Obligations Upon Expiration or Termination.*** Upon expiration or termination of this Agreement, the Contractor shall promptly (a) return to the County all computer programs, files, documentation, data, media, related material and any other recording devices, information, or compact discs that are owned by the County; (b) deliver to the County all Work Product; (c) allow the County or a new Contractor access to the systems, software, infrastructure, or processes of the

Contractor that are necessary to migrate the Services to a new contractor; and (d) refund to the County all pre-paid sums for Products or Services that have been cancelled and will not be delivered.

**No Suspension.** In the event that the County disputes in good faith an allegation of default 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 the delivery of Products or Services or any warranties or repossess, disable or render unusable any Software supplied by the Contractor, unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise.

**Authority to Terminate.** The County Manager or their designee is authorized to terminate this Agreement on behalf of the County.

**Audit.** During the term of the Agreement and for a period of one (1) year after termination or expiration of this Agreement for any reason, the County shall have the right to audit, either itself or through a third party, all books and records (including but not limited to the technical records) and facilities of the Contractor necessary to evaluate Contractor's compliance with the terms and conditions of the Agreement or the County's payment obligations. The County shall pay its own expenses, relating to such audits, but shall not have to pay any expenses or additional costs of the Contractor. However, if non-compliance is found that would have cost the County in excess of \$5,000 but for the audit, then the Contractor shall be required to reimburse the County for the cost of the audit.

**Remedies** (Applies to all contracts above the simplified acquisition threshold (currently \$250,000))

**Liquidated Damages:** The County and the Contractor acknowledge and agree that the County may incur costs if the Contractor fails to meet the delivery times set forth in the Request for Proposal for the Products and Services. The parties further acknowledge and agree that: (a) the County may be damaged by such failures, including loss of goodwill and administrative costs; but that (b) the costs that the County might reasonably be anticipated to accrue as a result of such failures are difficult to ascertain due to their indefiniteness and uncertainty. Accordingly, the Contractor agrees to pay liquidated damages at the rates set forth in the Request for Proposal (if applicable). The parties agree that the liquidated damages set forth in the Request for Proposal shall be the County's exclusive remedy for loss of goodwill and administrative costs, attributable to a failure by the Contractor to meet such delivery times but shall not be the remedy for the cost to cover or other direct damages.

**Right to Cover.** If the Contractor fails to meet any completion date or resolution time set forth in this Agreement (including the Exhibits), and it fails to cure such default within one (1) business day after receiving written notice from the County of such failure, 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:

Employ such means as it may reasonably deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and the Contractor is again able to resume performance under this Agreement; and

Deduct any and all reasonable expenses incurred by the County in obtaining or performing the Services from any money then due or to become due to the Contractor, and, should the County's reasonable cost of obtaining or performing the services exceed the amount due to the Contractor, collect the difference from the Contractor.

**Right to Withhold Payment.** If the Contractor materially breaches any provision of this Agreement, the County shall have a right to withhold all payments due to the Contractor with respect to the services that are the subject of such breach until such breach has been fully cured.

**Specific Performance and Injunctive Relief.** The Contractor agrees that due to the potential impact on public health, monetary damages may not be an adequate remedy for the Contractor's failure to provide the Services required by this Agreement, and monetary damages may not be the equivalent of the performance of such obligation. Accordingly, the Contractor hereby agrees that the County may seek an order granting specific performance of such obligations of the Contractor in a court of competent jurisdiction within the State of North Carolina. The Contractor further consents to the County seeking injunctive relief (including a temporary restraining order) to assure performance in the event the Contractor breaches the Agreement in any material respect.

**Setoff.** Each party shall be entitled to setoff and deduct from any amounts owed to the other party pursuant to this Agreement all damages and expenses incurred as a result of the other party's breach of this Agreement, following any applicable cure periods, and provided such party has given notice of its intention to apply a setoff prior to making the

payment deduction, together with documentary evidence demonstrating that such party has actually incurred the damages and/or expenses being setoff.

**Other Remedies.** Except as specifically set forth in the main body of this Agreement, the remedies set forth above shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.

**Debarment and Suspension** (Applies to all contracts and subcontracts regardless of the contract amount)

A contract award (see C.R.F. 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (3 C.F.R. part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), "Debarment and Suspension." SAM exclusions contain the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Contractor shall certify compliance.

This contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The Contractor is required to comply with 2 C.F.R. Part 180, Subpart C and 2 C.F.R. Part 3000, Subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies that:

This certification is a material representation of fact relied upon by the County. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the County, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

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

**Equal Employment Opportunity** (Applies to all federally assisted CONSTRUCTION contracts regardless of the contract amount)

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

1. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, 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, 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 considerations for employment without regard to race, color, religion, sex, or national origin.
3. 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.
4. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375, and with the rules, regulations, and relevant orders of the Secretary of Labor.
5. 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.

6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) 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 contractor. 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 Contractor 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.

**Davis-Bacon Requirements** (Applies to all CONSTRUCTION contracts above \$2,000. It does NOT apply to other FEMA grant and cooperative agreement programs, including the Public Assistance (PA) Program or HMGP)

If applicable to this contract, the Contractor agrees to comply with all provisions of the Davis Bacon Act as amended (40 U.S.C. 3141-348).

**1. Minimum Wages.**

(i) All laborers and mechanics employed or working upon the site of the work 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 the Secretary of Labor under the Copeland Act (29 C.F.R. Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent 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 (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 29 C.F.R. Part 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 (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 easily be 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 offer 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;

(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, Employment Standards Administration, 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 subparagraphs (1)(ii) (B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

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

## **2. *Withholding.***

The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work, all or part of the wages required by the contract, the Sponsor 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. 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 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 C.F.R. 5.5(a)(1)(iv) that the wages of any laborer or mechanic included 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 that 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 that show the costs anticipated or the actual costs 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 Sponsor 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 Sponsor. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 C.F.R. 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 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. Option Form WH-347 is available for this purpose from the Wage and Hour Division website at [www.dol.gov/whd/forms/wh347instr.htm](http://www.dol.gov/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 Sponsor 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 Sponsor, 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) The payroll for the payroll period contains the information required to be provided under 29 C.F.R. §5.5(a)(3)(ii), the appropriate information is being maintained under 29 C.F.R. §5.5 (a)(3)(i), and that such information is correct and complete;
- (2) Each laborer and 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 C.F.R. Part 3;
- (3) 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 (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 (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Sponsor, 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 C.F.R. 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, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, 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 Bureau of Apprenticeship and Training 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 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 (express in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractors 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; 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 Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau 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 C.F.R. 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 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 C.F.R. Part 30.

#### **5. Compliance with Copeland Act Requirements.**

The Contractor shall comply with the requirements of 29 C.F.R. 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 C.F.R. Part 5.5(a)(1) through (10) and such other clauses as the Sponsor may by appropriate instructions require, and also a clause requiring the subcontractor 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 C.F.R. 5.5.

## 7. Contract Termination: Debarment

A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a Contractor and a subcontractor as provided in 29 C.F.R. 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 C.F.R. 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 C.F.R. 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 C.F.R. 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 C.F.R. 5.12(a)(1).

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

## **Copeland "Anti-Kickback" Act (Applies to all CONSTRUCTION contracts above \$2,000).**

Contractor. The Contractor must comply with the requirements of the Copeland "Anti-Kickback" Act (18 U.S.C. § 874 and 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 contract.

Contractor and subcontractors are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The Contractor and each subcontractor must submit to the Owner, a weekly statement on the wages paid to each employee performing on covered work during the prior week.

Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may 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 subcontractors with all of these contract clauses.

Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provide in 29 C.F.R. §5.12."

## **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)**

Where applicable, all contracts awarded in excess of \$100,000 that involve the employment of mechanics or laborers must be in compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5).

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 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 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, such 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 \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 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.** The Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. **Subcontractors.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

## **Rights to Inventions Made Under a Contract or Agreement**

### *Patent and Rights in Data*

#### **Applies only to Contracts Involving Experimental, Developmental, or Research Work.**

**Rights in Data** – The following requirements apply to each contract involving experimental, developmental, or research work:

The term “subject data” used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term “subject data” does not include financial reports, cost analyses, and similar information incidental to contract administration.

The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the federal government, until such time as the federal government may have either released or approved the release of such data to the public; this restriction on publication; however, does not apply to any contract with an academic institution.

In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the federal government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for “federal government purposes,” any subject data or copyright described in subsections (2)(b)(i) and (2)(b)(ii) of this clause below. As used in the previous sentence “for federal government purposes” means use only for the direct purposes of the federal government. Without the copyright owner’s consent, the federal government may not extend its federal license to any other party.

Any subject data developed under that contract, whether or not a copyright has been obtained; and

Any rights of copyright purchased by the Purchaser or Contractor using federal assistance in whole or in part.

When federal assistance is awarded for experimental, developmental, or research work, it is the general intention to increase knowledge available to the public rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless determined otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agree to make available to the public, either the license in the copyright to any subject data developed in the course of that contract or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the federal government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with federal assistance.

Unless prohibited by state law, upon request by the federal government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the federal government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the federal government for any such liability arising out of the wrongful act of any employee, official, or agents of the federal government.

Nothing contained in this clause regarding rights in data shall imply a license to the federal government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the federal government under any patent.

Data developed by the Purchaser or Contractor and financed entirely without the use of federal assistance that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

Unless determined otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with federal assistance.

Unless the federal government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e.: a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.) the Purchaser and the Contractor agree to take the necessary actions to provide those rights in that invention due to the federal government as described in U.S. Department of Commerce regulation, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements," 37 C.F.R. Part 401.

The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with federal assistance.

**Patent Rights** – The following requirements apply to each contract involving experimental, developmental, or research work:

General – If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier.

Unless the federal government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide those rights in that invention due to the federal government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts,

The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with federal assistance.

**Procurement of Recovered Materials** (Applies to procurement of both prime and subcontracts)

Contractor and subcontractor must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 C.F.R. Part 247. In the performance of this contract and to the extent practicable, the Contractor and subcontractors are to use products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 C.F.R. Part 247 whenever:

1. The contract requires procurement of \$10,000 or more of a designated item(s) during the fiscal year; or
2. The Contractor has procured \$10,000 or more of a designated item using federal funding during the previous fiscal year.

Section 6002(c) establishes exceptions to the preferences for recovery EPA-Designed products if the Contractor can demonstrate the item is:

- Not reasonably available within a timeframe providing for compliance with the contract performance schedule;
- Fails to meet reasonable contract performance requirements; or
- Is only available at an unreasonable price.

Information about this requirement, along with the list of EPA – designated items, is available at EPA’s Comprehensive Procurement Guidelines website: <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>

**Safeguarding Personal Identifiable Information**

Contractor will take reasonable measures to safeguard protected personally identifiable information and other information designated as sensitive by the awarding agency or is considered sensitive consistent with applicable, federal, state, and/or local laws regarding privacy and obligations of confidentiality.

**DHS Seal, Logo, and Flags**

The Contractor shall not use the DHS seals(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without pre-approval by the specific federal agency.

**Domestic Preference Procurement Clause**

Contractor and any of its subcontractors must comply with C.F.R. 200.322 which states that as appropriate, and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

## Certification Regarding Lobbying

(Applies to all contracts over \$100,000)

“Byrd Anti-Lobbying Amendment, 31 U.S.C. §1352 (as amended)

This certification requirement applies to all FEMA grant and cooperative agreement programs. Contractors that apply or bid for an award of \$100,000 or more shall file the required certification required by 49 C.F.R. part 20, “New Restrictions on Lobbying.” 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 the name of any registrant under the Lobby Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the County.

**The offeror, by signing its offer, hereby certifies, to the best of his or her knowledge and belief that:**

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Contractor’s Authorized Official

\_\_\_\_\_  
Printed Name of Contractor’s Authorized Official

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

\_\_\_\_\_  
Title of Authorized Official