



**NORTH CAROLINA OFFICE OF STATE BUDGET & MANAGEMENT
(DISASTER RECOVERY SECTION)**

INVITATION FOR BIDS

IFB Title: Residential Recovery Program Single-Family Home Construction Project No. TSF 18

County: Haywood

**Project: Dennis and Rebecca Watson, 202 Sonoma Rd., Waynesville, NC 28786
TSF Client ID: FR000000LW
Purchase and Set Up of One (1) Double Wide Mobile Home Unit (MHU) Within
Ninety (90) Days.**

Issue Date: January 9, 2024

**Bid Opening Date: January 23, 2023, at 2:00 pm at OSBM-DR Conference Room, 4th Floor
Dobbs Building, Raleigh, NC, or OSBM-DR 215 N. Main Street,
Waynesville and by Call In at (919) 716-0711**

Pursuant to Section 5.9A of Session Law 2021-180, the State of North Carolina has established a Tropical Storm Fred Residential Recovery Program (RRP) to provide aid to repair, reconstruct, or replace homes damaged by the storm, or to reimburse owners their costs in repairing damage to their homes caused by the storm. The RRP is managed by the State through its Office of State Budget Management-Disaster Recovery Section (OSBM- DR), which serves as the grant program manager for the N.C. Department of Public Safety's Division of Emergency Management (NCEM). OSBM-DR is working in collaboration with NCEM and the Federal Emergency Management Agency ("FEMA") to share information, avoid duplication of efforts, increase financial assistance to homeowners, and expedite disaster recovery.

The MHU to be replaced is located at:

- **202 Sonoma Rd., Waynesville, NC 28786 (Haywood County)**

Enclosed please find the Bid Proposal Form which must be filled out completely and attach all documentation identifying your firm's qualifications to perform the requested work and services. Only the Bid Proposal Form and requested documentation must be submitted in a sealed envelope to OSBM-DR pursuant to the following delivery instructions. However, all Bidders understand that the Contract Award(s) include all pages of the IFB and its attachments.

SEALED BID DELIVERY LOCATIONS

As a result of the COVID-19 Pandemic, there is limited access to our building, State employees have been ordered to telework as much as possible, and OSBM-DR cannot assure bidders that regular U.S. Mail

delivers will be processed and delivered to our section within any specific time frame, there may not be public access to our building to allow for overnight mail deliveries, and/or there may be no access to our building without making an appointment assuming there are no stay-at-home orders in effect in North Carolina or in Wake County. Therefore, the following shall be the acceptable delivery methods:

Electronic Transmission is the Preferred Delivery Method:

1. Email in PDF (Image Only/TIFF/JPEG format) to:

OSBM-DR's Program Support Specialist: Diane.McGill@osbm.nc.gov Original Mailed To:

Durwin P. Jones, Director
Office of State Budget & Management-Disaster Recovery Section Mail Service Center 20320
Room 4002
Raleigh, NC 27699-0320 or

Sabrina Williams, Project Manager OSBM-DR - TS Fred
215 N. Main Street Waynesville, NC 28786

Bidder must email bid on or before the Bid Opening date and time, and the transmittal email should request a receipt of delivery. THE TRANSMITTAL INFORMATION SHOULD NOT CONTAINING ANY PRICING INFORMATION AND SHOULD ONLY STATE THE BIDDER'S LEGAL NAME AND OSBM-DR IFB NUMBER. The original email must be mailed so that it is received by OSBM-DR no later than five (5) days after the Bid Opening Date. All timely bids received by email will be conditionally accepted but subject to rejection if the original is not received by our office in regular mail by the close of business on the fifth day after the Opening Date.

OSBM-DR's administrative assistance will forward all bids to the OSBM-DR staff responsible for the bid opening on the bid opening date and will also set up a back-up folder for the bids in a networked folder that can be accessed by OSBM-DR staff on the Opening Date.

2. Hand-Delivery BY APPOINTMENT ONLY to:

Sabrina Williams, Project Manager OSBM-DR TS Fred
3rd Floor Haywood County Historic Courthouse 215
N. Main Street, Waynesville, NC 28786 (828) 526-6170

Hand-delivery is still discouraged because of the COVID-19 notwithstanding the end of states of emergency for the pandemic. Hand delivery is only permitted if a bidder is unable to scan and email its bid by the preferred method. The bidder must speak with OSBM- DR's Project Manager at least 24 hours in advance to discuss hand-delivery and if hand-delivery is approved by the Project Manager, then a delivery location will be agreed to and as well as the social distancing and the safety measures that will be followed during the delivery. Bidder must not have any conversation with the Project Manager regarding the IFB or any bid submitted in response to the IFB. The delivery must be cancelled if either party is experiencing any symptom of a cold, flu and/or COVID-19, or a party knows he or she has been exposed to an individual who has tested positive for COVID-19 or knows that a person he or she has been exposed to has taken a COVID-19 test but has not received the test results.

Optional Pre-Bid Meeting/Conference Call

An optional pre-bid meeting will be held for all interested bidders on **January 16, 2024, at 2:00 pm to 2:15 pm by CALL IN ONLY using the OSBM-DR Meet Me Line at (919) 716 0711.** The meeting will address project specific questions, issues, bidding procedures, construction scheduling, review of construction documents, and bid forms. Written inquiries regarding the IFB may be emailed to OSBM-DR (Sabrina Williams, Project Manager) at sabrina.williams@osbm.nc.gov up until 5:00 pm on January 18, 2024, and

OSBM-DR will post an addendum of answers to those inquiries or questions presented at the pre-bid meeting by Friday, January 19, 2024, at 5pm. Bidders are encouraged to visit the site before submitting bids.

Deadline for Delivery & Public Opening

Proposals will be received up to **2:00 pm** on **January 23, 2024**, and immediately thereafter publicly opened and read in the OSBM-DR Conference Room. The bid opening has been scheduled from 2:00 pm to 2:30 pm. Bidder attendance at bid opening is not mandatory and all bidders will receive a copy of the bid tabulation. OSBM-DR reserves the unqualified right to reject any and all bids. Reasons for rejection may include, but shall not be limited to, the following:

1. If the Form of Proposal furnished to the bidder was not used or was altered.
2. If the bidder adds any provisions reserving the right to accept or reject any award.
3. If there are unauthorized additions or conditional bids, or irregularities of any kind which tend to make the proposal incomplete, indefinite, or ambiguous as to its meaning.
4. If the bidder fails to complete the proposal form where information is requested so the bid may be properly evaluated by the owner.
5. If the bidder fails to comply with other instructions stated herein.
6. Bidder is not authorized to transact business in the North Carolina, bidder has been suspended from doing business in North Carolina by the N.C. Secretary of State, is under a revenue suspension by the N.C. Carolina Department of Revenue, bidder has been suspended or debarred from public contracting by any local, state, or federal government entity, and/or the State Construction Office has received a negative evaluation regarding bidder's performance on a state construction project.

After the opening of bids, no bid may be withdrawn, except under the provisions of General Statute Subject to the process set forth in Section 143-129.1 of the North Carolina General Statutes, a bidder's pricing shall remain valid for a period of forty-five (45) days unless otherwise specified in bid or an addendum to the IFB. Should the successful bidder default and fail to execute a contract, the contract may be awarded to the next lowest and responsible bidder, and OSBM-DR reserves the right to seek compensation from the original successful low bidder to cover any increased costs between the two bids.

1. Site Address for MHU Placement

- 202 Sonoma Rd., Waynesville, NC 28786

2. Specifications for MHU

- Concrete block with stucco skirting or full brick skirting with 18" x 24" door for crawl space
- All towing apparatus removed.
- Provide permanent steps or porch as described below.
- The bidder will be responsible for proper placement of the MHU on the lot in compliance with current zoning requirements.

MHU Minimum Requirements:

1. Doublewide with a minimum square footage 1500 sq ft
2. Model must have a maximum Three (3) Bedroom
3. Model must have a minimum Two (2) Bathroom
4. Model must include living/family room, kitchen and eating area.
5. Ceiling lights in each bedroom and in living/family room operated from wall switch.

6. **Wind Zone 2 home – rated for 100 mph** (minimum 25 or 30-year shingle with corresponding warranty)
7. Home shall have OSB exterior wall cladding (sheathing)
8. Energy Star designation for:
 - a. Windows (thermal pane insulated glass) with full screens.
 - b. Doors
 - c. HVAC
 - d. Appliances as achievable
9. Appliances that must be included in the bid are: refrigerator; dishwasher; range (combination oven and stovetop); microwave/range hood combination or separate range hood depending on standard package for MHU model.
10. Skirting with minimum height per local authority having jurisdiction or 32 inches above grade or 24 inches above any known flood levels, whichever is higher.
11. Finished Drywall wall finishes, not paneling, in all living spaces.
12. Installation of a 10-foot by 10-foot wood deck with steps to grade and installation of a 5- foot by 5-foot wood deck with stairs to grade for ingress/egress including 1 ramp for access.
13. No Plastic Plumbing Fixtures (sinks, faucets, etc.)
14. ADA/Comfort Height Toilet in Master Bath
15. Low Threshold/Walk in Shower in Master Bathroom.
16. MHU must meet U.S. Department of Housing and Urban Development's specifications for manufactured homes.
17. Vinyl sheet on entrance floors, living room, kitchen and bath floors and bedrooms. LVP (**Vinyl Plank**) may be used in any room as a substitution as approved by the homeowner.
18. Include the cost of transportation, cost of code approved set-up, costs of connecting to electrical utility, water supply and septic/sewer, costs of all permits, taxes (if applicable), and all other work or services required to obtain a certificate of occupancy from the local authority having jurisdiction any required (e.g., an as- built survey, plat, or site-specific engineering required by City, County, or public utility)

Licensing Requirements & Bonds

To the extent bidder will use a general contractor to perform any work in setting up any on any lot, the general contractor must be properly licensed under Chapter 87, Article 1, General Statutes of North Carolina, and must have license classification for Limited, Intermediate, or Unlimited Construction.

Bidder or its general contractor must use properly North Carolina licensed subcontractors for the performance of electrical, plumbing, mechanical and HVAC (heating, ventilation, and air conditioning), or as may be required by authority having jurisdiction (i.e., municipal and/or county building department).

No bid bond shall be required for this IFB.

The bidder shall indicate in its bid whether it is able to provide a performance bond and a payment bond for all contracts it may be awarded under this solicitation. The bidder shall include a unit price for the premium for each bond. In lieu of bonds, Bidder shall provide a statement as to how it will guarantee timely performance of any contract awarded under this solicitation and how it will resolve issues with its subcontractors to avoid mechanics liens that may be placed against the home and properties for alleged nonpayment of sums that may be due under the subcontractors. Any required bond shall have a penal sum for one hundred percent (100%) of the contract price.

Payment Terms

The Bidder may provide proposed payment terms attached to its bid or stated in the bid that will include 5% retainage based on its construction schedule and/or MHU manufacturer's production schedule that should be in the following format with Bidder adjusting the percentages for items 1 through 3 only.

1. A deposit up to 50% of the lump sum contract price to start production of the home(s) to which bidder was awarded a contract and cover the cost of initiate site and foundation work on the lot(s). The contractor shall also include in this percentage the costs of any required abatement of hazardous materials, demolition of damaged MHU, permitting, engineering, mobilization costs, and foundation work).
2. Payment of up to 25% of the lump sum contract price will be paid upon delivery of MHU to Bidder's regional/local office, facility, or lot OR upon delivery to a location agreed upon by OSBM-DR and Bidder, subject to inspection of MHU by OSBM-DR.
3. Payment of up to 20% of the lump sum contract price (and any additional percentage if the deposit was less than 50% but the total percentage shall not exceed 95% of the lump sum contract price) upon setting/installing the MHU on its foundation at the project site and connecting utilities to the MHU.
4. The final 5% and/or retainage shall be paid upon completion of the entire project including but not limited to final inspection by local building authority having jurisdiction that issued the building permit, completion of all punch list work, delivery of all warranties to the owner, and submission of final payment application to OSBM-DR.

If Bidder does not include proposed payment terms in its bid, then OSBM-DR in the contract award to successful bidder may require use of the payment milestones in Section 1.6 in the Proposed Contract General Terms and Conditions attached to this IFB, or require the use the payment terms above with the percentages set by OSBM-DR.

INSTRUCTIONS TO BIDDERS, EVALUATION OF BIDS AND CONTRACT AWARD

Instructions to Bidders, Evaluation of Bids and Contract Award

For a proposal to be considered it must be in accordance with the following instructions:

1. **Bid Proposal Format & Content:** Bidders must use and complete the Bid Proposal Form included in this IFB and must fill in all blank spaces regarding prices and schedule for each reconstruction project that Bidder is interested in building. The bidder shall write “No Bid” in blank spaces for any home that bidder does not want to work on.

The bidder understands and agrees that Bid Proposal includes the construction documents for each home that bidder submits a bid on, and that Bidder agrees to enter the applicable sample contract form after receiving notice of contract award from OSBM-DR. If a bidder desires to request any change to the sample contract form, it must submit such request prior to the pre-bid meeting and/or make the request at the pre-bid meeting. No modification to the contract form will be permitted after the public opening except as permitted in the contract.

Photocopied, emailed, or faxed bid proposals will not be considered.

Any bidder modification to the Bid Proposal Form may result in disqualifying all or part of the bid depending on what was modified. OSBM-DR reserves the right to waive minor informalities in any bid.

The bidder shall fill in the Form of Proposal as follows:

- a. If the documents are executed by a sole owner, that fact shall be evidenced by the word “Owner” appearing after the name of the person executing them.
- b. If the documents are executed by a partnership, that fact shall be evidenced by the word “Co-Partner” appearing after the name of the partner executing them.
- c. If the documents are executed on the part of a corporation, they shall be executed by either the president or the vice president and attested by the secretary or assistant secretary in either case, and the title of the office of such persons shall appear after their signatures. The seal of the corporation shall be impressed on each signature page of the documents.
- d. If the documents are executed on the part of a limited liability company, they shall be executed by the managing member (if any) or all members (if the company does not include a written authorization delegating the authority to enter into contracts to the member that submitted the bid) and attested by the secretary or assistant secretary of the company (if any) or properly notarized if the company does not have a secretary or assistant secretary, and the title of the office of such persons shall appear after their signatures. The seal of the company (if any) shall be impressed on each signature page of the documents.
- e. If the proposal is made by a joint venture, it shall be executed by each member of the joint venture in the above form for sole owner, partnership or corporation, whichever form is applicable.
- f. All signatures shall be properly witnessed.
- g. If the contractor’s license of a bidder is held by a person other than an owner, partner, or officer of a firm, then the licensee shall also sign and be a party to the proposal. The title “Licensee” shall appear under his/her signature.

Proposals should be addressed and delivered to OSBM-DR in an opaque sealed envelope, marked “Bid” and bearing the IFB Title of “Residential Recovery Program Single-Family Home Construction Project No. TSF-18” clearly mark on the outside of the bid envelope with Bidder’s name and the contractor’s license number appearing on the outside of the envelope. It shall be the specific responsibility of the bidder to deliver his bid to the proper official at the selected place and prior to the announced time for the opening of bids. All late bids shall be disqualified regardless of the reason for late delivery.

2. **Statement of Bidder’s Experience and Project References:** Bidder must include a brief statement, cover letter, and/or copies of webpages that describes the Bidder’s general contracting experience in building new single-family homes, experience with any state or federal disaster housing recovery programs, and/or experience working with any local housing authority or North Carolina Housing Finance Authority.

The Bidder’s statement shall also identify the surety that will be furnishing payment and performance bonds and identify the insurers who will be providing builders’ risk, commercial general liability, workers’ compensation insurance. Bidder should include the local agents for its surety and insurers.

Bidder’s statement or letter must include at least three references to single-family homes completed within the last two years, which must include: (1) project cost; (2) brief description of the home (e.g., sq. ft., no. bedrooms, bathrooms, stories, and any other features that may demonstrate bidder’s construction experience); (3) project’s street address; (4) start and finish dates; and (5) names of owners and designers. OSBM-DR reserves the right to obtain additional information from bidder or owners about the projects referenced in this statement for bidders is one of three lowest responsible bidder and prior to the award of any contract.

OSBM-DR reserves the right to review any publicly available information (including social media and internet) regarding the bidder’s work experience relevant to the delivery of the specified project type, but OSBM-DR will notify all bidders that this type of review will be conducted on all bidders prior to issuance of a notice of contract award.

OSBM-DR reserves the right to review a bidder’s financial statements and cashflow statements prior to awarding any contract or issuance of a notice to proceed with construction. OSBM-DR will notify all bidders that this type of review will be conducted on all bidders prior to issuance of a notice of contract award.

3. **Examination of Conditions:** It is understood and mutually agreed that by submitting a bid the bidder acknowledges that Bidder has carefully examined all documents pertaining to the work, the location, accessibility and general character of the site of the work and all existing buildings and structures within and adjacent to the site, and Bidder is satisfied as to the nature of the work, the condition of existing buildings and structures to be demolished (if any), the conformation of the ground, the character, quality and quantity of the material to be encountered, the character of the equipment, machinery, plant and any other facilities needed preliminary to and during prosecution of the work, the general and local conditions, the construction hazards, and all other matters, including, but not limited to, the labor situation which can in any way affect the work under the contract, and including all safety measures required by the Occupational Safety and Health Act of 1970 and all rules and regulations issued pursuant thereto. It is further mutually agreed that by submitting a proposal the bidder acknowledges that bidder is satisfied as to the feasibility and meaning of the plans, drawings, specifications, and other contract documents for the construction of the work and that bidder accepts all the terms, conditions and stipulations contained therein.

Each bidder may, at its own expense, make such additional surveys and investigations as the bidder may deem necessary to determine bid prices for the performance of the work in the durations requested by OSBM-DR. Any on-site investigation shall be done at the convenience of the OSBM-DR and the homeowner. Any reasonable request for access to the site will be honored

by the OSBM-DR and owner.

4. Except for good cause shown to OSBM-DR, no bid may be withdrawn after the public opening of bids. All bidders shall remain valid for 180 days subject to inflation and/or price escalation of materials/labor after 90 days. The owner reserves the right to reject any or all bids and to waive informalities.
5. **Bid Evaluation and Contract Award:** The award of the contract will be made to the lowest responsible bidder and OSBM-DR intends to make contract awards within five (5) business days following the public opening. However, OSBM-DR reserves the right to award multiple projects to any lowest responsible bidder(s) that has the building capacity to handle multiple awards and can deliver all the projects within the requested contract durations.

In determining the lowest responsible, responsive bidder, OSBM-DR shall take into consideration the experience, and performance on prior single-family home projects, completion times, building capacity, quality of work, review or ratings of surety and insurers identified by bidder, and any information provided by owners or designers if references are checked by OSBM-DR during the evaluation process.

Should OSBM-DR adjudge that the apparent low bidder is not the lowest responsible, responsive bidder by virtue of the above information, said apparent low bidder will be so notified and his bid security shall be returned to him.

6. **Substitutions:** In accordance with the provisions of N.C. Gen. Stat. § 133-3, material, product, or equipment substitutions proposed by the bidders to those specified herein can only be considered during the bidding phase until ten (10) days prior to the receipt of bids when submitted to the Designer with sufficient data to confirm material, product, or equipment equality. Proposed substitutions submitted after this time will be considered only as potential change order.

Approved for Issuance By:



Durwin P. Jones
Director & General Counsel

1/11/2024

Date

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FORM OF BID PROPOSAL

MHU REPLACEMENT PROJECT IFB TSF NO. 18

Procuring State Agency:

N.C. Office of State Budget & Management

Bidder: _____

Date: _____

The undersigned, as bidder, hereby declares that the only person or persons interested in this proposal as principal or principals is or are named herein and that no other person than herein mentioned has any interest in this proposal or in the contract to be entered into; that this proposal is made without connection with any other person, company or parties making a bid or proposal; and that it is in all respects fair and in good faith without collusion or fraud. The bidder further declares that the bidder had the option to examine the sites of the work and the contract documents relative thereto and has read all provisions furnished prior to the opening of bids; that bidder understands the work to be performed. The bidder further declares that it and its subcontractors will or have fully complied with N.C. Gen. Stat. 64, Article 2 regarding E- Verification as required by Section 2.(c) of Session Law 2013-418, codified as N.C. Gen. Stat. § 143- 129(j).

The Bidder proposes and agrees if this proposal is accepted to contract with the North Carolina Office of State Budget Management-Disaster Recovery Section (“OSBM-DR”), 430 N. Salisbury Street, Raleigh, North Carolina, in the form of contract as defined in the Invitation for Bids, to furnish all necessary materials, equipment, machinery, tools, apparatus, means of transportation and labor necessary to complete the delivery and set up **of the home for the following lump sum price:**

Project No.	Project Address: 202 Sonoma Rd., Waynesville, NC	Cost Including Set Up	Days to Complete (Calendar Days)
IFB TSF-18	Home Size:		

Proposal Signature Page

The undersigned further agrees that in the case of failure on his part to execute the said contract within ten(10) business calendar days after being given written notice of the award of contract, OSBM-DR may cancel the contract award, award the contract to the next lowest responsible bidder, and/or request the North Carolina Department of Justice to commence a civil action to recover the any increased cost between the bidder's bid price and the next lowest responsible bidder's bid price.

Respectfully submitted this day of _____, 2024.

(Name of firm or corporation making bid)

WITNESS:

By: _____
Signature

(Proprietorship or Partnership)

Name: _____
Print or type

ATTEST:

Title _____
(Owner/Partner/Pres./V.Pres)

By: _____

Address _____

Title: _____
(Corp. Sec. or Asst. Sec. only)

License No. _____

Federal I.D. No. _____

Email Address: _____

CONTRACT ACCEPTANCE PAGE

OSBM-DR accepts Contractor's Bid for:

Project IFB TSF 18 for the Lump Sum Amount of \$_____

By:

Durwin P. Jones
Director & General Counsel

Date

OWNERS ACCEPTANCE PAGE AND NOTICE TO PROCEED

Dennis and Rebecca Watson, the Owners of home and property identified above as Project IFB TSF 18, hereby consent by signing below to the replacement of my home, and this consent allows the Contractor _____ and OSBM-DR, Haywood County to enter my home upon reasonable notice to me/us and to allow Contractor to start the construction process, if I have not already granted access to my home and property for that purpose.

Dennis Watson

Date

Rebecca Watson

Date

Witness

Date

APPENDIX A

(THIS APPENDIX DOES NOT NEED TO BE RETURNED WITH BID, BUT BIDDER UNDERSTANDS THAT, IF AWARDED A CONTRACT, THE FOLLOWING TERMS AND CONDITIONS WILL BE INCLUDED IN THE CONTRACT.)

PROPOSED CONTRACT GENERAL TERMS & CONDITIONS

ARTICLE 1—WORK & RESPONSIBILITIES OF CONTRACTOR AND OWNER

- 1.1 **Contract:** The Contract between a successful bidder and Owner shall consist of: (1) Manufactured Housing Unit (“MHU”) Replacement Contract; (2) OSBM-DR’s IFB and any addenda; (3) Contractor’s Bid; (4) Contractor’s Construction Documents submitted for obtaining required building permits; and (5) Owner’s selections made at preconstruction meeting. The order of precedence for interpreting the terms and conditions of the Contract and/or resolving conflicting terms/conditions shall be the same as the order of the documents listed above.
- 1.2 **Scope of Work, Labor, and Materials.** The Contractor shall furnish a new MHU and all necessary labor, materials, supervision, machinery, tools, apparatus, transportation, equipment and such other services necessary to complete the Project’s Scope of Work including the specifications, which is attached hereto and incorporated herein as **Attachment A**, for the lump sum price of **\$XXX.XX** (the relevant excerpts from Contractor’s Bid are attached hereto and incorporated herein as **Attachment B**) in a good and workmanlike manner and in accordance with all applicable laws, regulations, and ordinances including, without limitation, all applicable North Carolina, local and federal building, housing, zoning, energy efficiency, environmental, safety, and sanitary codes, standards and/or quality. OSBM-DR will approve Alternate Prices through change order.
- 1.3 **Preconstruction Meeting.** Within 10 business days after the effective date of this Contract, OSBM-DR will schedule a preconstruction meeting with Contractor and Owner to develop the schedule for the construction of Project, which shall include but is not limited to: (i) final review of MHU model house plan and specification selected by the Owner that was offered by the Contractor, and Owner’s final selections of optional finishes, appliances, fixtures, and/or and construction components offered by Contractor, which must be mid-grade/tier/level quality (Owner may select higher quality for any of the foregoing at Owner’s expense, which must be paid prior to Contractor ordering the higher quality items for Owner); (ii) set date when Contractor will submit request for a building permit from the local building department—Authority Having Jurisdiction (“AHJ”); (iii) schedule site inspection; (iv) review a preliminary construction schedule(s); (v) provide Owner and OSBM-DR with contact information for Contractor (including subcontractor(s) performing foundation work); (vi) review terms and conditions of this Contract; and (vii) review Contractor’s safety protocols that OSBM-DR and Owner must comply with when they want to visit the Property during construction.

THE OWNER WILL BE FINANCIALLY RESPONSIBLE FOR ANY GRADE OF MATERIALS, FIXTURES AND/OR EQUIPMENT THAT EXCEED MID-GRADE OR MID-LEVEL; AND/OR ANY SELECTIONS THAT EXCEED ANY CONTRACTOR’S ALLOWANCE. THE OWNER SHALL PREPAY CONTRACTOR FOR ALL UPGRADES AND/OR AMOUNTS IN EXCESS OF ALLOWANCES BEFORE BOM ORDERS SUCH MATERIALS, FIXTURES, EQUIPMENT, AND/OR APPLIANCES.

- 1.4 **Access to Property.** The Contractor shall have full access to the property after OSBM-DR’s issuance

of a notice to proceed with construction. OSBM-DR shall also have the right to access the Property during construction to perform inspections of the construction, conduct audits, and/or monitor compliance with DRA grant requirements. Owner shall also have the right to visit the Property during construction but must schedule the visit(s) with the Contractor during reasonable work hours.

- 1.5 Commencement of Construction. No construction work shall commence at the Project site until the Contractor receives a written **Notice to Proceed** from OSBM-DR (the “Notice”) or Construction Contract sets the date to start work. The Contractor may place purchase orders for the MHU, building materials and hire subcontractors as soon as the Contractor executes this Contract and returns it to OSBM-DR. The Contractor shall mobilize and begin work within the time specified in said Notice but no later than 30 days from the Notice. The Contractor shall complete the Project within **[INSERT AGREED UPON DURATION] (XXX) calendar days** as stated in the Contractor’s bid proposal in response to the IFB or such other time specified in the Notice, which shall be referred to as the “Completion Date.” The Completion Date may only be extended by approved change order and request for time extension submitted to OSBM- DR as required by Article 2.4 below.

- 1.6 Construction and Payment Schedule. Within 10 business days following its receipt of the Notice, the Contractor shall provide OSBM-DR with a construction schedule for the Project calculated by using the start date in the Notice and showing a logical sequence of construction activities reflecting Contractor’s intent to: order the MHU; perform of any required or specified site work; construction of MHU’s foundation; any required or specified concrete pours for driveway, patio, and walkway; delivery and set up of MHU at the Property; final inspections; and Project closeout. All tasks should be completed within the duration stated in Contractor’s accepted bid, which is 90 calendar days. The Schedule should also contain payment milestones (e.g., deposit up to 25%, payment up to 60% of contract price at delivery of home on foundation, payment of up to 10% of contract price upon acceptance of Project after final inspection/issuance of certificate of occupancy by authority having jurisdiction, and final payment up to 5% of contract price upon closeout of project).

The Schedule must include the date contractor will notify Owner to schedule the reconnection of electrical service to the new MHU to avoid delays to final inspections and/or project closeout.

OSBM-DR shall have the right to request supporting documentation for any amount that Contractor requests payment of State funds. The Contractor understands that OSBM-DR has the right to withhold payment until supporting documentation has been submitted and reviewed, or OSBM-DR may pay only those amounts that were properly supported (i.e., short pay) and Contractor will have to resubmit the unpaid portion with the next payment request/application with supporting documentation that was requested for the unpaid amount. OSBM-DR may require Contractor to provide a notarized certification of payments to subcontractors and vendors if contractor does not use OSBM-DR’s payment application for of AIA Form G701 and G702 payment applications, and OSBM-DR may withhold pending payments until such properly notarized certification is received.

- 1.7 Permits and Licenses. The Contractor shall give any required notice and obtain all permits and licenses required for the completion of the Project.

Contractor must have the AHJ approve the foundation for MHU prior to the start of the construction of the remainder of the Project. No work shall commence on the project at any time prior to the contractor obtaining and exhibiting to OSBM the relevant building permit(s) from the AHJ.

- 1.8 Protection of Work, Property and Public. Contractor shall keep the Project site clean and safe for the Contractor, subcontractors, inspectors, OSBM-DR, Owner, public and adjoining landowners.

The Contractor shall enforce AHJ's and OSBM-DR's instructions regarding signs, advertisements, fire, and smoking.

No firearms, any type of alcoholic beverages, or drugs (other than those prescribed by a physician) will be permitted at the Project site.

- 1.9 Construction Supervision and Monitoring. The Contractor shall employ, a competent project manager, superintendent, other supervisory employee, or contractor/subcontractor who shall oversee Contractor's work at the Project site.
- 1.10 Warranties & Instruction Manuals. Contemporaneously with final inspection or final acceptance of the Project by AHJ through issuance of a certificate of occupancy, whichever is later, Contractor shall provide Owner with certificates of warranties, instruction manuals, and other documents specified in the Scope of Work and approved change orders. The Contractor may be required to provide a one-year express or implied warranty or workmanship and/or habitability for the overall construction of the home and Contractor shall make sure all subcontractors and suppliers also provide a one-year warranty for their workmanship and materials. The Contractor, at its expenses and/or included in with price may purchase for the owner a one-year commercial home warranty from a provider with a "good or better" Better Business Bureau rating or similar rating/review service, if Contractor and/or subcontractors are unable to fulfill their warranty commitments in the year following construction. Contractor's HVAC subcontractor should make sure homeowner properly registers any mechanical equipment with the manufacturer(s) to get any extended warranties offered by the manufacturer(s). Warranties shall commence from the date of final acceptance from the AHJ and Owner's written acceptance of the MHU. Contractor shall provide copies of the foregoing documents to the OSBM-DR.

ARTICLE 2—GENERAL TERMS & CONDITIONS

- 2.1 Sedimentation Pollution Control Act of 1973: Any land-disturbing activity performed by the Contractor in connection with the Project shall comply with all erosion control measures as may be required by the State or local authority having jurisdiction, and any additional measures which may be required in order to ensure that the project is in full compliance with the Sedimentation Pollution Control Act of 1973, as implemented by Title 15, North Carolina Administrative Code, Chapter 4, Sedimentation Control, Subchapters 4A, 4B and 4C, as amended (15 N.C.A.C. 4A, 4B and 4C).

Upon receipt of notice that a land-disturbing activity is in violation of said Act, the Contractor shall be responsible for ensuring that all steps or actions necessary to bring the project in compliance with said Act are promptly taken. The Contractor shall be responsible for defending any legal actions instituted pursuant to N.C. Gen. Stat. §113A-64 against any party or persons described in this Article. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless OSBM-DR, County, and their agents, consultants and employees from and against all claims, damages, civil penalties, losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from the Contractor's (including its subcontractors) performance of work or failure of performance of work, provided that any such claim, damage, civil penalty, loss or expense is attributable to a violation of the Sedimentation Pollution Control Act.

- 2.2 Inspection of the Work: It is a condition of this Contract that the work shall be subject to inspection by the AHJ, which will approve the MHU Construction Documents for the building permit as well as inspect the construction for occupancy and building code compliance.

OSBM-DR will also conduct quality assurance/quality control ("QA/QC") inspections for site work,

foundation work, setting of the MHU on the foundation, and final inspection to close out the Contract. OSBM-DR shall have the right to issue a notice of stop work if a QA/QC inspection finds deficient work, work that does not comply with the Construction Documents, and/or work that does not comply with the State Building Requirements and/or building requirements of the AHJ. OSBM-DR will also make inspections to approve progress payments. The Contractor shall permit all inspections at the Project site during normal working hours and during any time work is in preparation and progress by the AHJ, OSBM-DR, and/or those persons required by state law to test special work for official approval.

The Contractor shall always provide safe access to the work for such inspections. Contractor shall also permit OSBM-DR to perform QA/QC inspection of any MHU at Contractor's facility when the manufacturer delivers the MHU to Contractor and/or to inspect the MHU that Contractor has in its inventory.

- 2.3 Changes in Work: OSBM-DR does not expect any changes with respect to site conditions or manufacture of MHU after Owner has made final selections. OWNER AGREES NOT TO REQUEST ANY CHANGES TO THE MHU AFTER OWNER HAS MADE THE FINAL SELECTIONS OF FINISHES AT THE PRECONSTRUCTION MEETING. Notwithstanding the

foregoing, Contractor must obtain OSBM-DR written approval of any change in the Contract's scope of work prior to performing the change in work. Contractor may only proceed with a change in work if failure to do so will create a life-safety risk to the workers or Owner if not made at time the change was discovered. OSBM-DR will pay for approved change orders pursuant to the progress payment schedule set forth in Article 1.6 above.

- 2.4 Time of Completion, Delays and Extension of Time: The Contractor shall commence work to be performed under this Contract on a date set forth in the Notice to Proceed. OSBM-DR should be able to pay Contractor all deposits within 1-2 weeks after full execution of the Contract. Time is of the essence and the Contractor acknowledges the Owner and OSBM-DR will likely suffer financial damage for failure to complete the work within the time of completion (most notably Owner is displaced from the home and OSBM-DR will continue to pay temporary housing costs). After a two-week grace period following the Contract's preferred Completion Date, OSBM-DR may assess liquidated damages for each day after the grace period until Contractor completes the Project. The amount of liquidated damages to be assessed shall be \$150.00 per day, which the Contractor shall pay the Owner or OSBM-DR may deduct the amount of liquidated damages from the balance of the Contract Price that may be due Contractor.

If the Contractor is delayed at any time in the progress of his work solely by a material breach of the contract by OSBM-DR (e.g., failure to make a progress payment) or Owner, by changes ordered in the work; by abnormal weather conditions not reasonably anticipated for the locality where the work is performed; by unavoidable casualties; by any causes beyond the Contractor's control; or by any other causes which OSBM-DR determine may justify the delay, then the contract time may be extended by change order only for the time which OSBM-DR may determine is reasonable.

Time extensions will not be granted for rain, wind, snow, or other natural phenomena of normal intensity for the locality where work is performed. For purpose of determining extent of delay attributable to unusual weather phenomena, a determination shall be made by comparing the weather for the contract period involved with the average of the preceding five (5) year climatic range during the same time interval based on the National Oceanic and Atmospheric Administration National

Weather Service statistics for the locality where work is performed. Contractor will have to provide documentation of the abnormal weather event and any time extension will be based on the number of days of actual abnormal weather events. No weather delays shall be considered after the building is dried in. Time extensions for weather delays, acts of God, labor disputes, fire, delays in transportation, unavoidable casualties or other delays which are beyond the control of the OSBM- DR do not entitle the Contractor to compensable damages for delays, but Contractor will be entitled to a reasonable time extension.

- 2.5 Licensing & Bond Requirements: To the extent Contractor will use a general contractor to perform any work in setting up the MHU on the Lot, the general contractor must be properly licensed under Chapter 87, Article 1, General Statutes of North Carolina, and must have license classification for Limited, Intermediate, or Unlimited Construction.

Contractor or its general contractor must use properly North Carolina licensed subcontractors for the performance of electrical, plumbing, mechanical and HVAC (heating, ventilation, and air conditioning), or as may be required by authority having jurisdiction (i.e., municipal and/or county building department. If required by Notice of Contract Award, Contractor shall submit the original payment and performance bond to OSBM-DR prior to the start of any work on the Lot.

- 2.6 Insurance Coverage: During the term of the awarded Contract, the Contractor shall provide and maintain the following coverage and limits:

- a. Worker's Compensation. The Contractor's shall provide and maintain Worker's Compensation, as required by the laws of North Carolina, as well as employer's liability coverage with insurance minimum limits of \$500,000.00, covering all of Contractor's employees who are engaged in any work under this contract.
- b. Commercial General Liability. The Contractor's shall maintain General Liability Coverage on a Comprehensive Broad Form on a cost occurrence basis in the minimum amount of \$1,000,000.00 single limit and a combined/aggregate limit of \$2,000,000.00. Defense costs shall be in excess of the limit of liability.
- c. Automobile. The Contractor's shall maintain automobile liability insurance, to include liability coverage, covering all owned, hired, and non-owned vehicles, used in connection with this contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$10,000.00 medical payment.
- d. Property Insurance (Builder's Risk/Installation Floater). The Contractor shall purchase and maintain property insurance until final acceptance, upon the entire work at the site to the full insurable value thereof. This insurance shall include the interests of the Owner, the Contractor, the subcontractors, and sub-subcontractors in the work and shall insure against the perils of fire, wind, rain, flood, extended coverage, and vandalism and malicious mischief. If the Owner is damaged by failure of the Contractor to purchase or maintain such insurance, then the Contractor shall bear all reasonable costs properly attributable thereto; the Contractor shall affect and maintain similar property insurance on portions of the work stored off the site when request for payment per articles so includes such portions.
- e. Deductible. Any deductible, if applicable to loss covered by the insurance provided, is to be borne by the Contractor.

Requirements. Providing and maintaining adequate insurance coverage is a material obligation of the Contractor and is of the essence of this Agreement. 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 always comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies. 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. The costs of premiums shall be included in the Contract Price and be reflected in the Contractor's schedule of values in its payment application as general condition costs.

The Contractor represents to OSBM-DR and Owner that a certificate of insurance with all required insurance policies and limits has been obtained prior to the issuance of the Notice to Proceed. The Contractor will provide a copy of the certificate of insurance to the OSBM-DR or Owner upon request. If any personal injury or property damage or claim of such injury or damage should occur during construction of the Project, the Contractor shall provide upon request of OSBM-DR, Owner, subcontractor, any employee of an entity inspecting the property or providing architectural, engineering and/or land surveying services (including but not limited to State employees, employees of the AHJ), and/or any attorney representing an OSBM-DR or Owner a complete copy of any insurance policy that may provide coverage for the injury, damages and/or claim.

Notice. The State Tort Claims Act, N.C. Gen. Stat. §§ 143-291 et seq., may apply to any incident involving any State employees who may be at the Project site during construction for purposes performing DRA project management, grant monitoring/compliance and/or inspections, and he/she allegedly caused property damage to the Property and/or personal injury to the OSBM-DR, any Contractor employee, any subcontractor employee, and/or any other person at the Project site.

ARTICLE 3—ADDITIONAL MISCELLANEOUS PROVISIONS

- 3.1 Notices. Any notice to the OSBM-DR or Contractor required under this Agreement shall be served in person, email or by mail set forth below.

For OSBM-DR	For Contractor
Sabrina Williams, Project Manager OSBM-DR 215 N. Main Street Waynesville, NC 28786 (828) 526-6170 (office) Email: sabrina.williams@osbm.nc.gov	

- 3.2 Severability. If any provision of this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, then said provision shall be of no effect, but all remaining provisions shall remain enforceable.
- 3.3. Modification: The Contract or related construction documents may not be modified or amended in any manner except in an executed change order.

- 3.4. Assignment: This Contract and any of the documents related hereto and the rights, duties, or obligations thereunder may not be assigned by the OSBM-DR or the Contractor without the written consent of OSBM-DR. Any assignment made without the written consent of the OSBM-DR shall be void and of no force or effect.
- 3.5 Historically Underutilized Business Participation: N.C. Gen. Stat. § 143-128.2 establish a ten percent (10%) goal for participation by minority and women owned businesses in total value of work for DRA-18 Projects that have b historically underutilized (“HUB”). The document, *Guidelines for Recruitment and Selection of Minority Businesses for Participation in State Construction Contracts* including Affidavits are found on the N.C. State Construction Office website. Contractor shall make good faith efforts to obtain HUB subcontractor participation for manufacturing the MHU, site work, foundation work, and/or any other work required to set up the MHU on the Lot.
- 3.6 Dispute Resolution Goals and Scope. The primary goal of the DRA program is to expedite the State’s housing recovery efforts to counties that have needs that are not met by any federal disaster recovery programs. The DRA dispute resolution program will achieve the foregoing goal by fairly and timely addressing: changes in work; delays and requests for time extensions; DRA compliance issues; performance issues of Contractor and/or subcontractors; non-conforming or deficient work issues (quality control/quality assurance); payment and nonpayment issues; warranty issues within the first year (to the extent OSBM-DR is still implementing a DRA Housing Recovery Program); OSBM-DR’s enforcement of contract requirements; action on or disposition of any audit finding; OSBM-DR complaints relating and/or arising out of the construction of the Project; and/or any other dispute or claim that arises from or relates to the Project that are not otherwise excluded below.

During the time as any dispute, issue or claim is being presented, heard, and considered pursuant to this Paragraph, this Contract shall remain in full force and effect and the Contractor shall continue to perform work as directed in the Agreement.

All non-monetary and monetary claims, disputes or issues shall be disposed of in the following manner:

- a. The claimant shall submit to OSBM-DR a short written statement or email of the claim, dispute or issue and/or attach the document reflecting or containing the claim, dispute or issue (e.g., rejected change order request, rejected request for time extension and a schedule narrative/time impact analysis supporting a delay claim, notice of deficiency or non-conforming work, request for information, unpaid invoice or payment application, audit finding, etc.). OSBM-DR shall investigate the claim, dispute, or issue within seven (7) business days and the investigation may include but is not limited to: requesting a written response from any party to the claim, dispute, or issue within this time period; and/or consult with other state agencies or retained subject matter experts. OSBM-DR, at its discretion, may request a conference call or meeting with Contractor, manufacturer and/or subcontractor to discuss resolution of the claim, dispute, or issue.
- b. After the investigation, OSBM-DR shall issue a summary decision or recommendation resolving the claim, dispute or issue to the claimant and respondent(s). The claimant and respondent shall each notify in writing or by email of the response (acceptance or rejection) to the decision or recommendation. If the claimant and respondent accept the decision or recommendation, then the decision or recommendation shall be implemented by the Contractor, OSBM-DR, and/or the designer.
- c. If OSBM-DR’s decision or recommendation does not resolve the dispute, the parties agree to

hire a mediator and follow the process for mediation set forth in the State Building Commission's Dispute Resolution Rules. If mediation does not result in a settlement of the dispute, the parties may seek to resolve the dispute with a North Carolina Court. If the claim will be against OSBM-DR then, pursuant to N.C. Gen. Stat. § 143-135.3, the action must be commenced in Wake County Superior Court and tried to the Court, or a contested case filed with the Office of Administrative Hearings.

All parties to the Contract and DRA Housing Recovery Program project award to Owner understand and acknowledge that the foregoing dispute resolution process is intended to be an informal settlement process of claims, disputes, and issues. The parties are cautioned that OSBM-DR reserves the right to terminate this agreement for convenience, if the claimed proposed change order, proposed request for time extension/delay claim, and/or alleged damages for breach of contract will exceed any allocated contingency for the Project and DRA Housing Recovery Program funding cap for the OSBM-DR's Project type. Therefore, all parties are strongly encouraged to resolve all disputes, claims or issues as quickly as possible to avoid a termination of this Agreement for convenience.

3.7 Termination of Agreement

- a. Termination for Convenience. In general, OSBM-DR will provide notice to the Contractor to terminate this Contract for convenience by giving Contractor at least a three (3) day notice in writing and/or email to the Contractor but may issue a notice with less time. OSBM-DR may exercise this option for any reason, however, OSBM-DR is more likely to terminate this Contract for any of the following situations: unknown environmental hazards are discovered on the Property or in the Premises; proposed changes, claims, mechanics liens against Owner's Property, and/or disputes and related damages are projected to exceed the grant funding for the Project OSBM-DR grant (including any contingency); delays or performance issues caused by circumstances beyond the control of the Contractor or OSBM-DR (e.g., sickness, death, employee turnover, etc.); verbal or written complaints of non-payment or late payment by any of the Contractor's subcontractors or suppliers; violation of safety measures, protocols or prohibitions at the Project site (e.g., possession of firearm, consumption of alcohol, etc.); relationship issues between Contractor and OSBM-DR or Contractor and Owner; federal, state or local agency notice or action that causes work to stop that was not caused by an act or omission of the Contractor and/or OSBM-DR; damage to the Property caused by a third-party or other natural disaster; or any issue or circumstance that necessitates the termination of the Contract for convenience rather than a termination for cause/default. The termination shall take effect 10 business days after the date of the notice unless a short period is specified in the notice.

If this Contract is terminated for convenience by OSBM-DR, the Contractor will be paid for all work properly performed and in place at the Project site as of the date of the termination, payment of manufacturer for the cost of completing the MHU if it is in production prior to the placement of a purchase order and past any date to cancel the order, storage costs of the Contractor if it has accepted deliver of the MHU from the manufacturer, and reasonable demobilization costs included in Contractor's general conditions in its payment application's schedule of values. Unless the notice directs otherwise in the notice, the Contractor shall immediately stop placing of orders for materials, equipment, and supplies. County/OSBM-DR may direct certain work be continued or performed until completed or a date certain, which may be beyond a 10-business day transition period (or shorter period that may be stated in the notice). If the MHU has been Modular and delivered to Contractor, then OSBM-DR may negotiate a separate contract with Contractor to sell the MHU for OSBM-DR on consignment and OSBM-DR will pay reasonable storage costs until the MHU is sold to a third-party, and/or Contractor may make an offer to OSBM-DR

to purchase the MHU for Contractor's inventory.

- b. Termination for Cause/Default. The Contractor and Owner agree and understand that OSBM-DR has the right to terminate grant funding of this Project should the Contractor default in performing its work and carrying out its responsibilities under this Contract. Any of the following events or situations may give rise to a notice to the Contractor of the intent to terminate this Contract for cause or default:
1. The Contractor is adjudged as bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed because of its insolvency.
 2. The Contractor materially fails pay its subcontractors or suppliers.
 3. The Contractor has materially and substantially breached the Contract.
 4. The Contractor fails to so prosecute the Work (i.e., any unexcused and material delay in completion of the Project) as to ensure its completion by the Completion Date as extended by approved change order(s).

Procedures. OSBM-DR shall give Contractor and its surety (if any) a seven-day written notice, certified mail return receipt requested, to the last known business address of Contractor as well as by email, of the intent to terminate the Contract for any cause set forth above. The seven-day notice shall provide Contractor with a date certain by which it must cure the stated causes for termination and that failure to do so by that date will allow OSBM-DR to terminate the Contract without any further notices to cure. If Contractor fails to cure the stated causes for default by the specified date(s), then OSBM-DR shall notify Contractor and surety (if any) in writing that the Contract has been terminated for cause/default. OSBM-DR will take over completion of the Contract if no surety or surety shall take over completion of the Project within seven calendar days. Should surety fail to take over the Project within seven (7) days after default termination of Contractor, OSBM-DR shall arrange for the completion of the Project and take possession of the Project site and of all materials, and/or equipment on the site which has been purchased and paid for by OSBM-DR. OSBM-DR shall also issue a change order deducting the cost thereof from the unpaid Contractor Amount including earned but unpaid retainage. The Contractor and its surety (if any) shall not be entitled to any further payment from OSBM-DR until all costs of completing the Work shall have been paid. If the unpaid balance of the Contract Price exceeds the costs of finishing the Work, such excess shall be paid to the Contractor or its Surety as applicable after final inspection and issuance of certificate of occupancy by AHJ, whichever is later. If such costs exceed the unpaid Contract Price, the Contractor or its surety shall pay the difference to OSBM-DR. If OSBM-DR sues the Contractor or Surety to recover the excess costs, then Contractor and Surety shall pay all litigation costs, liquidated damages and/or actual damages incurred by OSBM-DR in the successful recovery of such costs and/or damages, including reasonable attorney's fees. Except further performance of the work and related contractual provisions, all other obligations of the Contractor shall survive the termination of the Contract, in particular auditing and DRA compliance.

Contractor Evaluation: The Contractor's overall work performance on each assigned or award DRA Project shall be fairly evaluated by OSBM-DR in accordance with the State Building Commission ("SBC") policy and procedures (included in the rules for the N.C. Department of Administration). The evaluations may be used by the Counties and OSBM-DR for bidding on future DRA projects and/or other state disaster recovery projects arising from Hurricane Matthew, Hurricane Florence, or any other subsequent natural disaster. The Contractor shall have the right to appeal any evaluation to the SBC pursuant to the aforementioned policy and procedures.

- 3.8 Gifts: Pursuant to N.C. Gen. Stat. § 133-32, it is unlawful for any vendor or contractor to make gifts or to give favors to any State employee. This prohibition covers those vendors and contractors who: (1) have a contract with a governmental agency; or (2) have performed under such a contract within the past year; or (3) anticipate bidding on such a contract in the future. For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review N.C. Gen. Stat. § 133-32.

During the construction of the Project, the Contractor and subcontractors are prohibited from making gifts to any employees of OSBM-DR and/or any other State employee from any other State Agency that may have any involvement, influence, responsibilities, oversight, management and/or duties that pertain to and/or relate to the contract administration, financial administration and/or disposition of claims arising from and/or relating to the Contract and/or Project.

- 3.9 Auditing Access to Person and Records: In accordance with N.C. Gen. Stat. §147-64.7, State Auditor and/or the internal auditors for the County, OSBM-DR and/or DPS/NCCEM, shall have access to Contractor's officers, employees, agents and/or other persons in control of and/or responsible for the Contractor's records that relate to this Contract for purposes of conducting audits under the referenced statute. Said auditors shall also have the right to access and copy the Contractor's and its subcontractors' and suppliers' records relating to the Contract and Project during the term of the Contract and within three (3) years following the completion of the Project/close-out of the Contract to verify accounts, accuracy, information, calculations and/or data affecting and/or relating to Contractor's requests for payment, requests for change orders, change orders, claims for extra work, requests for time extensions; and/or claims.-
- 3.10 North Carolina False Claims Act: The North Carolina False Claims Act ("FCA"), N.C. Gen. Stat. § 1-605 through 1-618, applies to this Contract. The Contractor should familiarize itself with the FCA and should seek the assistance of an attorney if it has any questions regarding the FCA and its applicability to any requests, demands and/or claims for payment it submits to the State through the contracting state agency. -
- 3.11 Choice of Law: This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.
- 3.12 Entire Agreement: This Agreement (inclusive of all documents identified herein) is between the OSBM-DR and the Contractor. The OSBM-DR and Contractor recognize and understand that this Agreement includes the DRA Program Policies and Procedures that are reference herein, Attachments hereto, and the construction documents constitute the entire Agreement and all prior agreements and/or oral representation/agreements are merged into this Agreement.