#### CITY OF NEW BERN BOARD OF ALDERMEN MEETING MARCH 10, 2020 – 6:00 P.M. CITY HALL COURTROOM 300 POLLOCK STREET

- 1. Meeting opened by Mayor Dana E. Outlaw. Prayer Coordinated by Alderman Odham. Pledge of Allegiance.
- 2. Roll Call.
- 3. Request and Petition of Citizens.

#### Consent Agenda

- 4. Consider Approving a Proclamation for North Carolina 811 Safe Digging Month.
- 5. Consider Approving a Proclamation for Vietnam Wall and Vietnam War Veterans' Day.
- 6. Consider Approving a Proclamation for Women's History Month.
- 7. Consider Approving a Proclamation for Arbor Day 2020.
- 8. Approve Minutes.

\*\*\*\*\*\*

- 9. Presentation of Longevity Certificates.
- 10. Consider Adopting a Resolution to Initiate the Upset Bid Process for 208 Daniels Street.
- 11. Consider Adopting a Resolution to Initiate the Upset Bid Process for 1509 Washington Street.
- 12. Consider Adopting a Resolution Approving a Contract with Moffatt & Nichol for Services Related to a Resiliency and Hazard Mitigation Plan.
- Consider Adopting a Resolution Approving an Amendment to a Letter of Engagement for Professional Services – FEMA with Disaster Recovery Services, LLC.
- 14. Consider Adopting a Resolution Approving a Contract with Draper Aden for Professional Engineering Services for Category A Identification Work.

- 15. Consider Adopting a Resolution Approving a Contract with Draper Aden for Professional Engineering Services for Category D Design Work.
- 16. Consider Adopting an Amendment to the Capital Project Ordinance for the Martin Marietta Park Project Fund.
- 17. Consider Adopting an Ordinance Establishing the Resiliency and Hazard Mitigation Plan Grant Project Fund.
- 18. Appointment(s).
- 19. Attorney's Report.
- 20. City Manager's Report.
- 21. New Business.
- 22. Closed Session.
- 23. Adjourn.

#### Aldermen

Sabrina Bengel Jameesha Harris Robert V. Aster Johnnie Ray Kinsey Barbara J. Best Jeffrey T. Odham



300 Pollock Street, P.O. Box 1129 New Bern, NC 28563-1129 (252) 636-4000 Dana E. Outlaw
Mayor
Mark A. Stephens
City Manager
Brenda E. Blanco
City Clerk
Mary M. Hogan
Director of Finance

Memo to: Mayor and Board of Aldermen

From: Mark A. Stephens, City Manager

Date: March 5, 2020

Re: March 10, 2020 Agenda Explanations

 Meeting opened by Mayor Dana E. Outlaw. Prayer Coordinated by Alderman Odham. Pledge of Allegiance.

2. Roll Call.

3. Request and Petition of Citizens.

This section of the Agenda is titled Requests and Petitions of Citizens. This is an opportunity for public comment, and we thank you for coming to the Board of Aldermen meeting tonight to share your views. We value all citizen input.

Speaker comments are limited to a maximum of 4 minutes during the public comment period. At the conclusion of 4 minutes, each speaker shall leave the podium. Comments will be directed to the full board, not to an individual board member or staff member. Although the board is interested in hearing your comments, speakers should not expect any comments, action or deliberation from the board on any issue raised during the public comment period.

In the board's discretion, it may refer issues to the appropriate city officials or staff for further investigation. If an organized group is present to speak on a common issue, please designate one person to present the group's comment, which shall be limited to a maximum of 4 minutes.

#### **Consent Agenda**

# 4. Consider Approving a Proclamation for North Carolina 811 Safe Digging Month.

Howard Corey, Education Liaison with NC 811, has requested a proclamation observing April as NC 811 Safe Digging Month.

# 5. Consider Approving a Proclamation for Vietnam Wall and Vietnam War Veteran's Day.

Dave Nelson, on behalf of American Legion Post 539, has requested a proclamation observing the display of the Vietnam Wall in New Bern on March 27-29, 2020 and proclaiming March 29<sup>th</sup> as Vietnam War Veteran's Day.

#### 6. Consider Approving a Proclamation for Women's History Month.

Bee Mayo has requested a proclamation for Women's History Month, which is observed in March.

#### 7. Consider Approving a Proclamation for Arbor Day 2020.

Foster Hughes, Director of Parks and Recreation, has requested a proclamation recognizing March 20, 2020 as Arbor Day. An annual proclamation is required for the City to receive the Tree City USA designation.

#### 8. Approve Minutes.

Draft minutes from the February 11, 2020 and February 25, 2020 regular meetings are provided for review and approval.

\*\*\*\*\*\*

#### 9. Presentation of Longevity Certificates.

Employment service is recognized at five-year increments. A roster is enclosed of all employees who are eligible to receive a service certificate for the period of July-December 2019. Some of these employees will be present at the meeting, and certificates will be on hand for the Mayor to present. Sonya Hayes, Director of Human Resources, will be available to assist with the presentation. The Board is asked to extend a handshake of appreciation to the employees.

# 10. Consider Adopting a Resolution to Initiate the Upset Bid Process for 208 Daniels Street.

(Ward 5) Jimmie Mangol has submitted an offer of \$9,500.00 for the purchase of 208 Daniels Street. The tax value of the half-acre lot with a singlewide mobile home is \$18,000.00, and the offer represents more than 50% of the value. The City and

County acquired the property jointly through tax foreclosure in August 2019. If the property is sold for the initial offer, the County will receive approximately \$6,529.85 of the proceeds, and the City will receive approximately \$2,970.15. These estimates take into account the cost of publishing the legal advertisement. A memo from Brenda Blanco, City Clerk, is attached along with photos of the subject property.

# 11. Consider Adopting a Resolution to Initiate the Upset Bid Process for 1509 Washington Street.

(Ward 5) Robert Carter has submitted an offer of \$3,000.00 for the purchase of 1509 Washington Street, which is a vacant, ¼-acre lot. The offer represents 50% of the tax value. The Board voted at its February 25, 2020 meeting to unfreeze this lot and authorize staff to accept a bid. The property was acquired by the City through tax foreclosure in October 2006. A memo from Mrs. Blanco is attached along with photos of the property.

# 12. Consider Adopting a Resolution Approving a Contract with Moffatt & Nichol for Services Related to a Resiliency and Hazard Mitigation Plan.

The City issued a Request for Qualifications ("RFQ") for the development of a Resiliency and Hazard Mitigation Plan. The goal of the plan is to build the capacity of the New Bern community to avoid, prepare for, withstand, recover, and build back better following disastrous events, with specific focus on underserved and historic communities. In response to the RFQ, nine submissions were received. Moffatt & Nichol was selected to be the most qualified firm, and a contract is proposed with the cost of services not to exceed \$140,000. A memo from Jeff Ruggieri, Director of Development Services, is attached.

# 13. Consider Adopting a Resolution Approving an Amendment to a Letter of Engagement for Professional Services – FEMA with Disaster Recovery Services, LLC.

Following Hurricane Florence in September 2018, the City entered into two agreements with Disaster Recovery Services, LLC to provide professional services. One agreement covered services related to FEMA claims and the second was relative to insurance claims. It is requested that the Board authorize a letter of engagement amending the scope of work for the FEMA services to include debris removal and repairs to approximately 66 miles of drainage ditches and waterways. Based upon the expanded scope of work, DRS estimates that the updated project costs for FEMA recovery will not exceed \$1,950,000.

# 14. Consider Adopting a Resolution Approving a Contract with Draper Aden for Professional Engineering Services for Category A Identification Work.

The City has been working with Disaster Recovery Services to have FEMA accept an estimated \$32 million project for repairs to the City's drainage system resulting from Hurricane Florence. An RFQ was issued for engineering services. From the responses received, Draper Aden was deemed the most qualified firm to perform phases II and IV of the project, which covers further detailed inspection and design work related to Category A projects. The cost of the contract shall not exceed \$850,000. A memo from Matt Montanye, Director of Public Works, is attached.

# 15. Consider Adopting a Resolution Approving a Contract with Draper Aden for Professional Engineering Services for Category D Design Work.

This item is similar to the previous. After issuing an RFQ for engineering services. Draper Aden was deemed the most qualified firm to perform phase III of the project, which covers design work related to Category D projects. This phase of the project will be invoiced based on time and material rates. A memo from Mr. Montanye is attached.

# 16. Consider Adopting an Amendment to the Capital Project Ordinance for the Martin Marietta Park Project Fund.

The City has been awarded a grant from the NC Parks and Recreation Trust Fund for park improvements associated with the Martin Marietta Park Phase I Project. The amount of the award is \$475,000. This ordinance acknowledges receipt of the grant and establishes the necessary budget. A memo from Mary Hogan, Director of Finance is attached.

# 17. Consider Adopting an Ordinance Establishing the Resiliency and Hazard Mitigation Plan Grant Project Fund.

This budget ordinance establishes the Resiliency and Hazard Mitigation Plan Project Fund and establishes the necessary budget of \$140,000. Various grants totaling \$88,000 have been received to date, the proceeds of which will be used toward development of a citywide resiliency and hazard mitigation plan. The remaining \$52,000 will be a transfer from the General Fund. A memo from Mrs. Hogan is attached.

#### 18. Appointment(s).

- a) James Dugan's term on the Appearance Commission has expired, and he is interested in reappointment. The Board is asked to consider reappointing Mr. Dugan or make a new appointment to serve a three-year term.
- b) Joseph Cannon's term on the Appearance Commission has expired, and he is not interested in reappointment. The Board is asked to make a new appointment to serve a three-year term. Mr. Hughes has the name of someone who has expressed interest in serving.
- c) Eastern Carolina Council of Governments has approved a bylaw change that allows member cities with a population over 20,000 to appoint a representative to serve on their Executive Committee. Attached is a memo of explanation from the Council.

#### 19. Attorney's Report.

- 20. City Manager's Report.
- 21. New Business.
- 22. Closed Session.
- 23. Adjourn.



**Agenda Item Title:**Consider Approving a Proclamation for NC 811 Safe Digging Month

| Date of Meeting: 03/10/   | /20               | Ward # if applicable: N/A  |
|---|-------------------|--|
| Department: City Clerk  |                   | Person Submitting Item: Brenda Blanco  |
| Call for Public Hearing   | g: □Yes⊠No        | Date of Public Hearing:  |
|   |                   |  |
| Explanation of Item:  |                   | Education Liaison with NC 811, requested a serving April as NC 811 Safe Digging Month. |
| Actions Needed by Board:  | Consider approv   | ring the proclamation  |
| Backup Attached:  | Proclamation      |  |
| Is item time sensitive?   | ×Yes □No N        | eed by April 1, 2020   |
| Will there be advocates   | opponents at th   | ne meeting?   Yes   No   |
| Cost of Agenda Item: \$0 If this requires an expensand certified by the Fin | nditure, has it b | een budgeted and are funds available  ☐ Yes ☐ No                                       |
| and certified by the Fin  | ance Director?    | □Yes □ No  |



#### MAYOR'S OFFICE PROCLAMATION

- WHEREAS, as utility owners, excavators, designers, and homeowners work to keep pace with North Carolina's economic development, it is important to minimize damages to underground utility lines, danger to workers and the general public, environmental impact, and loss of utility services to the citizens of North Carolina; and
- **WHEREAS,** North Carolina 811, a utility service notification center and leader in education celebrating its 42<sup>nd</sup> year of continuous service to the State, is key to preventing injuries and damages when excavating; and
- WHEREAS, this unique service provides easy, one-call notification about construction and excavation projects that may endanger workers and jeopardize utility lines while promoting workplace and public safety, reducing underground utility damage, minimizing utility service interruptions and protecting the environment; and
- WHEREAS, this vital service, which began in 1978 serves the citizens of North Carolina from the mountains to the coast, educates stakeholders about the need for excavation safety whether the project is as small as planting a tree to designing and beginning construction on a new interstate; and
- WHEREAS, in 2019, the North Carolina one-call system received 2.2 million notification requests and transmitted over 12.2 million requests, providing protection to utility companies infrastructure, their employees, excavators, and customers.
- NOW THEREFORE, I, Dana E. Outlaw, Mayor of the City of New Bern, on behalf of the New Bern Board of Aldermen, do hereby proclaim the month of April as

#### **NORTH CAROLINA 811 SAFE DIGGING MONTH**

to encourage all excavators and New Bern homeowners to contact 8-1-1 either by dialing 8-1-1 or contacting NC811 via the webpage of NC811.org at least three working days prior to digging in order to "Know What's Below," and avoid injury, protect the environment, prevent millions of dollars in damages, and to remind excavators that three working days' notice is the law, for safe digging is no accident, and that more information may be obtained by visiting www.nc811.org.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of New Bern this 28th day of January in the Year of Our Lord Two Thousand and Twenty

Dana E. Outlaw, Mayor



### **Agenda Item Title:**

Consider Approving a Proclamation for Vietnam Wall and Vietnam Veteran's Commemoration Week

| Date of Meeting: 03/10/20 | )                        | Ward # if applicable: N/A   |
|---------------------------|--------------------------|---|
| Department: City Clerk    |                          | Person Submitting Item: Brenda Blanco   |
| Call for Public Hearing:  | □Yes⊠No                  | Date of Public Hearing:   |
|                           | Dani Malan               | L-1-16-6A   |
| Explanation of Item:      | requested a procla       | behalf of American Legion Post 539, has amation observing the Vietnam Wall's display March 27-29, 2020 and Vietnam Veteran's Week |
| Actions Needed by Board:  | Consider approvi         | ng the proclamation   |
| Backup Attached:          | Proclamation             |   |
| Is item time sensitive?   | Ves \( \text{No. No.} \) | ad by April 1, 2020   |
|                           |                          | e meeting?  \( \subseteq \text{Yes} \times \text{No} \)   |
|                           |                          |   |
| Cost of Agenda Item: \$0  | diana haaiaha            | on hudgeted and one funds available   |
| and certified by the Fina | _                        | en budgeted and are funds available  Yes  No  |
| <del></del>               |                          |   |



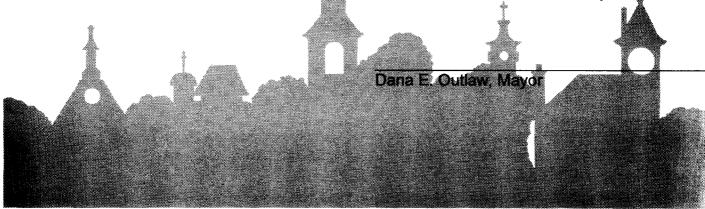
#### MAYOR'S OFFICE PROCLAMATION

- WHEREAS, it is an honor to recognize so many veterans today who have made countless sacrifices for New Bern and Greater Down East North Carolina; and
- **WHEREAS,** in 2012, the United States began the commemoration of the 50<sup>th</sup> Anniversary of the Vietnam War, a 13-year program to honor and thank those who answered the call to serve in the war; and
- WHEREAS, more than 58,000 service members made the ultimate sacrifice during the Vietnam War, thousands more were wounded, and over 1,600 remain missing in action; and
- WHEREAS, the families and friends of missing service members continue to endure the uncertainty concerning the fate of their loved ones who remain unaccounted for; and
- **WHEREAS,** Vietnam Veterans contribute to our city, counties, state, and nation by offering skills, education, leadership, and dedication learned in the military service; and
- WHEREAS, the State of North Carolina is home to more than 237,000 Vietnam-era veterans, with more than 16,000 living in New Bern and surrounding counties; and
- WHEREAS, we can never fully repay our debt of gratitude to those heroic men and women who served, were wounded, or died in battle. The Vietnam Wall presents an opportunity for the people of New Bern and our neighboring counties to honor and thank our Vietnam Veterans for their service to our country.
- NOW THEREFORE, I, Dana E. Outlaw, Mayor of the City of New Bern, on behalf of the New Bern Board of Aldermen, do hereby extend greetings to all who will observe the Vietnam Veteran Wall in New Bern on March 27-29, 2020 and hereby proclaim March 29<sup>th</sup> as

#### VIETNAM WAR VETERANS DAY

and encourage the citizens of New Bern to pay honor and tribute to these veterans.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of New Bern this 10<sup>th</sup> day of March in the Year of Our Lord Two Thousand and Twenty.



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#### **WALL SPONSORS**

DIAMOND Carolina East Health System

GOLD Knights of Columbus Kenneth I. Parker Assembly 1820

**Minges Bottling Group** 

\* Temple Church

\* Curtis Media

SILVER Edward Jones

Mike Bass, Joanna Carr, Kevin Page, Dan Roberts and

Mike Sprague,

**Cotton Funeral Home** 

\* Sun Journal

\* Craven AG Services

BRONZE Chick-Filet

Coastal Carolina Health System

Craven County Insurance Agents Assoc., Inc.

**Harris Teeter Stores** 

Norm Kellum Law Firm

E.T. Mitchell

Moore's Old Tyme Barbecue

**Realo Drugs** 

St. Paul Roman Catholic Church and School

Piggly Wiggly Stores

Decks and Docks Lumber Company

BOOSTER Jonathan Segal

Union Bank Tom Meyer

**Coldwell Banker** 

**Knights of Columbus-Council 3303** 

On Target 4 Vets

Framing Fox Art Gallery

Coastal Carolina Military Officers' Assc.

Debbie L. Roberts

- Wal-Mart Store 4564, Goldsboro
- \* The Shoppes at Goldsboro Shopping Center
- Bender Apparel and Graphics
- \* Three Guys Signs

OTHER Lucy Andre

Elks Lodge #764

Fisher Oil

**Kitty Fraser** 

**Bob Mattocks** 

**Overhead Door** 

Ken and Dottie Ralph

**Debbie L. Roberts** 

Sumrell Sugg Carmichael

**Trent Cadillac** 

**Mayor Chuck Tyson** 

**Lance Wallace** 

**Sharon Warren** 

Jack and JoAnn Webb

Rodger Wilcox

**Carol Zink** 

Harry Kling

Joseph and Nancy Mansfield

Richard and Barbara Mushet

**Chuck Tyson** 

- \* A. Thompson Flags and Flag Poles
- \* Register Glass Company
- \* Lowe's Home Improvement
- \* In Kind Contributions



**Agenda Item Title:**Consider Approving a Proclamation for Women's History Month

| Date of Meeting: 03/10/                          | /20              | Ward # if applicable: N/A                                     |
|--|------------------|---|
| <b>Department:</b> City Clerk                    |                  | Person Submitting Item: Brenda Blanco                         |
| Call for Public Hearing                          | g: □Yes⊠No       | Date of Public Hearing:                                       |
|  |                  |   |
| Explanation of Item:                             | · ·              | ested a proclamation for Women's History s observed in March. |
| Actions Needed by Board:                         | Consider appro   | ving the proclamation   |
| Backup Attached:                                 | Proclamation     |   |
| Is item time sensitive?                          |                  |   |
| Will there be advocates                          | s/opponents at t | he meeting? □Yes ⊠ No   |
| Cost of Agenda Item: \$                          |                  |   |
| If this requires an expeand certified by the Fin |                  | peen budgeted and are funds available  Yes No                 |
|  |                  |   |

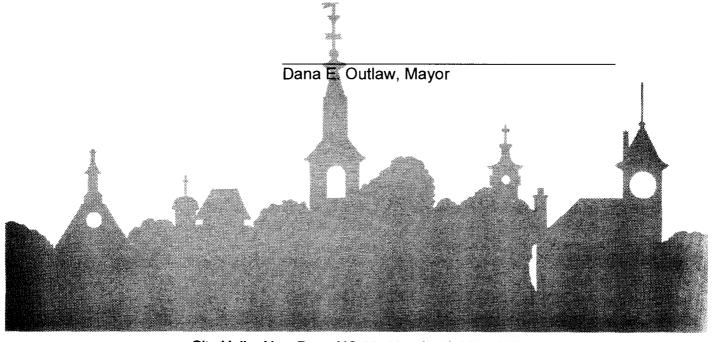


- WHEREAS, Women's History Month is a time to celebrate the contributions American women have made to strengthen and lead our city, state and nation; and
- WHEREAS, Women's History Month honors women of every race, status, and ethnicity who have made historic contributions through leadership, innovation, and ingenuity; generations of women have made significant contributions in science, medicine, technology, business, military, politics, and arts and culture; and
- **WHEREAS,** the 2020 theme for Women's History Month is "Valiant Women of the Vote", which honors the brave women who fought to win suffrage rights for women and the women who continue to fight for the voting rights of others; and
- NOW THEREFORE, I, Dana E. Outlaw, Mayor of the City of New Bern, on behalf of the New Bern Board of Aldermen, do hereby proclaim the month of March as

#### **WOMEN'S HISTORY MONTH**

and encourage the citizens of New Bern to pay honor to the brave women in our community who give so much of themselves and their time for the benefit of others.

**IN WITNESS WHEREOF,** I have hereunto set my hand and affixed the Seal of the City of New Bern this 10<sup>th</sup> day of March in the Year of Our Lord Two Thousand and Twenty.



City Hall • New Bern, NC 28563 • (252) 636-4000

**Agenda Item Title:**Proclamation to recognize March 20, 2020 as Arbor Day.

| <b>Date of Meeting: 3/10/20</b>                       | 020             | Ward # if applicable: 3  |
|---|-----------------|--|
| <b>Department:</b> Parks & Rec                        | reation         | Person Submitting Item: Foster Hughes  |
| Call for Public Hearing                               | : □Yes⊠No       | Date of Public Hearing:  |
|   |                 |  |
| Explanation of Item:                                  |                 | eation is requesting a proclamation to recognize ch falls on Friday, March 20, 2020. |
| Actions Needed by Board:                              | Consider approv | ving the proclamation.   |
| Backup Attached:                                      | Memo and proc   | lamation.  |
| Is item time sensitive?                               | Ves □No         |  |
|   |                 | he meeting?  |
|   |                 |  |
| Cost of Agenda Item: \$0                              |                 |  |
| If this requires an experand certified by the Finance | ŕ               | een budgeted and are funds available  Yes  No  |
| <u> </u>  |                 |  |



#### Aldermen

Sabrina Bengel Jameesha Harris Bobby Aster Johnnie Ray Kinsey Barbara J. Best Jeffrey T. Odham

#### Foster Hughes, CPRE Director of Parks & Recreation



Dana E. Outlaw Mayor

Mark A. Stephens City Manager

Memo To:

Mayor and Board of Aldermen

From:

Foster Hughes, CPRE

**Director Parks and Recreation** 

Re:

Consider approving a Proclamation for Arbor Day 2020

#### **Background Information:**

Parks and Recreation is requesting a Proclamation to recognize Arbor Day, which falls on Friday, March 20, 2020. In 1967, the State Legislature ratified a bill in support of recognizing a particular day each year as Arbor Day. The first Friday following March 15<sup>th</sup> is designated as Arbor Day in North Carolina.

We will have a celebration on Arbor Day at Lawson Creek Park, at 11:00am. Several trees will be planted. Tree seedlings will also be given away.

#### **Recommendation:**

Consider approving the Arbor Day Proclamation.

If you have any questions concerning this matter, please let me know.



#### MAYOR'S OFFICE PROCLAMATION

- WHEREAS, Arbor Day is a national celebration of community tree growing, planting and care dating back to 1872; and
- WHEREAS, recognition of this important historical tradition and the practical as well as aesthetic value of trees is a year-long effort in New Bern; and
- WHEREAS, Arbor Day serves to acknowledge the good work of City employees, resident volunteers, local garden clubs, corporate participants and the many service groups involved in the preservation and expansion of our urban forest; and
- WHEREAS, Arbor Day reminds us all of the basic need for trees, such as they help clean the air, protect wildlife, save heating and cooling costs, conserve energy production, block pollution of rivers and streams, reduce soil erosion and provide a sense of comfort, shelter and spiritual well-being; and
- WHEREAS, trees in our City increase property values, enhance the economic vitality of business areas and comprise a visual record of New Bern's past as well as a plan for the future appearance of its streetscapes and landscapes,
- NOW THEREFORE, I, Dana E. Outlaw, Mayor of the City of New Bern, on behalf of the New Bern Board of Aldermen do hereby proclaim March 20, 2020 as

#### "ARBOR DAY"

in the City of New Bern and urge all citizens to celebrate its meaning by planting, replacing or protecting their trees and woodlands and by learning more about the proper selection, care and maintenance of trees to make them last longer for the benefit of this and future generations.

of New Bern this the 10<sup>th</sup> day of March in the Year of Our Lord Two Thousand and twenty.



|                            | Longe       | ity Awar | ds July - December 2019          |            |
|----------------------------|-------------|----------|----------------------------------|------------|
|                            |             |          |                                  | YEARS      |
| LAST NAME                  | FIRST NAME  | <u> </u> | DEPARTMENT                       | OF SERVICE |
| Bennett                    | M. Suzanne  | c        | Administration                   | 20         |
|                            |             |          |                                  |            |
| Brice                      | Kevin       | М        | Police                           | 5          |
| Cuthrell                   | Stephen     | L        | Public Works                     | 5          |
| Felicies                   | Michael     | Α        | Police                           | 5          |
| Garrard                    | Sharice     | L        | Police                           | 5          |
| Gillen                     | Michael     | G        | Public Utilities~Electric        | 5          |
| Gohn III                   | Barry       | L        | Fire                             | 5          |
| Guzman-Martinez            | Jonathan    |          | Public Utilities~Water Resources | 5          |
| lpock                      | Jeremy      | N        | Fire                             | 5          |
| Price                      | David       | G        | Public Works                     | 5          |
| Ramos                      | Mark        | Α        | Police                           | 5          |
| Weaver                     | Jeffrey     | Α        | Police                           | 5          |
| Wright                     | Teryl       | R        | Parks & Recreation               | 5          |
|                            |             |          |                                  |            |
| Allen                      | Robbie      | G        | Public Utilities~Electric        | 10         |
| Kosco                      | Christopher | Α        | Public Utilities~Water Resources | 10         |
| Lee                        | Matthew     | D        | Police                           | 10         |
| Long                       | Brian       | K        | Public Utilities~Water Resources | 10         |
| Upchurch                   | David       | W        | Police                           | 10         |
| Adama                      | D'-L-       |          |                                  |            |
| Adams                      | Ricky       | D        | Public Works                     | 15         |
| Bullock Jr.                | James       | M        | Parks & Recreation               | 15         |
| DiGiulio                   | Deborah     | L        | Human Resources                  | 15         |
| Hawkins                    | Tony        | R        | Public Utilities~Water Resources | 15         |
| King                       | Cheryl      | 0        | Public Utilities~Water Resources | 15         |
| Longmire<br>Morrison-Brown | Katrina     | D<br>E   | Police                           | 15         |
|                            | Marquie     |          | Police                           | 15         |
| Poole                      | Timothy     | M        | Police                           | 15         |
| Gaskins                    | Dalton      | L        | Public Utilities~Water Resources | 20         |
| Hargett                    | Monico      | J        | Police                           | 20         |
| Williams                   | Taurance    | F        | Parks & Recreation               | 20         |
| Louis                      |             |          | Dorlo 0 Dorosti                  |            |
| Lewis                      | James       | L        | Parks & Recreation               | 30         |
| Locklear                   | Robert      | V        | Fire                             | 30         |
| Mattocks                   | Veronica    | E        | Parks & Recreation               | 30         |
| RETIREES                   |             |          |                                  | YEARS      |
| LAST NAME                  | FIRST NAME  | М        | DEPARTMENT                       | OF SERVICE |
| Riegelsperger              | Nancy       | J        | Development Services             | 30         |
| Wilcutt, Jr.               | Willie      | С        | Police                           | 26         |



**Agenda Item Title:**Consider Adopting a Resolution to Initiate the Upset Bid Process for 208 Daniels Street

| <b>Date of Meeting:</b> 3/10/202 | 0                 | Ward # if applicable: 5   |
|----------------------------------|-------------------|---|
| Department: City Clerk           |                   | Person Submitting Item: Brenda Blanco   |
| Call for Public Hearing:         | □Yes⊠No           | Date of Public Hearing: N/A   |
| Evaloration of Itama             | An offen of CO 5  | 00 has been received for the 1 C200   |
| Explanation of Item:             |                   | 00 has been received for the purchase of 208<br>This represents more than 50% of the tax value. |
| Actions Needed by Board:         | Consider adopting | ng resolution   |
| Backup Attached:                 |                   | on, offer to purchase, maps and pictures of the operty card, and estimate of proceeds           |
|                                  |                   |   |
| Is item time sensitive?          |                   |   |
| will there be advocates/o        | opponents at the  | ne meeting?   Yes   No  |
| Cost of Agenda Item:             |                   |   |
|                                  | diture, has it b  | een budgeted and are funds available  |
| and certified by the Fina        |                   |   |
|                                  |                   |   |

#### Aldermen

Sabrina Bengel Jameesha Harris Robert V. Aster Johnnie Ray Kinsey Barbara J. Best Jeffrey T. Odham



300 Pollock Street, P.O. Box 1129 New Bern, NC 28563-1129 (252) 636-4000 Dana E. Outlaw
Mayor
Mark A. Stephens
City Manager
Brenda E. Blanco
City Clerk
Mary M. Hogan
Director of Finance

MEMO TO:

Mayor and Board of Aldermen

FROM:

Brenda Blanco, City Clerk

DATE:

February 28 2020

SUBJECT:

Offer to Purchase 208 Daniels Street

Jimmie Mangol has made an offer to purchase 208 Daniels Street for \$9,500.00. The tax value of the half-acre lot is \$18,000, and the offer represents more than 50% of the value. A mobile home is situated on the lot.

The property was acquired jointly by the City and County through tax foreclosure in August 2019. If the property is sold for the initial offer, the County will receive approximately \$6,529.85 of the proceeds, and the City will receive approximately \$2,970.15. These estimates take into account the cost of publishing the legal advertisement.

/beb

#### **RESOLUTION**

THAT WHEREAS, the City of New Bern and Craven County own certain real property identified as 208 Daniels Street, Craven County parcel identification number 8-018-063; and

WHEREAS, North Carolina General Statute § 160A-269 permits the City to sell property by upset bid after receipt of an offer for the property; and

WHEREAS, the City and Craven County have received an offer to purchase the above described property in the amount of \$9,500.00, submitted by Jimmie Mangol; and

WHEREAS, Jimmie Mangol has paid the required five percent (5%) deposit on the offer.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

- Section 1. The Board of Aldermen of the City of New Bern authorizes the sale of its interest in the property described above through the upset bid procedure of North Carolina General Statute § 160A-269.
- Section 2. The City Clerk shall cause a notice of the proposed sale to be published. The notice shall describe the property and the amount of the offer, and shall state the terms under which the offer may be upset.
- Section 3. Persons wishing to upset the offer that has been received shall submit a sealed bid with their offer to the office of the City Clerk within ten (10) days after the notice of sale is published. At the conclusion of the 10-day period, the City Clerk shall open the bids, if any, and the highest such bid will become the new offer. If there is more than one bid in the highest amount, the first such bid received will become the new offer.
- Section 4. If a qualifying higher bid is received, the City Clerk shall cause a new notice of upset bid to be published, and shall continue to do so until a 10-day period has passed without any qualifying upset bid having been received. At that time, the amount of the final high bid shall be reported to the Board of Aldermen.
- Section 5. A qualifying higher bid is one that raises the existing offer by not less than ten percent (10%) of the first \$1,000.00 of that offer and five percent (5%) of the remainder of that offer.
- Section 6. A qualifying higher bid must also be accompanied by a deposit in the amount of five percent (5%) of the bid; the deposit may be made in cash, cashier's check or

certified check. The City will return the deposit on any bid not accepted, and will return the deposit on an offer subject to upset bid if a qualifying higher bid is received. If the City and County accept the final high bid, the deposit of the final high bidder will be applied to the purchase price at closing, and if the final high bidder is unable to complete the purchase of the property, the deposit shall be forfeited.

Section 7. The terms of the final sale are:

- (a) The Board of Aldermen must approve the final high offer before the sale is closed, which it may do within thirty (30) days after the final upset bid period has passed; and
  - (b) The buyer must pay with cash at the time of closing.

Section 8. The City reserves the right to withdraw the property from sale at any time before the final high bid is accepted, and the right to reject all bids at any time, specifically including the initial offer.

Section 9. If no qualifying upset bid is received after the initial public notice, and if the offer set forth above has not been subsequently rejected, the offer set forth above is hereby accepted, and the appropriate city officials are authorized to execute the instruments necessary to convey the property to Jimmie Mangol.

ADOPTED THIS 10th DAY OF MARCH, 2020.

| DANA E. OUTLAW, MAYOR |  |
|-----------------------|--|
|                       |  |
|                       |  |

BRENDA E. BLANCO, CITY CLERK

#### NORTH CAROLINA

#### OFFER TO PURCHASE AND CONTRACT

#### **CRAVEN COUNTY**

| Jimmie Mangol , as Buyer, hereby offers to purchase and CRAVEN COUNTY and  | the   |
|--|-------|
| CITY OF NEW BERN, collectively as Seller, upon acceptance of said offer, agrees to sell and convey, all of that plot, piece or pa of land described below (hereafter referred to as the "Property"), upon the following terms and conditions:  | arcel |
| 1. REAL PROPERTY: Located in or near the City of New Bern, Craven County, North Carolina, being known as and n   | more  |
| particularly described as: Street Address: 208 Daniels Street  | потс  |
| Subdivision Name:  |       |
| Tax Parcel ID No.: 8-018-083   |       |
| Plat Reference:  |       |
| Being all of that property more particularly described in Deed Book 3582, Page 1242 in the Craven County Registry.   |       |
| 2. PURCHASE PRICE: The purchase price is \$9,500.00 and shall be paid as follows:  |       |
| (a) \$475.00 , EARNEST MONEY DEPOSIT with this offer by Acash bank check certified check to  | o be  |
| neld by Seller until the sale is closed, at which time it will be credited to Buyer, or until this contract is otherwise prop  | erly  |
| terminated. In the event this offer is not accepted, then all earnest monies shall be refunded to Buyer. In the event of breachthis contract by Sallan all accepted, then all earnest monies shall be refunded to Buyer.   | h of  |
| this contract by Seller, all earnest monies shall be refunded to Buyer upon Buyer's request In the event of breach of this contract by Buyer, then all earnest monies shall be forfitted to Seller upon Gull described t | tract |
| by Buyer, then all earnest monies shall be forfeited to Seller upon Seller's request, but such forfeiture shall not affect any or remedies available to Seller for such breach   | ther  |
| remedies available to Seller for such breach.  (b) \$\frac{9,025.00}{\text{CONDENSESS}}\$, BALANCE of the purchase price in cash or readily available funds at Closing.  |       |
| 3. CONDITIONS:   |       |
| (a) This contract is not subject to Buyer obtaining financing.   |       |
| (b) The Property must be in substantially the same or better condition at Closing as on the date of this offer, reasonable wear and excepted.  | tear  |
| (c) The Property is being sold subject to all liens and encumbrances of record, if any.  |       |
| (d) Other than as provided herein, the Property is being conveyed "as is"  |       |
| (e) This contract is subject to the provisions of G.S. §160A-269. Buyer acknowledges that this contract is subject to certain no   | otice |
| provisions and the rights in others to submit upset bids in accordance therewith.  |       |
| (f) Title shall be delivered at Closing by QUITCLAIM DEED  |       |
| 4. SPECIAL ASSESSMENTS: Seller makes no warranty or representation as to any pending or confirmed governmental spe   | cial  |
| assessments for sidewalk, paving, water, sewer, or other improvements on or adjoining the Property, or pending or confirmed owners association special assessments. Buyer shall take title subject to all pending assessments, if any.   | ers'  |
| 5. PAYMENT OF TAXES: Any ad valorem taxes to which the Property is subject shall be paid in their entirety by Buyer.   |       |
| 6. EXPENSES: Buyer shall be responsible for all costs with respect to any title search, title insurance, recording of the deed,  | and   |
| its legal fees. Seller shall pay for preparation of a deed and all other documents necessary to perform Seller's obligations under   | this  |
| agreement, and for any excise tax (revenue stamps) required by law.  | LIXID |
| 7. EVIDENCE OF TITLE: Not Applicable.  |       |
| 8. CLOSING: Closing shall be defined as the date and time of recording of the deed. All parties agree to execute any and   | all   |
| documents and papers necessary in connection with Closing and transfer of title within thirty (30) days of the granting of figure 100 to the sale by Crosser Countries Provided Countries and transfer of title within thirty (30) days of the granting of figure 100 to the sale by Crosser Countries Provided Countries and transfer of title within thirty (30) days of the granting of figure 100 to the sale by Crosser Countries Provided Countries and transfer of title within thirty (30) days of the granting of figure 100 to the sale by Crosser Countries and transfer of title within thirty (30) days of the granting of figure 100 to the sale by Crosser Countries and transfer of title within thirty (30) days of the granting of figure 100 to the sale by Crosser Countries and transfer of title within thirty (30) days of the granting of figure 100 to the sale by Crosser Countries and the sale | inal  |
| approval of the sale by Craven County's Board of Commissioners and the City of New Bern's Board of Aldermen pursuant to C §160A-269. The deed is to be made to Jimmie Mangol   | Э.S.  |
| 9. POSSESSION: Unless otherwise provided herein, possession shall be delivered at Closing.   |       |
| 10. PROPERTY INSPECTION, APPRAISAL, INVESTIGATION:   |       |
| (a) This contract is not subject to inspection, appraisal or investigation, as the Property is being bought "as is". Seller makes  | s no  |
| representation as to water, sewer, conditions, title, access, or fitness for any intended use.   | 110   |
| (b) <u>CLOSING SHALL CONSTITUTE ACCEPTANCE OF THE PROPERTY IN ITS THEN EXISTING CONDITION</u>  |       |
| 11. RIGHT OF ENTRY, RESTORATION AND INDEMNITY: Buyer and Buyer's agents and contractors shall not have the righ  | ıt to |
| enter upon the Property for any purpose without advance written permission of the Seller. If such permission is given, Buyer and hold Seller harmless from all less demand a line with a line of the Seller.   | will  |
| indemnify and hold Seller harmless from all loss, damage, claims, suits or costs, which shall arise out of any contract, agreement, or injudy person or property as a result of any activities of Buyer and Buyer's agents and contractors relating to the Property. This indemnity is a suit of any activities of Buyer and Buyer's agents and contractors relating to the Property.  | jury  |
| shall survive this contract and any termination hereof.  | nity  |
| 12. OTHER PROVISIONS AND CONDITIONS: (ITEMIZE ALL ADDENDA TO THIS CONTRACT AND ATTAC   | CH    |
| HERETO.): None.  | C11   |
| Buyer Initials  Seller Initials  |       |
|  |       |

- 13. RISK OF LOSS: The risk of loss or damage by fire or other casualty prior to Closing shall be upon Seller.
- 14. ASSIGNMENTS: This contract may not be assigned without the written consent of all parties, but if assigned by agreement, then this contract shall be binding on the assignee and the assignee's heirs, successors or assigns (as the case may be).
- 15. PARTIES: This contract shall be binding upon and shall inure to the benefit of the parties, i.e., Buyer and Seller and their heirs, successors and assigns. As used herein, words in the singular include the plural and the masculine includes the feminine and neuter genders, as appropriate.
- 16. SURVIVAL: If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the Closing, it shall survive the Closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.
- 17. ENTIRE AGREEMENT: This contract contains the entire agreement of the parties and there are no representations, inducements or other provisions other than those expressed herein. All changes, additions or deletions hereto must be in writing and signed by all parties.
- 18. NOTICE AND EXECUTION: Any notice or communication to be given to a party herein may be given to the party or to such party's agent. This offer shall become a binding contract (the "Effective Date") when signed by both Buyer and Seller and such signing is communicated to the offering party. This contract is executed under seal in signed multiple originals, all of which together constitute one and the same instrument, with a signed original being retained by each party, and the parties adopt the word "SEAL" beside their signatures below.

| BUYER:   |                | SELLER           |        |
|--|----------------|------------------|--------|
| (If an individual)   |                | CRAVEN COUNTY    |        |
| Name: Jimmie Mangol  Date: February 17, 2020  Address: 129 Lewis Farm Road  New Bern, NC 28560 | (SEAL)<br><br> | By: Its: Date:   |        |
| Phone: (If a business entity)  |                | CITY OF NEW BERN |        |
| Ву:  | (SEAL)         | Ву:              | (SEAL) |
| Its:   | ····           | Its:             |        |
| Date:  | _              | Date:            |        |
| Address:   | _              |                  |        |
| Phone:   | <del></del>    |                  |        |

#### Craven County Geographic Information System

Craven County does NOT warrant the information shown on this page and should be used ONLY for tax assessment purposes.

This report was created by Craven County GIS reporting services on 2/17/2020 2:49:38 PM

Parcel ID:

8-018 -063

Owner:

**CRAVEN COUNTY & NEW BERN-CITY** 

Mailing Address:

406 CRAVEN ST NEW BERN NC 28560

**Property Address:** 

208 DANIELS ST

**Description:** 

4-5-6 BLK 1 OAKSIDE

Lot Description:

150 X 150

Subdivision:

Assessed Acreage :

0.504

Calculated Acreage: 0.520

Deed Reference:

3582-1242

Recorded Date:

8 28 2019

**Recorded Survey:** 

**Estate Number:** 

Land Value:

CALL

Tax Exempt:

Yes

★ Improvement Value: APPRAISAL

APPRAISAL OFFICE # of Improvements:

1

Total Value :

(252) 636-6640

City Name:

**NEW BERN** 

Fire tax District:

**Drainage District:** 

**Special District:** 

Land use:

**RES - MFG HOME AS REAL PROP** 

#### **Recent Sales Information**

| SALE DATE | Sellers Name               | Buyers Name                   | Sale Type            | Sale Price |
|-----------|----------------------------|-------------------------------|----------------------|------------|
| 8/28/2019 | WILLIAMS, JUANITA M<br>HRS | CRAVEN COUNTY & NEW BERN-CITY | STRAIGHT<br>TRANSFER | \$4,500    |
| 7/1/1994  | BANKS, LEROY SR            | WILLIAMS, JUANITA M           | STRAIGHT<br>TRANSFER | \$7,500    |
| 7/1/1994  | WILLIAMS, JUANITA M        | WILLIAMS, JUANITA M HRS       | STRAIGHT<br>TRANSFER | \$0        |

#### List of Improvements to Site

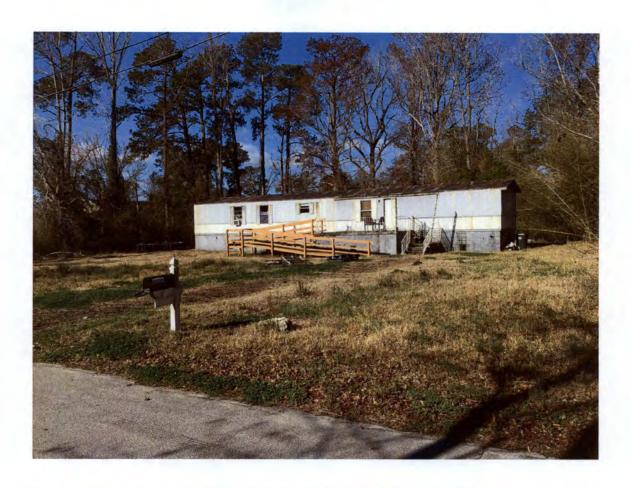
| Type of Structure             | Year Built | Base Area 1st Floor | Value                       |
|-------------------------------|------------|---------------------|-----------------------------|
| MANUFACTURED HOME - SINGLE WD | 1993       | 1064                | CALL<br>APPRAISAL<br>OFFICE |

\*Will be reevaluated by end of March, 2021. Current tax value is \$18,000 per Glen @ County.





# Craven County GIS PID 8-018-063







# ESTIMATE OF DIVISION OF PROCEEDS UPON RECEIPT OF INITIAL OFFER

Property: 208 DANIELS STREET

| Offer Amount<br>Less: Reimb to City for publication of notice of offer (annrox)        |           | v                              | 205 00                   | ,<br>6 | \$ 9,500.00          |
|--|-----------|--------------------------------|--------------------------|--------|----------------------|
| Balance  |           | ጉ                              | 703.00                   | 9,     | 9,295.00             |
| County cost reimbursement<br>City cost reimbursement                                   |           | ∽                              | 2,576.61                 | , 2,   | 2,576.61             |
| Remaining Balance  |           |                                |                          | , 6    | 6,718.39             |
| County Taxes at Foreclosure<br>City Taxes/Priority Liens at Foreclosure<br>Total Taxes | <b>φφ</b> | 1,019.61<br>713.18<br>1,732.79 | 58.842% \$<br>41.158% \$ |        | 3,953.24<br>2,765.15 |
| County Total<br>City Total   | ጭ ጭ       | 6,529.85<br>2,970.15           |                          |        |                      |



## **Agenda Item Title:**

Consider Adopting a Resolution to Initiate the Upset Bid Process for 1509 Washington Street

| Date of Meeting: 03/102020  Department: City Clerk |  | Ward # if applicable: 5  Person Submitting Item: Brenda Blanco                        |
|--|--|---|
|  |  |   |
| F14'   | An offen of \$2.0  | 100 has been received for the numbers of 1500   |
| Explanation of Item:                               | An offer of \$3,000 has been received for the purchase of 1509 Washington Street. This represents 50% of the tax value. The Board voted at its February 25th meeting to unfreeze this property and permit the submission of a bid. |   |
| Actions Needed by Board:                           | Consider adopti  | ng resolution   |
| Backup Attached:                                   | 1 '  | on, offer to purchase, maps and pictures of the operty card, and estimate of proceeds |
|  |  |   |
| Is item time sensitive?                            | ]Yes ⊠No   |   |
| Will there be advocates/o                          | opponents at t   | he meeting? □Yes ☒ No   |
|  |  |   |
| Cost of Agenda Item:                               |  |   |
| If this requires an expenand certified by the Fina | •  | een budgeted and are funds available  ☐Yes ☐ No                                       |

#### Aldermen

Sabrina Bengel Jameesha Harris Robert V. Aster Johnnie Ray Kinsey Barbara J. Best Jeffrey T. Odham



300 Pollock Street, P.O. Box 1129 New Bern, NC 28563-1129 (252) 636-4000 Dana E. Outlaw
Mayor
Mark A. Stephens
City Manager
Brenda E. Blanco
City Clerk
Mary M. Hogan
Director of Finance

MEMO TO:

Mayor and Board of Aldermen

FROM:

Brenda Blanco, City Clerk

DATE:

February 28 2020

SUBJECT:

Offer to Purchase 1509 Washington Street

Robert Carter made an offer to purchase 1509 Washington Street for \$3,000.00. The tax value of the vacant, almost 1/4-acre lot is \$6,000, and the offer represents 50% of the value. The Board voted at its February 25, 2020 meeting to unfreeze this lot and authorize staff to accept a bid. The property was acquired by the City in October 2006 through tax foreclosure.

/beb

#### **RESOLUTION**

THAT WHEREAS, the City of New Bern owns certain real property identified as 1509 Washington Street, Craven County parcel identification number 8-013-020; and

WHEREAS, North Carolina General Statute § 160A-269 permits the City to sell property by upset bid after receipt of an offer for the property; and

WHEREAS, the City has received an offer to purchase the above described property in the amount of \$3,000.00, submitted by Robert E. Carter; and

WHEREAS, Robert E. Carter has paid the required five percent (5%) deposit on the offer.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

- Section 1. The Board of Aldermen of the City of New Bern authorizes the sale of the property described above through the upset bid procedure of North Carolina General Statute § 160A-269.
- Section 2. The City Clerk shall cause a notice of the proposed sale to be published. The notice shall describe the property and the amount of the offer, and shall state the terms under which the offer may be upset.
- Section 3. Persons wishing to upset the offer that has been received shall submit a sealed bid with their offer to the office of the City Clerk within ten (10) days after the notice of sale is published. At the conclusion of the 10-day period, the City Clerk shall open the bids, if any, and the highest such bid will become the new offer. If there is more than one bid in the highest amount, the first such bid received will become the new offer.
- Section 4. If a qualifying higher bid is received, the City Clerk shall cause a new notice of upset bid to be published, and shall continue to do so until a 10-day period has passed without any qualifying upset bid having been received. At that time, the amount of the final high bid shall be reported to the Board of Aldermen.
- Section 5. A qualifying higher bid is one that raises the existing offer by not less than ten percent (10%) of the first \$1,000.00 of that offer and five percent (5%) of the remainder of that offer.

Section 6. A qualifying higher bid must also be accompanied by a deposit in the amount of five percent (5%) of the bid; the deposit may be made in cash, cashier's check or certified check. The City will return the deposit on any bid not accepted, and will return the deposit on an offer subject to upset bid if a qualifying higher bid is received. If the City accepts the final high bid, the deposit of the final high bidder will be applied to the purchase price at closing.

Section 7. The terms of the final sale are:

- (a) The Board of Aldermen must approve the final high offer before the sale is closed, which it may do within thirty (30) days after the final upset bid period has passed; and
  - (b) The buyer must pay with cash at the time of closing.

Section 8. The City reserves the right to withdraw the property from sale at any time before the final high bid is accepted, and the right to reject all bids at any time, specifically including the initial offer.

Section 9. If no qualifying upset bid is received after the initial public notice, and if the offer set forth above has not been subsequently rejected, the offer set forth above is hereby accepted, and the appropriate city officials are authorized to execute the instruments necessary to convey the property to Robert E. Carter.

ADOPTED THIS 10th DAY OF MARCH, 2020.

BRENDA E. BLANCO, CITY CLERK

#### OFFER TO PURCHASE AND CONTRACT

#### **CRAVEN COUNTY**

| Robert E. Carter   | as Buyer, hereby offers to purchase and CITY OF NEW BERN, as Seller,                |
|--|---|
| upon acceptance of said offer, agrees to sell and convey,      | all of that plot, piece or parcel of land described below (hereafter referred to    |
| as the "Property"), upon the following terms and condition     | ns:   |
|  | of New Bern, Craven County, North Carolina, being known as and more                 |
| particularly described as:                                     |   |
| Street Address: 1509 Washington Street                         |   |
| Subdivision Name: Tax Parcel ID No.:                           |   |
| Tax Parcel ID No.:   |   |
| Plat Reference:  | 0540 - 0044   |
| Being all of that property more particularly described in D    | Deed Book 2518, Page 0844 in the Craven County Registry.                            |
| 2. PURCHASE PRICE: The purchase price is \$3,000               |   |
|  | DEPOSIT with this offer by Acash bank check certified check to be                   |
|  | ne it will be credited to Buyer, or until this contract is otherwise properly       |
|  | en all earnest monies shall be refunded to Buyer. In the event of breach of         |
|  | funded to Buyer upon Buyer's request In the event of breach of this contract        |
|  | to Seller upon Seller's request, but such forfeiture shall not affect any other     |
| remedies available to Seller for such breach.                  |   |
|  | price in cash or readily available funds at Closing.                                |
| 3. CONDITIONS:   |   |
| (a) This contract is not subject to Buyer obtaining finance    |   |
| excepted.  | ter condition at Closing as on the date of this offer, reasonable wear and tear     |
| (c) The Property is being sold subject to all liens and enc    |   |
| (d) Other than as provided herein, the Property is being c     |   |
|  | 50A-269. Buyer acknowledges that this contract is subject to certain notice         |
| provisions and the rights in others to submit upset bid        |   |
| (f) Title shall be delivered at Closing by QUITCLAIM I         |   |
| 4. SPECIAL ASSESSMENTS: Seller makes no warra                  | anty or representation as to any pending or confirmed governmental special          |
| assessments for sidewalk, paving, water, sewer, or other is    | mprovements on or adjoining the Property, or pending or confirmed owners'           |
| association special assessments. Buyer shall take title sub    |   |
| 5. PAYMENT OF TAXES: Any ad valorem taxes to v                 | which the Property is subject shall be paid in their entirety by Buyer.             |
|  | s with respect to any title search, title insurance, recording of the deed and its  |
|  | d all other documents necessary to perform Seller's obligations under this          |
| agreement, and for any excise tax (revenue stamps) require     | ed by law.  |
| 7. EVIDENCE OF TITLE: Not Applicable.                          |   |
| 8. CLOSING: Closing shall be defined as the date an            | nd time of recording of the deed. All parties agree to execute any and all          |
| documents and papers necessary in connection with Cle          | osing and transfer of title within thirty (30) days of the granting of final        |
|  | d of Aldermen pursuant to G.S. §160A-269. The deed is to be made to                 |
| Robert E. Carter   |   |
| 9. POSSESSION: Unless otherwise provided herein, po            |   |
| 10. PROPERTY INSPECTION, APPRAISAL, INVE                       |   |
| (a) This contract is not subject to inspection, appraisal      | or investigation, as the Property is being bought "as is." Seller makes no          |
| representation as to water, sewer, conditions, title, access,  |   |
|  | E OF THE PROPERTY IN ITS THEN EXISTING CONDITION.                                   |
|  | MNITY: Buyer and Buyer's agents and contractors shall not have the right to         |
|  | e written permission of the Seller. If such permission is given, Buyer will         |
|  | claims, suits or costs, which shall arise out of any contract, agreement, or injury |
| to any person or property as a result of any activities of Buy | yer and Buyer's agents and contractors relating to the Property. This indemnity     |
| shall survive this contract and any termination hereof.        |   |
|  | (ITEMIZE ALL ADDENDA TO THIS CONTRACT AND ATTACH                                    |
| HERETO.): None.  |   |
| Buyer Initials QEC   | Seller Initials   |
|  |   |

- 13. RISK OF LOSS: The risk of loss or damage by fire or other casualty prior to Closing shall be upon Seller.
- 14. ASSIGNMENTS: This contract may not be assigned without the written consent of all parties, but if assigned by agreement, then this contract shall be binding on the assignee and the assignee's heirs, successors or assigns (as the case may be).
- 15. PARTIES: This contract shall be binding upon and shall inure to the benefit of the parties, i.e., Buyer and Seller and their heirs, successors and assigns. As used herein, words in the singular include the plural and the masculine includes the feminine and neuter genders, as appropriate.
- 16. SURVIVAL: If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the Closing, it shall survive the Closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.
- 17. ENTIRE AGREEMENT: This contract contains the entire agreement of the parties and there are no representations, inducements or other provisions other than those expressed herein. All changes, additions or deletions hereto must be in writing and signed by all parties.
- 18. NOTICE AND EXECUTION: Any notice or communication to be given to a party herein may be given to the party or to such party's agent. This offer shall become a binding contract (the "Effective Date") when signed by both Buyer and Seller and such signing is communicated to the offering party. This contract is executed under seal in signed multiple originals, all of which together constitute one and the same instrument, with a signed original being retained by each party, and the parties adopt the word "SEAL" beside their signatures below.

| BUYER:   | SELLER           |     |
|--|------------------|-----|
| (If an individual)   | CITY OF NEW BERN |     |
| Name: Robert E. Carter  Date: 02/20/2020 3 2 2020 REC  Address: 2002 Evans Street  New Bern, NC 28562  Phone: 252-571-3503 | EAL) By:(SE      | AL) |
| (If a business entity)   |                  |     |
| By: Its: Address:  | (SEAL)           |     |
| Phone:   |                  |     |

# Craven County Geographic Information System

Craven County does NOT warrant the information shown on this page and should be used ONLY for tax assessment purposes. This report was created by Craven County GIS reporting services on 2/20/2020 10:04:45 AM

Parcel ID:

8-013 -020

Owner:

NEW BERN-CITY OF

Mailing Address:

PO BOX 1129 NEW BERN NC 28563

**Property Address:** 

1509 WASHINGTON ST

**Description:** 

1507-09 WASHINGTON

Lot Description:

Subdivision:

Assessed Acreage :

0.231

Calculated Acreage: 0.230

Deed Reference:

2518-0844

Recorded Date:

10 12 2006

**Recorded Survey:** 

**Estate Number:** 

Land Value:

\$6,000

Tax Exempt:

Yes

Improvement Value : \$0

# of Improvements: 0

**Total Value:** 

\$6,000

City Name:

**NEW BERN** 

Fire tax District:

**Drainage District:** 

**Special District:** 

Land use:

**RESIDENTIAL - ONE FAMILY UNIT** 

**Recent Sales Information** 

SALE DATE

Sellers Name

**Buyers Name** 

Sale Type

Sale Price

10/12/2006

DAVIS, MARTHA J HRS

**NEW BERN-CITY OF** 

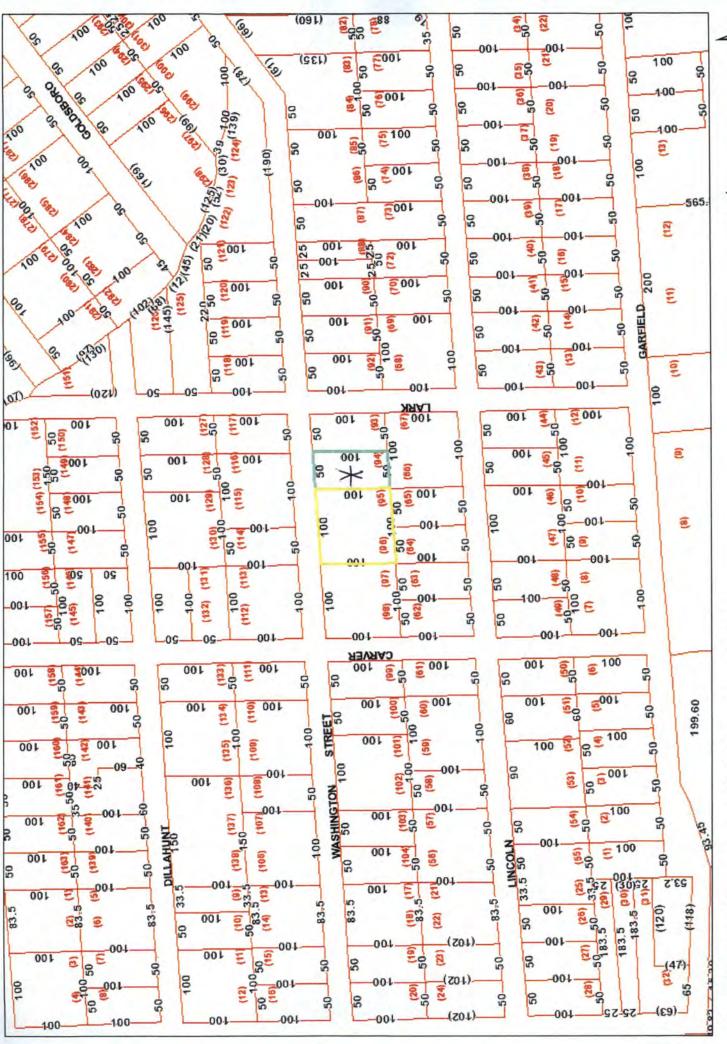
STRAIGHT

\$0

**TRANSFER** 

List of Improvements to Site

No improvements listed for this parcel





inch = 130 feet







# **AGENDA ITEM COVER SHEET**



**Agenda Item Title:**Consider Adopting a Resolution Approving a Contract with Moffatt & Nichol.

| Date of Meeting: March 10, 2020   |  | Ward # if applicable: N/A   |  |  |
|---|--|---|--|--|
| Department: Development Services  |  | Person Submitting Item: Jeff Ruggieri, Director of Development Services |  |  |
| Call for Public Hearing: □Yes⊠No  |  | Date of Public Hearing: N/A   |  |  |
|   |  |   |  |  |
| Explanation of Item:  | The City previously received nine (9) qualified responses to a Request for Qualifications (RFQ) for Developing a Resiliency and Hazard Mitigation Plan. Moffatt & Nichol was selected to be the most qualified and has submitted a contract for \$140,000. |   |  |  |
| Actions Needed by Board:  | Consider Adopting a Resolution Approving a Contract with Moffatt & Nichol.   |   |  |  |
| Backup Attached:  | Memo, Resolution, Contract   |   |  |  |
|   |  |   |  |  |
| Is item time sensitive? ⊠Yes □No  |  |   |  |  |
| Will there be advocates/opponents at the meeting? □Yes □ No                   |  |   |  |  |
|   |  |   |  |  |
| Cost of Agenda Item: \$140,000.00   |  |   |  |  |
| If this requires an expenditure, has it been budgeted and are funds available |  |   |  |  |
| and certified by the Finance Director?   Yes   No                             |  |   |  |  |

**Additional Notes:** 



303 First Street, P.O. Box 1129 New Bern, NC 28563 (252)639-7587

# **MEMORANDUM**

TO:

Mayor Dana Outlaw, City of New Bern Board of Aldermen

FROM:

Jeff Ruggieri, Director Development Services

DATE:

February 28, 2020

**SUBJECT:** 

Consider Adopting a Resolution Approving a Contract with Moffatt &

Nichol.

The development of a Citywide Resiliency and Hazard Mitigation Plan is needed to increase community resilience to sea-level rise and climate change through an engaged stakeholder process. The goal of the plan is to build the capacity of the New Bern community to avoid, prepare for, withstand, recover, and build back better after hazard events, with specific focus on underserved and historic communities. The plan will develop recommendations and prioritize implementation steps to provide an opportunity to empower and benefit the community. New Bern seeks to maintain its unique cultural identify in the face of natural disasters and allow for economic continuity and quick recovery if another natural disaster occurs.

The City received submittals to a Request for Qualifications (RFQ) to develop a Resiliency and Hazard Mitigation Plan for the City of New Bern, Moffatt & Nichol was selected to be the most qualified firm.

Staff recommends the Board consider approving a Resolution Approving a Contract with Moffatt & Nichol to develop a Resiliency and Hazard Mitigation Plan for the City of New Bern.

Please contact Jeff Ruggieri at 639-7587 should you have questions or need additional information.

#### RESOLUTION

THAT WHEREAS, a Request for Qualifications ("RFQ") to develop a Resiliency and Hazard Mitigation Plan was publicly advertised. From the responses received, Moffatt & Nichol was selected to be the most qualified firm; and

WHEREAS, the City Manager has since negotiated pricing for a contract not to exceed a cost of \$140,000 and recommends acceptance of the proposed contract with Moffatt & Nichol.

# NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

That the Professional Services Agreement between the City of New Bern and Moffatt & Nichol, Inc., a copy of which is attached hereto and incorporated herein by reference, is hereby approved, and the City Manager is authorized to execute duplicate originals of said agreement on behalf of the City.

ADOPTED THIS 10th DAY OF MARCH, 2020.

|                              | DANA E. OUTLAW, MAYOR |  |
|------------------------------|-----------------------|--|
| BRENDA E. BLANCO, CITY CLERK | _                     |  |

# **COUNTY OF CRAVEN**

THIS AGREEMENT (hereinafter the "Agreement") is made and entered into this 10<sup>th</sup> day of March, 2020, by and between the City of New Bern, a North Carolina municipal corporation, hereinafter referred to as the "CITY", and **Moffatt & Nichol, Inc.**, hereinafter referred to as the "CONSULTANT".

# WITNESSETH

WHEREAS, the CITY desires to retain and engage the CONSULTANT to perform certain professional services hereinafter described, and further that the parties hereto desire to reduce the terms of this Agreement to writing:

NOW THEREFORE, for and in consideration of the mutual promises to each other, as hereinafter set forth, the parties hereto do mutually agree as follows:

- 1. <u>Term of Agreement</u>. The term of this Agreement shall commence as of the date set forth above and continue through to the completion of the project unless sooner terminated as provided herein.
- 2. <u>Consultant's Services</u>. The CONSULTANT hereby agrees to perform, in a manner satisfactory to the CITY, professional and timely services as set forth in Exhibit "A" and Federal Contracting Provisions attached hereto and incorporated herein by this reference. The parties hereto acknowledge that the terms outlined in Exhibit "A" shall be valid and enforceable to the extent they are not inconsistent with the provisions as set forth herein, and to the extent that they are inconsistent, the provisions as set forth in this Agreement shall control. The parties hereto further agree that the terms, conditions and requirements as set forth in any Request for Qualification ("RFQ") put forth by CITY and responded to by CONSULTANT shall be binding upon the parties to the extent that they do not conflict with the provisions as set forth herein, said RFQ, if applicable, being attached hereto as Exhibit "B" and incorporated herein by this reference.
- 3. <u>Compensation to Consultant</u>. The CITY hereby agrees to pay to CONSULTANT the amount not to exceed **One Hundred Forty Thousand dollars (\$140,000)** for services as provided herein. In the event that CONSULTANT should fail to provide the services as set forth above, CITY shall be entitled to a refund of its payment(s) to CONSULTANT. Payment will be made within 30 days after receipt of an approved invoice.
- 4. <u>Termination</u>. CITY shall have the right to terminate this Agreement at any time and without cause upon thirty (30) days written notice to the other party.
- 5. Records. The CITY has the right to audit all records pertaining to this Agreement both during its performance and after its completion. Further, upon termination of this Agreement, the CONSULTANT shall deliver to the CITY all records, notes, memorandum, data, documents or any other

materials produced by CONSULTANT in connection with services rendered pursuant to this Agreement. If compensation for expenses shall be provided to CONSULTANT, the CONSULTANT shall maintain all expense charge documents for a period of three (3) years following the completion of this agreement and said documents shall only be forwarded to the CITY upon request.

- 6. Ownership of Documents. The CONSULTANT agrees that all materials and documents developed pursuant to this Agreement shall be the exclusive property of the CITY, and the CONSULTANT shall retain no property or copyright interest therein. Further, upon termination of this Agreement, the CONSULTANT shall deliver to the CITY all records, notes, memorandum, data, documents or any other materials received or obtained from the CITY in connection with services rendered pursuant to this Agreement.
- Independent Consultant. This Agreement does not create an employee/employer relationship between the parties. It is the intention of the parties that the CONSULTANT will be an independent consultant and not the CITY's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the federal Internal Revenue Code, the provisions of the North Carolina revenue and taxation laws, the North Carolina Wage and Hour Act, the North Carolina Workers' Compensation Act, and the provisions of the North Carolina Employment Security Law. The CONSULTANT will retain sole and absolute discretion in the judgment of the manner and means of carrying out the CONSULTANT's activities and responsibilities hereunder. The CONSULTANT agrees that he/she/it is a separate and independent enterprise from the CITY; and that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the services described herein. This Agreement shall not be construed as creating any joint employment relationship between the CONSULTANT and the CITY, and the CITY will not be liable for any obligation incurred by the CONSULTANT, including but not limited to unpaid minimum wages and/or overtime premiums.
- Indemnity. The CONSULTANT shall release, indemnify, keep and save harmless the CITY, its agents, officials and employees, from any and all responsibility or liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether agents, officials or employees of the CITY or third persons, and to all property proximately caused by, incident to, resulting from, arising out of, or occurring in connection with, directly or indirectly, the performance or nonperformance by CONSULTANT (or by any person acting for CONSULTANT or for whom CONSULTANT is or is alleged to be in any way responsible), whether such claim may be based in whole or in part upon contract, tort (including alleged active or passive negligence or participation in the wrong), or upon any alleged breach of any duty or obligation on the part of CONSULTANT, its agents, officials and employees or otherwise. The provisions of this Section shall include any claims for equitable relief or for damages (compensatory or punitive) against the CITY, its agents, officials, and employees including alleged injury to the business of any claimant and shall include any and all losses, damages, injuries, settlements, judgments, decrees, awards, fines, penalties, claims, costs and expenses. Expenses as used herein shall include without limitation the costs incurred by the CITY, its agents, officials and employees, in connection with investigating any claim or defending any action, and shall also include reasonable attorneys' fees by reason of the assertion of any such claim against the CITY, its agents, officials or employees. The provisions of this Section shall also include any claims for losses, injuries or damages, and wages or overtime compensation due the CONSULTANT's

employees in rendering services pursuant to this Agreement, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act or any other federal or state law. The intention of the parties is to apply and construe broadly in favor of the CITY the foregoing provisions subject to the limitations, if any, set forth in N.C.G.S. 22B-1.

9. <u>Representatives of the Parties.</u> Amanda Ohlensehlen, Community & Economic Development Manager, is designated as the CITY's contract administrator for this Agreement. The contract administrator shall work with requesting department for monitoring the CONSULTANT's performance, coordinating the CONSULTANT's activities, approving all administrative requests by the CONSULTANT and approving all payments to the CONSULTANT pursuant to this Agreement. Further, any notice required to the CITY under this Agreement shall be sufficient if mailed to the CITY by certified mail as indicated below:

Amanda Ohlensehlen, Community & Economic Development Manager City of New Bern P.O. Box 1129 New Bern, NC 28563

shall be the CONSULTANT's representative for this Agreement. Any notice required to the CONSULTANT under this Agreement shall be sufficient if mailed to the CONSULTANT by certified mail as indicated below:

Moffatt & Nichol, Inc. 4700 Falls of Neuse, Suite 300 Raleigh, NC 27609

- 10. Other Laws and Regulations. CONSULTANT will comply with any and all applicable federal, state and local standards, regulations, laws, statutes and ordinances including those regarding toxic, hazardous and solid wastes and any pollutants; public and private nuisances; health or safety; and zoning, subdivision or other land use controls. CONSULTANT will take all reasonably necessary, proper or required safety, preventative and remedial measures in accordance with any and all relations and directives from the North Carolina Department of Human Resources, the United States Environmental Protection Agency, the North Carolina Department of Environmental Management, Health Departments, and any other federal, state or local agency having jurisdiction, to ensure the prompt prevention or cessation (now or in the future) of violations of either the applicable provisions of such standards, regulations, laws, statutes, and ordinances or any permits or conditions issued CONSULTANT specifically acknowledges and agrees that CONSULTANT, and any subconsultants it uses, has complied with and shall continue to comply with the provisions of the federal E-Verify program in compliance with Article 2 of Chapter 64 of the North Carolina General Statutes. CONSULTANT shall maintain adequate safeguards with respect to sensitive customer information in conformance with and pursuant to 16 C.F.R. §681.1 and in accordance with N.C. Gen. Stat. §132-1.10 and §75-65.
  - 11. <u>Insurance Requirements</u>.
  - A. <u>Commercial General Liability</u>

- 1. CONSULTANT shall maintain Commercial General Liability (CGL) and if necessary, Commercial Umbrella Liability insurance with a total limit of not less than \$1,000,000.00 each occurrence for bodily injury and property damage. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location or the general aggregate shall be twice the required limit.
- 2. CGL insurance shall be written on Insurance Services Office (ISO) "occurrence" form CG 00 01 covering Commercial General Liability or its equivalent and shall cover the liability arising from premises, operations, independent CONSULTANTs, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
- 3. The City of New Bern, its officers, officials, agents, and employees are to be covered as additional insureds under the CGL by endorsement CG 20 10 or CG 20 33 AND CG 20 37 or an endorsement providing equivalent coverage as respects to liability arising out of activities performed by or on behalf of the CONSULTANT; products and completed operations of the CONSULTANT; premises owned, leased or used by the CONSULTANT; and under the commercial umbrella, if any. The coverage shall contain no special limitations on the scope of protection afforded to the City of New Bern, its officers, officials, agents, and employees.
- 4. There shall be no endorsement or modification of the CGL or Umbrella Liability limiting the scope of coverage for liability arising from explosion, collapse, underground property damage, or damage to the named insured's work, when those exposures exist.
- 5. The CONSULTANT's Commercial General Liability insurance shall be primary as respects the City of New Bern, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by the City of New Bern, its officers, officials, and employees shall be excess of and not contribute with the CONSULTANT's insurance.
- 6. The insurer shall agree to waive all rights of subrogation against the City of New Bern, its officers, officials, agents and employees for losses arising from work performed by the CONSULTANT for the City of New Bern.

# B. Workers' Compensation and Employer's Liability

- 1. CONSULTANT shall maintain Workers' Compensation as required by the general statutes of the State of North Carolina and Employer's Liability Insurance.
- 2. The Employer's Liability, and if necessary, Commercial Umbrella Liability insurance shall not be less than \$500,000.00 each accident for bodily injury by accident, \$500,000.00 each employee for bodily injury by disease, and \$500,000.00 policy limit.
- 3. The insurer shall agree to waive all rights of subrogation against the City of New Bern, its officers, officials, agents and employees for losses arising from work performed by the CONSULTANT for the City of New Bern.
- 4. The U.S. Longshore and Harborworkers Compensation Act endorsement shall be attached to the policy when the services will be on or in close proximity to navigable waterways.
- 5. The Maritime Coverage endorsement (WC 00 02 01) shall be attached to the policy when the contracted services involve the use of watercraft.

NOTE: Additional requirements needed if you have a borrowed servant, offshore platforms or federal act situations. (Federal Acts such as the Defense Base Act, Migrant and Seasonal Agricultural Worker Protection Act, and the Federal Coal Mine Health and Safety Act, etc.)

# C. <u>Business Auto Liability</u>

- 1. CONSULTANT shall maintain Business Auto Liability and, if necessary, Commercial Umbrella Liability insurance with a limit of not less than \$1,000,000.00 each accident.
- 2. Such insurance shall cover liability arising out of any auto, including owned, hired, and non-owned autos.
- 3. Business Auto coverage shall be written on ISO form CA 00 01, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in ISO form CA 00 01.
- 4. Pollution liability coverage equivalent to that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48) shall be provided, and the Motor Carrier Act endorsement (MCS 90) shall be attached when those exposures exist.
- 5. CONSULTANT waives all rights against the City of New Bern, its officers, officials, agents and employees for recovery of damages to the extent these damages are covered by the business auto liability or commercial umbrella liability insurance obtained by CONSULTANT pursuant to Section 11.C.1 of this agreement.
- 6. The CONSULTANT's Business Auto Liability insurance shall be primary as the City of New Bern, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by the City of New Bern, its officers, officials, and employees shall be excess of and not contribute with the CONSULTANT's insurance.

# D. <u>Professional Liability Insurance</u>

- 1. CONSULTANT shall maintain in force for the duration of this contract professional liability or errors and omissions liability insurance appropriate to the CONSULTANT's profession. Coverage as required in this paragraph shall apply to liability for a professional error, act, or omission arising out of the scope of the CONSULTANT's services as defined in this contract. Coverage shall be written subject to limits of not less than \$1,000,000.00 per claim.
- 2. If coverage required in paragraph 1. above is written on a claims-made basis, the CONSULTANT warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 (two) years beginning from the time that work under the contract is complete.

# E. Deductibles and Self-Insured Retentions

1. The CONSULTANT shall be solely responsible for the payment of all deductibles to which such policies are subject, whether or not the City of New Bern is an insured under the policy.

# F. Miscellaneous Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- 1. Each insurance policy required by this contract shall be endorsed to state that coverage shall not canceled by either party except after 30 days prior written notice has been given to the City of New Bern, PO Box 1129, New Bern, NC 28563.
- 2. If CONSULTANT's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

# G. Acceptability of Insurers

Insurance is to be placed with insurers licensed to do business in the State of North Carolina with an A.M. Best's rating of no less than A VII unless specific approval has been granted by the City of New Bern.

# H. Evidence of Insurance

- 1. The CONSULTANT shall furnish the City of New Bern with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements prior to commencing the work, and thereafter upon renewal or replacement of each certified coverage until all operations under this contract are deemed complete.
- 2. Evidence of additional insured status shall be noted on the certificate of insurance as per requirements in Section 11.
- 3. With respect to insurance maintained after final payment in compliance with requirements, an additional certificate(s) evidencing such coverage shall be provided to the City of New Bern with final application for payment and thereafter upon renewal or replacement of such insurance until the expiration of the period for which such insurance must be maintained.

# I. Sub Consultants

CONSULTANT shall include all sub consultants as insureds under its policies or shall furnish separate certificates for each sub consultant. All coverage for sub consultants shall be subject to all of the requirements stated herein. Commercial General Liability coverage shall include independent CONSULTANT's coverage, and the CONSULTANT shall be responsible for assuring that all sub consultants are properly insured.

# J. Conditions

- 1. The insurance required for this contract must be on forms acceptable to the City of New Bern.
- 2. The CONSULTANT shall provide that the insurance contributing to satisfaction of insurance requirements in Section 11. Minimum Scope and Insurance Requirements shall not be canceled, terminated or modified by the CONSULTANT without prior written approval of the City of New Bern.
- 3. The CONSULTANT shall promptly notify the Safety Officer at (252) 639-7574 of any accidents arising in the course of operations under the contract causing bodily injury or property damage.
- 4. The City of New Bern reserves the right to obtain complete, certified copies of all required insurance policies, at any time.

- 5. Failure of the City of New Bern to demand a certificate of insurance or other evidence of full compliance with these insurance requirements or failure of the City of New Bern to identify a deficiency from evidence that is provided shall not be construed as a waiver of CONSULTANT's obligation to maintain such insurance.
- 6. By requiring insurance herein, the City of New Bern does not represent that coverage and limits will necessarily be adequate to protect the CONSULTANT and such coverage and limits shall not be deemed as a limitation of CONSULTANT's liability under the indemnities granted to the City of New Bern in this contract.
- 7. The City of New Bern shall have the right, but not the obligation of prohibiting CONSULTANT or any sub consultant from entering the project site or withhold payment until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the City of New Bern.
- 8. No Presumption. None of the Parties shall be considered the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof. This Agreement was drafted with substantial input by all Parties and their counsel, and no reliance was placed on any representations other than those contained herein.
- 9. Entire Agreement and Amendment. This Agreement, including any Exhibits attached, which are incorporated herein and made a part hereof, constitutes the entire contract between the parties, and no warranties, inducements, considerations, promises or other inferences shall be implied or impressed upon this Agreement that are not set forth herein. This Agreement shall not be altered or amended except in writing signed by all Parties.
- 10. No Assignment. No party shall sell or assign any interest in or obligation under this Agreement without the prior express written consent of all the parties.
- 11. <u>Conflict of Interest</u>. No paid employee of the CITY shall have a personal or financial interest, direct or indirect, as a contracting party or otherwise, in the performance of this Agreement.
- 12. Non-Waiver of Rights. It is agreed that the CITY's failure to insist upon the strict performance of any provision of this Agreement, or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this Agreement.
- 13. <u>Binding Effect</u>. Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.
- 14. <u>Reference</u>. Use of the masculine includes feminine and neuter, singular includes plural; and captions and headings are inserted for convenience of reference and do not define, describe, extend or limit the scope of intent of this Agreement.
- 15. <u>Interpretation/Governing Law</u>. All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina without regard to any conflicts of law principles and subject to the exclusive jurisdiction of federal or state courts within the State of North Carolina. In the event of a conflict between the various terms and conditions contained herein or between these terms and other applicable provisions, then the more particular shall prevail over the general and the more stringent or higher standard shall prevail over the less stringent or lower standard. The place of this Agreement, its situs and

- forum, shall be New Bern, Craven County, North Carolina, and in said County and State shall all matters, whether sounding in contract or tort relating to the validity, construction, interpretation or enforcement of this Agreement be determined.
- 16. <u>Saving Clause</u>. If any section, subsection, paragraph, sentence, clause, phrase or portion of this Agreement is for any reason held invalid, unlawful, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.
- 17. Time. Time is of the essence in this Agreement and each and all of its provisions.
- 18. <u>Immunity Not Waived</u>. This Agreement is governmental in nature, for the benefit of the public. CONSULTANT acknowledges that City reserves all immunities, defenses, rights or actions arising out of City's sovereign status under applicable law. No waiver of any such immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of City's entry into this Agreement.
- 19. Non-Appropriation. In the event no City funds or insufficient City funds are appropriated or otherwise available by any means whatsoever in any fiscal year for any payment due under this Agreement, then the City will immediately notify CONSULTANT of such occurrence and this Agreement shall create no further obligation of the City as to such fiscal year and shall be null and void, except as to the portions of payments for which funds shall have been appropriated and budgeted. In such event, this Agreement shall terminate on the last day of the fiscal year for which appropriations were received without penalty or expense to the City of any kind whatsoever.
- 20. <u>Authority to Act/IDA Certification</u>. Each of the persons executing this Agreement on behalf of CONSULTANT does hereby covenant, warrant and represent that the Organization is a duly organized and validly existing <u>corporation</u>, that <u>Timothy R. Reid, Vice President</u>, has full right and authority to enter into this Agreement, and that each and all persons signing on behalf of the CONSULTANT were authorized to do so. The undersigned certifies that CONTRACTOR is not listed on the Final Divestment List created by the N.C. State Treasurer pursuant to Chapter 147 (the Iran Divestment Act) of the North Carolina General Statutes.
- 21. Non-Discrimination. CONSULTANT will take affirmative action not to discriminate against any employee or applicant for employment or otherwise illegally deny any person participation in or the benefits of the program which is the subject of this agreement because of race, creed, color, sex, age, disability or national origin. To the extent applicable, CONSULTANT will comply with all provisions of Executive Order No. 11246 the Civil Rights Act of 1964, (P.L. 88-352) and 1968 (P.L. 90-284), and all applicable federal, state and local laws, ordinances, rules, regulations, orders, instructions, designations and other directives promulgated to prohibit discrimination. Violation of this provision, after notice, shall be a material breach of this agreement and may result, at CITY's option, in a termination or suspension of this agreement in whole or in part.
- 22. <u>E-Verify.</u> As a condition of payment for services rendered under this agreement, CONSULTANT shall comply with the requirements of Article 2 Chapter 64 of the General Statutes. Further, if Seller provides the services to the City utilizing a subcontractor, Seller shall require the subcontractor to comply with requirements of Article 2 Chapter 64 of the General Statutes as well.

- 23. <u>Counterparts.</u> This Agreement may be executed in several counterparts, including separate counterparts. Each shall be an original, but all of them together constitute the same instrument.
- 24. Minority Business Enterprise (MBE)

The CITY desires that minority business enterprises have the maximum opportunity to participate in the performance of this contract and will:

- l. Promote affirmatively (where feasible) in accordance with North Carolina General Statute 143-129, together with all other applicable laws, statutes and constitutional provisions) the procurement of goods, services in connection with construction projects for minority owned business enterprises.
- 2. Ensure that competitive and equitable bidding opportunities are followed to afford minority business enterprises participation. Strive to obtain contract and subcontract awards to minority business enterprises.
- 3. Identify and communicate to the minority business enterprises community procedures and contract requirements necessary for procurement of goods and services for construction projects and subcontracts.
- 4. Provide technical assistance as needed.
- 5. Promulgate and enforce contractual requirements that the general CONSULTANT or all construction projects shall exercise all necessary and reasonable steps to ensure that minority business enterprises participate in the work required in such construction contracts.

The CONSULTANT shall ensure that minority business enterprises have the maximum opportunity to compete for and perform portions of the work included in this contract and shall not discriminate on the basis of race, color, national origin or sex. The CONSULTANT shall include this special provision, Minority Business Enterprise (MBE), in all subcontracts for this contract. Failure on the part of the CONSULTANT to carry out the requirements set forth in this special provision may constitute a breach of contract and after proper notification may result in termination of the contract or other appropriate remedy.

A minority business enterprise is defined as a business, with at least fifty (51%) percent owned and controlled by minority group members. The minority ownership must exercise actual day-to-day management. Minority group members may consist of Black Americans (an individual of the Black race of African origin), Hispanic Americans (an individual of a Spanish speaking culture and origin at parentage), Asian Americans (an individual of a culture, origin or parentage traceable to the areas of the Far East, Southeast Asia, the Indian subcontinent and the Pacific Islands), Indian Americans (an individual who is an enrolled member of a Federally recognized Indian tribe, or recognized by the tribe as being an Indian, as evidenced by a certification of a tribal leader), American Aleuts or any recognized minority group approved by the CITY.

A Woman Business Enterprise is a business with at least fifty (51%) percent owned and controlled by women who exercise actual day-to-day management.

The CONSULTANT shall exercise all necessary and reasonable steps to ensure that Minority Business Enterprises and Woman Business Enterprises participate in the work required in this contract. The CONSULTANT agrees by executing this contract that he will exercise all necessary and reasonable steps to ensure that this special provision contained herein on Minority Business Enterprise is complied with.

IN WITNESS WHEREOF, the CITY and the CONSULTANT have each executed this Agreement in duplicate originals, one of which shall be retained by each of the parties.

CITY OF NEW BERN

| By: |         |                        |
|-----|---------|------------------------|
|     | Mark A. | Stephens, City Manager |

# STATE OF NORTH CAROLINA COUNTY OF CRAVEN

I, Brenda Espinosa-Blanco, a Notary Public in said State and County, certify that Mark A. Stephens personally appeared before me this day and acknowledged that he is the City Manager of the City of New Bern, a North Carolina Municipal Corporation, and that by authority duly given and as the act of the City of New Bern, the foregoing instrument was signed in its named by him as its Manager.

WITNESS my hand and notarial seal, this the day of March, 2020.

| Brenda Espinosa-Blanco, Notary Public |
|---------------------------------------|

My Commission Expires: 03/09/2023

# FINANCE OFFICER'S CERTIFICATION STATEMENT

| This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act. |                               |  |  |  |  |
|---|-------------------------------|--|--|--|--|
| This day of March, 2020.  |                               |  |  |  |  |
|   | M MH E om                     |  |  |  |  |
|   | Mary M Hogan, Finance Officer |  |  |  |  |
| Project Number: Account Number: Amount of Contract:   | _ (if applicable)<br>         |  |  |  |  |
| Requisition/PO Number:Federal ID Number:  |                               |  |  |  |  |

# CONSULTANT

| By:  |                   |                                  |
|--|-------------------|----------------------------------|
| •  | Timothy R. Reid   | l, Vice President                |
|  |                   |                                  |
| STATE OF   |                   |                                  |
| COUNTY OF  |                   |                                  |
|  |                   |                                  |
| I, TIMOTHY R. REID, personally came before me this of MOFFATT & NICHOL, INC., a corporation, and the corporation, he executed the foregoing instrument on be | at by authority o | luly given and as the act of the |
| Witness my hand and official seal, this the  | day of            | , 2020.                          |
|  | Notary Public     |                                  |
|  | i volumy i dollo  |                                  |
| My Commission Expires:   | 1                 | [SEAL]                           |

# Exhibit A Federal Contracting Requirements

These Federal Contracting Requirements are incorporated into the Service Contract between the City 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 "Vendor" or "Provider" shall be deemed to mean the Contractor. By signing the Service Contract with the City, Contractor certifies that it has read and agrees to comply with all of the terms and conditions set forth below and that are incorporated into the Service Contract with the City and 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 document 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.CFR 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 sub-contractors, if any, hereby represent and covenant that they are 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 requirements in accordance with Drug Free Workplace Act of 1988 (Pub 100-690, Title V, Subtitle D). All contractors 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 City of New Bern or pass through entity in accordance with federal policy.

#### **Mandatory Disclosure**

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 agrees 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 City and understands and agrees that the City 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 these 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 USC § 1251-1387).

The Contractor agrees to report any violation to the City immediately upon discovery. The Contractor understands and agrees that the City will, in turn, report each violation as required to assure notification to the City, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency (EPA) Regional Office. Contractor must include this requirement in all subcontracts that exceed \$150,000.

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

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the City, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representative's 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 representative's 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

The City 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 City, 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 sub-contractor who will be subject to its provisions.

# Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this 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 sub-contractors who will be subject to the provisions.

#### Changes

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**

Termination Without Cause. The City 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 City. By giving written notice to the Contractor, the City 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 or provide the proof of insurance as required by this Agreement.

Cancellation of Orders and Subcontracts. In the event this Agreement is terminated by the City 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 City 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 City, 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 City all computer programs, files, documentation, data, media, related material and any other recording devices, information, or compact discs that are owned by the City; (b) deliver to the City all Work Product;

(c) allow the City or a new vendor access to the systems, software, infrastructure, or processes of the Contractor that are necessary to migrate the Services to a new vendor; and (d) refund to the City all pre-paid sums for Products or Services that have been cancelled and will not be delivered.

**No Suspension**. In the event that the City 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 City Manager or their designee is authorized to terminate this Agreement on behalf of the City.

Audit. During the term of the Agreement and for a period of one year after termination or expiration of this Agreement for any reason, the City shall have the right to audit, either itself or through a third party, all books and record (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 City's payment obligations. The City 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 City in excess of \$5,000 but for the audit, then the Contractor shall be required to reimburse the City for the cost.

# Remedies

Liquidated Damages: The City and the Contractor acknowledge and agree that the City 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 City may be damaged by such failures, including loss of goodwill and administrative costs; but that (b) the costs that the City 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 City'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 City of such failure, the City 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 City in obtaining or performing the Services from any money then due or to become due the Contractor and, should the City's reasonable cost of obtaining or performing the services exceed the amount due the Contractor, collect the difference from the Contractor.

**Right to Withhold Payment.** If the Contractor materially breaches any provision of this Agreement, the City 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 City 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 City 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**

A contract award (see CFR 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 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR 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 CFR Part 180 and 2 CFR Part. 3000. As such, the Contractor is required to verify that none of the Contractor, its principals (defined at 2 CFR § 180.995), or its affiliates (defined at 2 CFR § 180.905) are excluded (defined at 2 CFR§ 180.940) or disqualified (defined at 2 CFR § 180.935).

The Contractor is required to comply with 2 CFR Part 180, Subpart C and 2 CFR 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 proper certifies that:

This certification in this clause is a material representation of fact relied upon by the City. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available by the City, 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 CFR Part 180, Subpart C and 2 CFR 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**

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 vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

# **Davis-Bacon Requirements**

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 CFR 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 CFR 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 sub-contractors 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 officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
- (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 benefit 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 assets, in a separate account, for the meeting of obligations under the plan or program.

#### 2. Withholding.

The City 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 sub-contractor 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 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records 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 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at 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 sub-contractors. 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 sub-contractor 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 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 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 CFR 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 sub-contractor 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, 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 CFR 5.12.

# 4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, 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 to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above. shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or sub-Contractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the 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 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the

event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

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

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

#### 6. Subcontracts.

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 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 CFR Part 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 CFR 5.12.

#### 8. Compliance with Davis-Bacon and Related Act Requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

# 9. Disputes Concerning Labor Standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

#### 10. Certification of Eligibility.

(i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be

awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC 1001.

# Copeland "Anti-Kickback" Act

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 CFR 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 by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

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 provided in 29 CFR § 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 CFR 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 forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- 2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in 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 forty 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. <u>Subcontractors</u>. 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 subcontracts to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any sub-contractors 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

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 CFR § 18.34 and 49 CFR § 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 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 and Cooperative Agreements," 37 CFR 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:

<u>General</u> - 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 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 and Cooperative Agreements," 37 CFR Part 401.

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**

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 CFR 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 CFR Part 247 whenever:

- 1. The contract requires procurement of \$10,000 or more of a designated item 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- designate items, is available at EPA's Comprehensive Procurement Guidelines web site, 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 seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without pre-approval by the specific federal agency.

#### **Insurance and Indemnity**

INSURANCE AND INDEMNITY. To the fullest extent permitted by laws and regulations, CONTRACTOR shall indemnify and hold harmless the CITY 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. Contractor shall also maintain Employers' Liability insurance limits of not less than \$500,000 per accident and \$500,000 each employee for injury by disease. Additionally, CONTRACTOR shall maintain, at its expense, the following minimum insurance coverage:

- (a) Commercial General Liability Insurance in an amount not less than\$1,000,000 per occurrence for bodily injury or property damage.
- (b) Professional Liability Insurance in an amount not less than \$1,000,000 per occurrence.
- (c) Workers Compensation Insurance in an amount \$500,000 per occurrence.
- (d) Commercial Automobile Insurance in an amount \$1,000,000 per occurrence as applicable.

CONTRACTOR, upon execution of this Contract, shall furnish to the CITY 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.

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

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient."

APPENDIX A, 44 C.F.R. PART 18 - CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)
The undersigned Contractor certifies, to the best of his or her knowledge, 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      |  |
|--|--|
| Name and Title of Contractor's Authorized Official |  |
| Date   |  |

#### **EXHIBIT B**

# REQUEST FOR QUALIFICATIONS To Develop a Resiliency and Hazard Mitigation Plan



# Issued By:

# **City of New Bern**

Development Services Department 303 First Street, PO Box 1129 New Bern, NC 28563

# **RELEASE DATE:**

Wednesday December 11, 2019

# **PROPOSAL CLOSING:**

Friday, January 10, 2020 5:00 pm EST Late submissions will not be accepted

Submit responses to:

City of New Bern
Development Services
303 First Street, PO Box 1129
New Bern, NC 28563

# New Bern, NC 28563 City of New Bern Request for Qualifications to develop a Resiliency and Hazard Mitigation Plan

#### **Project Title:**

Resiliency and Hazard Mitigation Plan

#### **Project Description:**

The development of a City-wide Resiliency and Hazard Mitigation Plan to increase community resilience to sea-level rise and climate change through an engaged stakeholder process.

The Plan should utilize the frameworks provided in the Regional Resilience Tool Kit (<a href="https://www.epa.gov/smartgrowth/regional-resilience-toolkit">https://www.epa.gov/smartgrowth/regional-resilience-toolkit</a>), 12 North Carolina State Disaster Recovery Framework Recovery Support Functions (<a href="https://www.ncdps.gov/documents/north-carolina-disaster-recovery-framework">https://www.ncdps.gov/documents/north-carolina-disaster-recovery-framework</a>) and 6 FEMA Recovery Support Functions (<a href="https://www.fema.gov/recovery-support-functions">https://www.fema.gov/recovery-support-functions</a>) to create a resiliency framework that focuses on avoiding hazards, withstanding the event, recovery and to ultimately "Build Back Better" at the citizen level; the business level; and the municipal level. Strategy initiatives should run the gamut from the routine and highly feasible to the very ambitious, including social and community health programing, resiliency planning frameworks, land-use regulatory changes, and large-scale infrastructure projects including the use of green infrastructure practices when possible.

The Plan should pay specific attention to:

- 1) Reaching underserved populations, ensure representation and participation from socially vulnerable populations, and address their needs and risks.
- 2) Innovative and implementable solutions that increase flood resilience in both the short and long term for historic structures.
- 3) Use of green and hybrid infrastructure solutions whenever possible.
- 4) Innovative and implementable solutions that increase structural and economic resilience in historic main street and commercial areas.
- 5) Reducing the City's reliance on Federal funding following future disasters.
- 6) Required land use changes to improve resiliency.
- 7) Coordination within and beyond the corporate limits of New Bern to build sustainable working relationships with Craven County and relevant regional and state agencies.

#### Background

The City of New Bern located at the confluence of the Trent and Neuse Rivers in Eastern North Carolina was devastated by Hurricane Florence in September 2018. 4,325 homes and 300 businesses in and around the City of New Bern were damaged, 261 of these structures are located in 2 of the City's locally designated historic districts and listed on the National Register. Many more homes affected were located in the City's most vulnerable neighborhoods where 36% of the population lives at or below the poverty level. Total damage estimation was approximately \$100 million.

An unprecedented 11'+ storm surge affected the homes and businesses of the City's wealthiest residents, as well as those living in its poorest communities, revealing the City's vulnerability to flooding and water intrusion. Although comprised of different populations with varying socioeconomic backgrounds, buildings and structures, each of New Bern's neighborhoods must adapt to the increasing frequency and strength of storm events, as well as new base flood plain regulatory levels. The City must develop a comprehensive land use, hazard mitigation, and resiliency plan to inform future development and investment decisions as we deal with the impacts of climate change and sea level rise. Flooding is

the most frequent natural hazard, yet most of our communities and businesses are not equipped or prepared to deal with the consequences of periodic flooding.

Hurricane Florence's economic impact has been significant on the area's tourism industry. The loss of convention and meeting business due to the closure and rehabilitation of the Craven County Convention Center and the City's largest hotel (220 rooms) has adversely affected the City's historic main street commercial small businesses who are struggling to recoup lost revenues.

The plan will determine the best ways to reshape existing social, economic and municipal systems so that New Bern is less vulnerable and more resilient to natural disasters and reduce the City's cost and reliance on Federal funding following future disasters.

#### **Project Funding:**

The City of New Bern has secured \$45,000 in grant funding to-date for plan development. These sources include the Duke Energy Foundation, Wells Fargo Foundation, and the National Trust for Historic Preservation. Additional project funding will be secured from a combination of local, state and federal grant sources, as available, and/or City contributions.

#### **Schedule of Events**

|                          | RFQ Schedule of Events  |
|--------------------------|---|
| December 11, 2019        | Advertisement date  |
| December 18, 2019        | Last day to accept questions and requests for clarification on the RFQ 5:00 PM (local time) All questions shall be in writing addressed to <a href="mailto:ohlensehlena@newbernnc.gov">ohlensehlena@newbernnc.gov</a> |
| December 19, 2019        | Answers to submitted questions provided by addendum 5:00 PM (local time)  |
| January 10, 2020         | Qualifications due - 5:00 PM (local time)   |
| Week of January 13, 2020 | Evaluation period Week of January 13, 2020  |
|                          |   |
|                          |   |

#### **Services Requested:**

The goal of the plan is to build the capacity of the New Bern community to prepare for, withstand, recover, avoid and build back better after hazard events, with specific focus on underserved and historic communities. The plan will develop recommendations and prioritize implementation steps to provide an opportunity to empower and benefit the community. New Bern seeks to maintain its unique cultural identify in the face of natural disasters and allow for economic continuity and quick recovery if another natural disaster occurs.

# Phase 1: Data Collection, Assessment and Public Engagement

#### 1. Data gathering:

- a. At a minimum, this step entails review of regional Hazard Mitigation Plans previously developed. Other information to be reviewed includes the City's Zoning Regulations. The extent of previous damage from Hurricane Florence and other storms will also be investigated.
- b. GIS data collection. At a minimum, this step entails collection of relevant GIS data from the City and other public sources to create a database of structures, valuation, existing uses, population and employment centers, and topography. Respondent can assume City of New Bern GIS has, or can obtain, all relevant data. Elevation certificates on file may also be reviewed.
- 2. Public input: Multiple public input meetings will be conducted to inform the public of the study and determine major concerns. At least one public input session will present the findings of the draft plan. At least one public presentation will present the final plan. The consultant will assist with the creation of a steering committee and establish a meeting schedule for the life of the project. Meetings may also be held with other boards (e.g., Planning and Zoning Board, Board of Aldermen).
- 3. Vulnerability and risk assessment. The consultant will use GIS data, existing plans, sea level rise viewing tools and other information to identify future vulnerabilities (e.g., economic, infrastructure, community facilities, community services) and risks. Independent sea level rise projections will not be developed for this project.

#### Phase 2: Analysis and Plan Development

- 4. Review of possible solutions. Relevant solutions will be reviewed and evaluated that relate to the vulnerabilities identified in the risk assessment. These strategies should include a cost benefit analysis.
- 5. Preparation of the draft Resiliency and Hazard Mitigation Plan. The results of the previous steps will be communicated in a draft plan. The goal is for the plan to be easy to understand with risks and recommended solutions clearly stated. Recommendations will be developed with a focus on implementation and will take into consideration potential costs, benefits and potential funding sources for implementation. Engineered solutions may be developed for specific public infrastructure vulnerabilities. Recommendations should be an amalgamation of existing plans and ordinances used by the City of New Bern to establish implementation pathways.

#### Phase 3: Preparation of Resiliency and Hazard Mitigation Plan

- 6. Public review of draft plan. A well-advertised public input session will present the findings of the draft plan to the general public and relate to the public's initial concerns. This stage may also include meetings with various local boards for additional input.
- 7. Preparation of final Resiliency and Hazard Mitigation Plan. Using input received, revisions will be made to the draft plan. A final public presentation will be held. The intention is for the final plan to be adopted by the Board of Aldermen for the City of New Bern.

The Development Services Department will be available to consult and direct in data gathering, meeting and event planning and general coordination.

The City and the most qualified proposer may agree to mutually amend the scope of services in order to accomplish the project as described. All amendments to the scope of services shall be in writing.

#### **Submittal Requirements:**

Firms wishing to be considered for the study are expected to be architect/engineering/planning consultants with expertise and experience developing municipal coastal resiliency, hazard mitigation and land use plans.

#### Submissions shall include:

- 1. A detail statement of qualifications of the firm and any sub-consultants.
- 2. Information on specific experience with similar projects including any experience with municipal coastal resiliency, hazard mitigation and land use planning. Include sample copies of any completed studies or website links where they are posted.
- 3. Demonstration of experience in working with appointed and executive bodies in North Carolina.
- 4. Demonstration of experience in engaging the public in a similar planning study process. Description of experience with public outreach and approach to running a successful public planning event and meetings.
- 5. A list and curriculum vitae of the specific staff, including any partner entities, to be assigned to the project. Proposed project manager shall be identified.
- 6. A list of references for on-going and recently completed municipal/county planning projects including contact person and phone number.
- 7. Proposed work plan process, approach and timetable. A detailed description of the proposed work plan in response to the scope of work outlined in this document. Work plan shall include the respondent's proposed methodology, process, communication plan and timetable for completion.
- 8. Any additional information that will assist in evaluating the applicant's qualifications.
- 9. Other requirements, insurance and certification.
  - a. Certificate of insurance with the following limits:
    Firm shall maintain at its own expense (a) Commercial General Liability Insurance in an amount not less than \$1,000,000 per occurrence for bodily injury or property damage; "City of New Bern", PO box 1129, New Bern, NC 28563, shall be named as additional insured. (b) Professional Liability insurance in an amount not less than \$1,000,000 per occurrence if providing professional services; (c) Workers Compensation Insurance, as required by the general statutes of the State of North Carolina, and Employer's Liability Insurance not less than \$500,000 each accident for bodily injury by accident, \$500,000 each employee for bodily injury by disease, and \$500,000 policy limit; (d) Commercial Automobile Insurance applicable to bodily injury and property damage, covering all owned, non-owned, and hired vehicles, in an amount not less than \$1,000,000 per occurrence as applicable. Certificates of Insurance shall be furnished prior to the commencement of services.
  - b. Certification:

     A licensed Professional Architect or Engineer authorized to practice in the State of North Carolina shall be required for this project.
  - c. Equal Employment Opportunity Elements:

The City of New Bern reserves the rights to negotiate with any or all firms submitting qualifications. Small and minority businesses, women's business enterprises, and labor surplus area firms are encouraged to submit qualifications and firms using subcontractors must solicit such firms in the subcontracting process.

The City of New Bern is an equal opportunity employer without regard to race, color, sex, age, religion, national origin, persons with disabilities, or limited English proficiency.

10. Delivery: In order to be considered for consulting work pursuant to this RFQ, firms must return 3 hard copies of proposals in a sealed envelope, as well as an electronic copy of all submission materials, by 5:00pm EST on Friday, January 10, 2020 to the office below. Sealed envelopes must be labeled "2019 Resiliency and Hazard Mitigation Plan" for reference.

City of New Bern Development Services Attn: Amanda Ohlensehlen, Community & Economic Development Manager 303 First Street, PO Box 1129 New Bern, NC 28563

Email: ohlensehlena@newbernnc.gov

Responses received after the date and time listed will not be considered.

#### **Evaluation and Award:**

#### A. Selection Process:

A consultant selection committee comprising of City and community leaders will be formed to review all qualification submittals, and rank demonstrated competences and qualifications according to outlined specifications. The selection committee will make a final selection of the most qualified consultant for this project. Thereafter, the City of New Bern will negotiate a contract for those services at a fair and reasonable fee with the best-qualified firm. If a contract cannot be negotiated with the best-qualified firm, negotiations with that firm shall be terminated and initiated with the next best-qualified firm. The RFQ will not be deemed to be awarded until a written contract, has been fully executed by both parties. Sample Contract is included in RFQ.

#### B. Evaluation Criteria:

- 1. Qualifications and relevant experience of the firm and any proposed subconsultants in successfully preparing coastal resiliency, hazard mitigation and land use plans. Specific experience shall include but not be limited to the following:
  - GIS analysis of flood hazard risk
  - Devising engineering solutions to flood hazard risks related to public infrastructure, natural and historic resources
  - Land use planning
  - Preparing municipal plans with an emphasis on implementable recommendations
  - Successful engagement with the public in dialogues about coastal resiliency and hazard mitigation and public engagement
  - Creative, sustainable designs and regulatory approaches to the challenges of sea level rise and climate change
  - Revising municipal land use regulations in order to implement resiliency and mitigation goals
  - Emergency management planning related to flood hazards and storm surges
  - Experience evaluating and incorporating green infrastructure solutions where applicable and feasible.

- 2. Qualifications of key personnel, inclusive of any outside consultants to be assigned to the project.
- 3. Ability to reach consensus through public engagement that results in completed planning projects.
- 4. Demonstrated ability to meet schedules and deadlines. Some priority will be given to applicants who can commence work immediately.

#### C. Critical Dates:

December 18, 2019 is the last day to submit questions and requests for clarification on the RFQ at 5:00 PM (local time). All questions shall be in writing addressed to ohlensehlena@newbernnc.gov. Answers to those questions shall be issued by addendum on December 19, 2019 by 5:00 PM EST (local time). Qualification Submittal Deadline is Friday, January 10, 2020 at 5:00 PM EST(local time). All qualification reviews will begin the week of January 13, 2020.



## DEVELOPMENT SERVICES DEPARTMENT

303 First Street
P.O. Box 1129 - New Bern NC 28562
252-639-7580

# Resiliency and Hazard Mitigation Plan

| Reviewer:   |                 |       |
|---|-----------------|-------|
| Firm Name:  |                 |       |
| Review Section  | Possible Points | Score |
| General Qualifications, Competence & Reputation of Firm and any Sub-consultants:     Qualifications and stability of firm     Reputation with previous clients     Grasp of Project Requirements and Criteria   | 10              | 0     |
| 2. Experience of firm working on similar projects:  - Experience with municipal coastal resiliency  - Experience with hazard mitigation plans  - Experience with land use planning  - Experience with green infrastructure solutions  - Familiarity with City of New Bern. Familiarity with state and federal guidelines.   | 20              | 0     |
| 3. Demonstrated experience working with appointed/executive bodies in North Carolina:  - Completed similar projects and worked with similar clients  - Understanding of NC General Statutes  - Preparing municipal plans with an emphasis on implementable recommendations  | 5               | 0     |
| 4. Demonstrated experience in public engagement planning processes:  - Similar project planning and public engagement demonstrated  - Approach and methodology of communication plan  - Successful public diaglogues about coastal resiliency measures  - Ability to reach consensus through public engagement  | 10              | 0     |
| 5. Staff experience, certifications and access to expert team members:  - Availability of staff to handle project and identified project manager  - Ability to provide access to qualified project team members on a continual basis  - Ability to commit available resources (current workload) to the project  - Experience with GIS analysis of flood hazard risk  - Experience devising engineering solutions to flood hazard risks related to public infrastructure, natural and historic/cultural resources | 20              | 0     |
| 6. Reference Evaluation:  - List of similar completed or on-going municipal/county projects  - Firm reputation and demonstrated success / project delivery  - Points of contact from other projects provide positive feedback  - Demonstrated ability to meet schedules and deadlines   | 10              | 0     |

|   | 7. Workplan process approach and timetable:  - Grasp of project guidelines / requirements  - Design approach / methodology  - Clear process and timetable  - Strong communication plan  - Ability to commence work immediately  - Demonstrate use of creative, sustainable designs and regulatory approaches to face the | 25 | 0 |
|---|--|----|---|
| challenges of sea level rise and climate change | - Demonstrate use of creative, sustainable designs and regulatory approaches to face the challenges of sea level rise and climate change   |    |   |

| 8. Other Requirements / Additional Information to add to quality of submission: | 0 | 0 |
|---|---|---|
| - To aid scoring in other categories (as appropriate)                           |   |   |
|   |   |   |

| Total Score |   |
|-------------|---|
| (100 Max)   | 0 |

#### RESPONDER'S CERTIFICATION FORM

I have carefully examined the Request for Qualifications, the sample Agreement for Consultant Services and any other documents accompanying or made a part of this Request for Qualification.

I hereby propose to furnish the professional engineering consultant services for City of New Bern in accordance with the instructions, terms, conditions, and requirements incorporated in this Request for Qualification. I certify that all information contained in this response is truthful to the best of my knowledge and belief. I further certify that I am duly authorized to submit this response on behalf of the firm as its act and deed and that the firm is ready, willing and able to perform if awarded the contract.

| NAME OF FIRM:          |         |  | <u></u>  |
|------------------------|---------|--|----------|
| BY: (printed name)     |         |  | _        |
| SIGNATURE:             |         |  |          |
| MAILING ADDRESS:       |         |  |          |
| CITY/STATE/ZIP CODE: _ |         |  |          |
| TELEPHONE NUMBER: _    |         |  | <u>.</u> |
| FAX NUMBER:            |         |  | -        |
|                        |         |  |          |
| Responder hereby       | 11012.0 | DGEMENT OF AD<br>t of all Addenda throug |          |
| Addendum No.           | Date    | Acknowledgement                          |          |
|                        |         |  |          |
|                        |         |  |          |

# NON-COLLUSION AFFIDAVIT

State of North Carolina

|        | , being fir   | rst duly sworn, deposes and says that   | at:  |
|--------|---|---|--|
| 1.     | He/She is the   | (title) of  | (firm's name), the   |
|        | responder that has submitted the atta   | sched response;   |  |
| 2.     | He/She is fully informed respecting pertinent circumstances respecting so   |   | of the attached response and of all  |
| 3.     | Such response is genuine and is not   | a collusive or sham response;   |  |
| 4.     | parties in interest, including this affi<br>indirectly, with any other responde<br>with the contract for which the at<br>connection with such contract, or ha<br>of communication or conference with<br>attached response, if applicable, or<br>of the response price of the response | Tant, has in any way colluded, consor firm or Person to submit a collustrached response has been submitted in any manner, directly or indirectly as in any other responder, firm or per of any other responders, or to fix se, if applicable, of any other responder any advantage against and  Signature | agents, representatives, employees or spired, connived or agreed, directly or sive or sham response in connection ed or to refrain from responding in ctly sought by agreement or collusion erson to fix the price or prices in the any overhead, profit or cost element onder or to secure through collusion, at the City of New Bern or any person |
| NOTAR  | RIZE  | Title   |  |
| Subscr | ibed and sworn to before me,  |   |  |
| This   | day of  | _, 20   |  |
| Notary | Public  |   |  |
| Му Со  | ommission Expires:  | ····  |  |

# City of New Bern Affidavit

# STATE OF NORTH CAROLINA AFFIDAVIT CITY OF NEW BERN

| I,                   |   | (the individua   | al attesting bel | ow), being dul  | y authorized by    |
|----------------------|---|--|------------------|-----------------|--------------------|
| and on be            | half of                                   |  | (the entity      | y bidding on pr | oject hereinafter  |
| "Employe             | r") after first being                     | duly sworn hereby sw   | ears or affirms  | as follows:     |                    |
| States De equivalent | partment of Homela<br>t program used to v | t E-Verify is the federand Security and other rerify the work author h NCGS §64-25(5). | federal agenci   | es, or any succ | essor or           |
| employee             | to work in the Unit                       | Employers Must Use<br>ed States, shall verify<br>ce with NCGS§64-26                    | the work author  |                 |                    |
| and that e           |   | ness entity, or other o<br>employees in this Stat<br>—                                 |                  |                 | ness in this State |
|                      | ct, Employer will er                      | comply with E-Verif  | · ·              | •               | -                  |
| This                 | day of                                    | , 20_  |                  |                 |                    |
| Signature            | of Affiant                                |  |                  | -               |                    |
| Print or T           | ype Name                                  |  |                  | -               |                    |
|                      | ublic Certification                       |  |                  |                 |                    |
| State of _           |   | , County o   | of               |                 | _                  |
| Sign and             | sworn to (or affirme                      | ed) before me, this the  | day              |                 | , 20               |
| Signature            | of Notary                                 |  |                  | _               |                    |
| My Comr              | mission expires                           |  |                  |                 |                    |

#### **General Provisions**

| I-1.  | Definitions              | I-16. | Warranty   |
|-------|--------------------------|-------|--|
| I-2.  | E-Verify                 | I-17. | Item Substitution and Variation                      |
| I-3.  | Conflicts of Interests   | I-18. | Inspection and Acceptance                            |
| I-4.  | Officials not to Benefit | I-19. | Availability of Funds                                |
| I-5.  | Oral Representations     | I-20. | Invoicing and Payment                                |
| I-6.  | Non Appropriation        | I-21. | Withholding  |
| I-7.  | Representations          | I-22. | Contractor Liability                                 |
| I-8.  | Advertisements           | I-23. | Termination  |
| I-9.  | Subcontracting           | I-24. | Requests for Monetary or other Relief                |
| I-10. | Assignment               | I-25. | Notification of Debarment or Suspension Status       |
| I-11. | Iran Divestment Act      | I-26. | Equal Employment Opportunity                         |
| I-12. | Permits and Licenses     | I-27. | Drug-Free Work Place                                 |
| I-13. | Non-Waiver or Defaults   | I-28. | Accident Prevention, Fire Protection, and Sanitation |
| I-14. | Indemnity                | I-29. | Standards  |
| I-15. | Insurance                | I-30. | Force Majeure  |
|       |                          | I-31. | Federal Funds  |

- I-1. **Definitions:** As used throughout this contract, the following terms shall have the meaning set out below:
  - A. "City" refers to the City of New Bern Government activities and organizations.
  - B. "Contract" Identifies this contract or any modification thereto.
  - C. "Contractor or vendor" means the individual, partnership, corporation, or other entity which is a party to this contract and who is responsible for all actions, performance and work there under, to include that of any subcontractor or vendor.
- I-2. **E-Verify:** As a condition of payment for services rendered under this agreement, Vendor or Contractor shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Further, if Vendor or Contractor provides the services to the City utilizing a subcontractor, Vendor or Contractor shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes as well. Vendor or Contractor shall verify, by affidavit, compliance of the terms of this section upon request by the City.
- I-3. Conflicts of Interests: Contractor warrants that no person or selling agency has been employed or retained to secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee excepting bona fide employees or bona fide established commercial selling agencies retained by contractor or vendor for the purpose of securing business. Contractor warrants that no gratuities (Entertainment, gifts, etc.) were or will be offered or given by the Contractor or any person representing the Contractor to any City of New Bern Alderman, employee, or spouse of an employee/Alderman. For breach of either of the warranties, City of New Bern may terminate this and all other. City of New Bern Contracts for default and deduct from amounts due under this or other contracts, or bill contractor or vendor for the total value of any contingent fee or gratuity.
- I-4. Officials Not to Benefit: No person or Alderman involved in the purchasing process and/or contracting of this agreement, shall be admitted to any share or part of this contract, or to any benefit that may arise there from; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.
- I-5. Oral Representations: This written Contract includes the entire agreement between the parties. The City of New Bern will not be bound by any oral or written representation not included in the written contract or a change or amendments thereto. The City of New Bern will not be bound by any terms on contractor or vendor forms or letter unless such terms are specifically agreed to and incorporated in the contract and signed by the Finance Director.
- I-6. Non Appropriation: All funds for payment by the City under this Contract are subject to the availability of any annual appropriation for this purpose by the Board of Aldermen. In the event of non-appropriation of funds by the Board

Of Aldermen under the Contract, City will terminate the Contract, without termination charge or liability, on the last day of the then-current fiscal year or when the appropriation made for then-current year for the services/items covered by this Contract is spent, whichever occurs first. If at any time funds are not appropriated for the continuance of this Contract, cancellation shall be accepted upon three (3) days prior written notice, but failure to give such notice shall be of no effect and City shall not be obligated under this Contract beyond the date of termination.

- I-7. Representations: The Contractor will not represent itself to be an agent or representative of City of New Bern or any other agency or instrumentality of the US Government.
- I-8. Advertisements: The Contractor will not represent in any manner, expressly or by implication, those items or services purchased or sold under this contract are approved or endorsed by any element of City of New Bern Government. Any advertisement, including cents off coupons, by the Contractor which refers to City of New Bern activity will contain a statement that the advertisement was neither paid for nor sponsored, in whole or in part, by the particular activity.
- I-9. <u>Subcontracting:</u> Contractor shall not subcontract any part of the work to be performed without the prior written consent of the Finance Director. Any subcontractor or vendor used in connection with this contract is the agent of the Finance Director.
- I-10. <u>Assignment:</u> Contractor may not assign its rights or delegate its obligations under this contract without the prior written consent of the Finance Director.
- I-11. Iran Divestment Act: Seller certifies that: (i) Seller is not listed on the Iran Divestment List created by the State Treasurer pursuant to N.C.G.S. § 147-86.58 (the "Final Divestment List"), and (ii) Seller will not utilize any subcontractor performing work under this Purchase Order which is listed on the Final Divestment List. The Final Divestment List can be found on the State Treasurer's website at the address www.nctreasurer.com/Iran and should be updated every 180 days.
- I-12. Permits and Licenses: Contractor will, at his own expense, obtain all necessary permits, give all notices, pay all license fees and comply with all laws, rules, ordinances, and regulations relating to the preservation of the public health or applicable to the services or business carried on under this contract. The burden of determining applicability of licensing requirements, laws, ordinances, and regulations for Contractor and his employees rests with the Contractor.
- I-13. Non-Waiver or Defaults: Any failure by City of New Bern at any time to enforce or require strict performance of any terms or conditions of this contract will not constitute waiver thereof and will not affect or impair such terms and conditions in any way or City of New Bern's right at any time to avail itself of such remedies as it may have for breach or breaches of such terms and conditions.

#### I-14. Indemnity:

- A. Contractor shall indemnify, hold harmless and defend City of New Bern, their agents, representatives, employees and customers from any and all suits, judgments and claims, including those established by or pursuant to court decisions, to international agreements, or duly promulgated regulations of the United States Government, and all charges and expenses incident thereto which arise out of or in connection with:
  - 1. The alleged or established violation or infringement of any patent, copyright or trademark rights asserted by any third party with regard to items or services provided by Contractor:
  - 2. Loss, death, damage or injury alleged or established to have arisen out of or in connection with products, services, or equipment provided by Contractor, unless such loss, death, damage, or injury was caused by City of New Bern, its representatives, or employees.
  - 3. Any loss, death, damage, or injury alleged or established to have arisen out of or in connection with any other acts or omissions of the Contractor, the Contractor's subcontractor or vendors, representatives, agents, or employees.
- B. City of New Bern will give Contractor notice and an opportunity to defend.
- I-15. Insurance: During the term of the Contract, the Contractor or vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the contract. As a minimum, the Contractor or vendor shall provide and maintain the following coverage and limits.
  - A. Worker's Compensation The Contractor or vendor shall provide and maintain worker's compensation insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$150,000, covering all of Contractor or vendor's employees who are engaged in any work under the contract. If any

- work is sublet, the Contractor or vendor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the contract.
- B. <u>Commercial General Liability</u> General Liability Coverage, on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$500,000.00 combined single limit (Defense cost shall be in excess of the limit of liability).
- C. <u>Automobile</u> Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles used in connection with the contract. The minimum combined single limit shall be \$150,000.00 bodily injury and property damage; \$150,000.00 uninsured/under-insured motorist; and \$1,000.00 medical payment.

#### I-16. Warranty: Contractor warrants that:

- A. The items furnished shall be merchantable, and fit and sufficient for the use intended and are not "seconds" as the term is normally understood in the trade. This warranty shall survive acceptance by City of New Bern of the items and is in addition to other warranties of additional scope given by the Contractor to City of New Bern.
- B. The items or services furnished under this contract are covered by the most favorable warranties the Contractor gives to any customer for such items or services and that the rights and remedies provided in the Contractor's warranties are in addition to and do not limit any rights afforded to City of New Bern by any other clause of this contract.
- C. Where applicable, the items furnished under this contract have been manufactured in accordance with Underwriter's Laboratories, Inc. (UL) standard, or if manufactured overseas, the overseas equivalent of UL and the applicable item and/or component items carry the appropriate UL or overseas equivalent seal of approval.
- D. Items, packing, and packaging provided will comply with all contract terms and with all laws, rules, and regulations applicable to delivery for domestic resale. Contractor shall comply with the Magnuson-Moss Warranty Act on all sales to City of New Bern.
- I-17. <u>Item Substitution and Variation in Quantity</u>: No substitution or variation in the quantity of any item called for by this contract will be accepted unless authorized by the Finance Director.
- I-18. <u>Inspection and Acceptance</u>: the government per the following shall make inspection and acceptance:
  - A. The Contractor shall maintain an in process and end-item quantity control program to ensure shipments to City of New Bern activities do not include defective/non-conforming items.
  - B. Inspection and acceptance shall not be conclusive with respect to latent defects or fraud, or with respect to City of New Bern rights under the warranty provisions contained herein.
  - C. In case any supplies or services are defective in material or workmanship, or are otherwise not in conformity with the requirements of this contract, the City of New Bern shall have the right to reject such supplies or services, or to require replacement or correction. Rejected supplies shall be removed by and at the expense of the Contractor promptly after notice. When such rejection, correction or replacement requires transportation of the supplies or part thereof, all shipping and administrative costs to and from the Contractor's plant shall also be borne by the Contractor.
  - D. In case of refund, the Contractor shall be liable to the City of New Bern for the additional costs of re-procurement (if any). In no event will the liability of Contractor for cost and losses, and for re-procurement exceed an amount equal to the original purchase price of the defective item.
  - E. The provisions of this clause do not affect the rights or obligations of either party, as they may be provided for in other portions of this contract or otherwise under applicable law.
- I-19. Availability of Funds: Any and all payments to the Contractor or vendor are dependent upon and subject to the availability of funds to the City for the purposes set forth in this agreement.

#### I-20. Invoice and Payment:

- A. Invoicing Instructions. In order to be considered proper invoices, invoices must be submitted as follows:
  - 1. Contractor must prepare a separate numbered invoice for each order or part of an order. Do not consolidate multiple purchase orders on one invoice. Additionally, when partial shipments are authorized, use a separate invoice. Do not duplicate an invoice number used for prior billings:
  - 2. Invoices must be issued by the company whose name is on the contract/order (unless otherwise authorized by Finance Director) and must contain the following minimum information to enable timely payment:
    - (a) Name of Contractor.
    - (b) Invoice Date. This cannot be a date earlier than the ship date required by the contract or purchase/deliver order. In the event that the invoice date is a date earlier than the required ship date, City of New Bern retains the right either to return the improper invoice to the Contractor for

correction or to change the invoice date to be the required ship date. In the event that an improper invoice is returned to a Contractor because the date on the invoice is earlier than the required ship date or because the invoice is improper for any other reason, the invoice date, will be considered to be the date of receipt of the corrected, proper invoice.

- (c) Contract/Order Number.
- (d) Item Description and Quantity Shipped/Delivered.
- (e) Contract/Order Line Item Cost and Total
- (f) Any applicable sales tax
- (g) Shipping and Discount Terms, and special allowance(s) if included in the contract. Special allowances must be shown on the invoice using percentage figures only. Do not deduct any of these from the item cost or from the invoice total.
- (h) "Ship To" address as shown on order or contract.
- (i) Freight charges (on FOB origin shipments).
- (j) Name, title and phone number of Contractor's contact person.
- (k) Complete "Remit To" mailing address on the invoice to indicate where Contractor's payment is to be sent. This address must be the same address as on the contract unless otherwise communicated from the Accounts Payable office
- 3. Correcting invoices and credit memos must be marked as such and must cross-reference the corrected invoice.

#### B. Payment.

- 1. A proper invoice is an invoice which contains all of the information/documentation, specified in paragraph A. (2) above, and is sent to the address specified in the contract or purchase/delivery order for the designated City of New Bern Accounting office. Improper invoices may be returned without payment to the Contractor.
- 2. The next payment date for City of New Bern Contracts is established at 30 days after receipt of a proper invoice.
- 3. Payment is made:
  - (a) The date a check for payment is dated.
  - (b) The date an electronic fund transfer is submitted to the financial institution, regardless of the date the financial institution posts the transfer.
  - (c) The date a withholding authorized by the contract is initiated by City of New Bern.
- 4. Any questions or inquiries concerning invoice payments should be directed to the City of New Bern Finance Account Payable department designated on the contract or purchase/deliver order.
- I-21. Withholding: City of New Bern may withhold payment for amounts due or creditable to City of New Bern under this contract, E.G., returns, damage.

#### I-22. Contractor Liability:

- A. Except as set out specifically elsewhere in the contract, Contractor shall be liable for cost to City of New Bern associated with termination for default, rejection of items, and breach of warranty, in addition to reimbursement of payment of the purchase price and re-procurement costs.
- B. Contractor will not be liable for damages if the failure to perform arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, Acts of God or the public enemy, Acts of the Government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

#### I-23. **Termination:**

- A. Mutual Termination. This contract may be terminated at any time upon the mutual agreement of both parties.
- B. Termination for Convenience. City of New Bern by written notice may terminate this contract in whole or in part when it is in the best interest of the City of New Bern. To the extent that this contract is for services and is so terminated, City of New Bern shall be liable for payment as set forth in the payment provisions of the contract for services rendered prior to the effective date of termination
- C. Termination for Default. City of New Bern by written notice may terminate this contract in whole or in part for failure of the Contractor to perform any of the provisions hereof. In such event, the Contractor shall be liable for damages including the excess costs of re-procuring similar supplies and services provided that if
  - 1. the Contractor was not in default; or
  - 2. the Contractor's failure to perform is without his/her or his/her Subcontractor or vendor's control or negligence; then the termination shall be deemed a "Termination for Convenience."

- D. The rights and remedies of City of New Bern provided in this clause are in addition to any other rights and remedies provided by law or under other clauses of this contract.
- I-24. Request for Monetary or Other Relief: No request for monetary or other relief by Contractor shall be considered unless submitted in writing to the Finance Director within 90 days after termination or termination of performance under the contract, whichever comes first. This clause shall not extend any period for filing, which is further limited by another clause of the contract.
- I-25. Notification of Debarment or Suspension Status: The Contractor or Vendor shall provide immediate notice to the Finance Director in the event of being suspended, debarred, or declared ineligible by any state of NC or federal department or agency, or upon receipt of a notice of proposed debarment from another agency, during the performance of this contract.
- I-26. **Equal Employment Opportunity:** The contractor will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or disability.
- I-27. **Drug-Free Work Place**: The contractor or vendor agrees to make a good faith effort to establish and maintain a drug-free work place in connection with the performance of this contract. Consistent with the size and organization of its work force, contractor or vendor may wish to consider taking the following or other appropriate actions in establishing a drug-free work place: Publicizing a drug-free work place policy; initiating an employee drug awareness program or encouraging participation in existing community programs; informing employees of the general availability of drug counseling programs; etc.
- I-28. Accident Prevention. Fire Protection, and Sanitation: If this contract is performed in whole or in part on premises owned or under the control of the City of New Bern Government, the contractor or vendor shall conform to all safety regulations and requirements concerning such premises in effect any time during contract performance to prevent accidents. Any violations of safety regulations, unless immediately corrected as directed by the Finance Director, shall be grounds for termination of the contract under the "Termination for Default" Clause.
- I-29. Standards: All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate state inspector which customarily requires the label or re-examination listing or identification marking of the appropriate safety standard organization; such as the American Society of Mechanical Engineers for pressure vessels;

The Underwriters Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; or the American Gas Association for gas operated assemblies, where such approvals of listings have been established for the type of device offered and furnished. Further, all items furnished shall meet all requirements of the Occupational Safety and Health Act (OSHA), and state and federal requirements relating to clean air and water pollution.

All Codes, standards, and specifications such as the National Electrical Code, North Carolina State Building Code, ASTM specifications, etc. referred to in the project specification shall be the issue in effect on the date of the invitation for bid, request for quote, and/or award.

- I-30. <u>Force Majeure:</u> Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.
- I-31. **Federal Funds**: If the source of funds for this Agreement is federal funds, the following federal provisions apply pursuant to 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II (as may be applicable):
  - A. Equal Employment Opportunity (41 C.F.R. Part 60);
  - B. Davis-Bacon Act (40 U.S.C. 3141-3148);
  - C. Copeland "Anti-Kickback" Act (40 U.S.C. 3145);
  - D. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708);
  - E. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387);
  - F. Debarment and Suspension (Executive Orders 12549 and 12689);
  - G. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352);
  - H. Procurement of Recovered Materials (2 C.F.R. § 200.322); and
  - I. Record Retention Requirements (2 CFR § 200.324)

# Exhibit A Federal Contracting Requirements

These Federal Contracting Requirements are incorporated into the Service Contract between the City 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 "Vendor" or "Provider" shall be deemed to mean the Contractor. By signing the Service Contract with the City, Contractor certifies that it has read and agrees to comply with all of the terms and conditions set forth below and that are incorporated into the Service Contract with the City and 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 document 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.CFR 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 sub-contractors, if any, hereby represent and covenant that they are 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 requirements in accordance with Drug Free Workplace Act of 1988 (Pub 100-690, Title V, Subtitle D). All contractors 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 City of New Bern or pass through entity in accordance with federal policy.

#### **Mandatory Disclosure**

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 agrees 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 City and understands and agrees that the City 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 these 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 USC § 1251-1387).

The Contractor agrees to report any violation to the City immediately upon discovery. The Contractor understands and agrees that the City will, in turn, report each violation as required to assure notification to the City, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency (EPA) Regional Office. Contractor must include this requirement in all subcontracts that exceed \$150,000.

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

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the City, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representative's 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 representative's 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

The City 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 City, 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 sub-contractor who will be subject to its provisions.

#### Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this 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 sub-contractors who will be subject to the provisions.

#### **Changes**

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**

**Termination Without Cause.** The City 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 City. By giving written notice to the Contractor, the City 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 or provide the proof of insurance as required by this Agreement.

Cancellation of Orders and Subcontracts. In the event this Agreement is terminated by the City 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 City 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 City, 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 City all computer programs, files, documentation, data, media, related material and any other recording devices, information, or compact discs that are owned by the City; (b) deliver to the City all Work Product;

(c) allow the City or a new vendor access to the systems, software, infrastructure, or processes of the Contractor that are necessary to migrate the Services to a new vendor; and (d) refund to the City all pre-paid sums for Products or Services that have been cancelled and will not be delivered.

No Suspension. In the event that the City 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 City Manager or their designee is authorized to terminate this Agreement on behalf of the City.

Audit. During the term of the Agreement and for a period of one year after termination or expiration of this Agreement for any reason, the City shall have the right to audit, either itself or through a third party, all books and record (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 City's payment obligations. The City 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 City in excess of \$5,000 but for the audit, then the Contractor shall be required to reimburse the City for the cost.

#### **Remedies**

Liquidated Damages: The City and the Contractor acknowledge and agree that the City 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 City may be damaged by such failures, including loss of goodwill and administrative costs; but that (b) the costs that the City 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 City'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 City of such failure, the City 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 City in obtaining or performing the Services from any money then due or to become due the Contractor and, should the City's reasonable cost of obtaining or performing the services exceed the amount due the Contractor, collect the difference from the Contractor.

**Right to Withhold Payment.** If the Contractor materially breaches any provision of this Agreement, the City 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 City 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 City 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**

A contract award (see CFR 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 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR 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 CFR Part 180 and 2 CFR Part. 3000. As such, the Contractor is required to verify that none of the Contractor, its principals (defined at 2 CFR § 180.995), or its affiliates (defined at 2 CFR § 180.905) are excluded (defined at 2 CFR§ 180.940) or disqualified (defined at 2 CFR § 180.935).

The Contractor is required to comply with 2 CFR Part 180, Subpart C and 2 CFR 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 proper certifies that:

This certification in this clause is a material representation of fact relied upon by the City. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available by the City, 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 CFR Part 180, Subpart C and 2 CFR 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**

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 vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### **Davis-Bacon Requirements**

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 CFR 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 CFR 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 sub-contractors 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 officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
- (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 benefit 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 assets, in a separate account, for the meeting of obligations under the plan or program.

# 2. Withholding.

The City 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 sub-contractor 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 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records 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 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at 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 sub-contractors. 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 sub-contractor 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 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 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 CFR 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 sub-contractor 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, 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 CFR 5.12.

#### 4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, 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 to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above. shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or sub-Contractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the 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 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress. expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the

event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

# 5. Compliance with Copeland Act Requirements.

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

#### 6. Subcontracts.

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 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 CFR Part 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 CFR 5.12.

# 8. Compliance with Davis-Bacon and Related Act Requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

#### 9. Disputes Concerning Labor Standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

#### 10. Certification of Eligibility.

(i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be

awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC 1001.

# Copeland "Anti-Kickback" Act

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 CFR 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 by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

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 provided in 29 CFR § 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 CFR 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 forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- 2. <u>Violation; liability for unpaid wages; liquidated damages</u>. 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 forty 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. <u>Subcontractors</u>. 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 subcontracts to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any sub-contractors 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

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 CFR § 18.34 and 49 CFR § 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 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 and Cooperative Agreements," 37 CFR 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:

<u>General</u> - 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 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 and Cooperative Agreements," 37 CFR Part 401.

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**

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 CFR 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 CFR Part 247 whenever:

- 1. The contract requires procurement of \$10,000 or more of a designated item 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- designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <a href="https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program.">https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program.</a>"

#### **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 seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without pre-approval by the specific federal agency.

#### **Insurance and Indemnity**

**INSURANCE AND INDEMNITY.** To the fullest extent permitted by laws and regulations, CONTRACTOR shall indemnify and hold harmless the CITY 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. Contractor shall also maintain Employers' Liability insurance limits of not less than \$500,000 per accident and \$500,000 each employee for injury by disease. Additionally, CONTRACTOR shall maintain, at its expense, the following minimum insurance coverage:

- (a) Commercial General Liability Insurance in an amount not less than\$1,000,000 per occurrence for bodily injury or property damage.
- (b) Professional Liability Insurance in an amount not less than \$1,000,000 per occurrence.
- (c) Workers Compensation Insurance in an amount \$500,000 per occurrence.
- (d) Commercial Automobile Insurance in an amount \$1,000,000 per occurrence as applicable.

CONTRACTOR, upon execution of this Contract, shall furnish to the CITY 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.

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

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient."

APPENDIX A, 44 C.F.R. PART 18 - CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)
The undersigned Contractor certifies, to the best of his or her knowledge, 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      |  |
|--|--|
| Name and Title of Contractor's Authorized Official |  |
| Date   |  |

# PROFESSIONAL SERVICES AGREEMENT

#### **COUNTY OF CRAVEN**

| THIS AGREEMENT (hereinafter the "Agreement") is made and entered into this day of, 20, by and between the City of New Bern, a North Carolina municipal corporation, hereinafter referred to as the "CITY", and, hereinafter referred to as the "CONSULTANT".  |
|---|
| WITNESSETH  |
| WHEREAS, the CITY desires to retain and engage the CONSULTANT to perform certain professional services hereinafter described, and further that the parties hereto desire to reduce the terms of this Agreement to writing:  |
| NOW THEREFORE, for and in consideration of the mutual promises to each other, as hereinafter set forth, the parties hereto do mutually agree as follows:  |
| 1. <u>Term of Agreement</u> . The term of this Agreement shall commence as of the date set forth above and continue through to the completion of the project unless sooner terminated as provided herein.   |
| 2. <u>Consultant's Services</u> . The CONSULTANT hereby agrees to perform, in a manner satisfactory to the CITY, professional and timely services as set forth in Exhibit "A" attached hereto and incorporated herein by this reference. The parties hereto acknowledge that the terms outlined in Exhibit "A" shall be valid and enforceable to the extent they are not inconsistent with the provisions as set forth herein, and to the extent that they are inconsistent, the provisions as set forth in this Agreement shall control. The parties hereto further agree that the terms, conditions and requirements as set forth in any Request for Qualification ("RFQ") put forth by CITY and responded to by CONSULTANT shall be binding upon the parties to the extent that they do not conflict with the provisions as set forth herein, said RFQ, if applicable, being attached hereto as Exhibit "B" and incorporated herein by this reference. |
| 3. Compensation to Consultant. The CITY hereby agrees to pay to CONSULTANT the amount not to exceed dollars (\$) for services as provided herein. In the event that CONSULTANT should fail to provide the services as set forth above, CITY shall be entitled to a refund of its payment(s) to CONSULTANT. Payment will be made within 30 days after  |
| receipt of an approved invoice.   |

- 4. <u>Termination</u>. CITY shall have the right to terminate this Agreement at any time and without cause upon thirty (30) days written notice to the other party.
- 5. Records. The CITY has the right to audit all records pertaining to this Agreement both during its performance and after its completion. Further, upon termination of this Agreement, the

CONSULTANT shall deliver to the CITY all records, notes, memorandum, data, documents or any other materials produced by CONSULTANT in connection with services rendered pursuant to this Agreement. If compensation for expenses shall be provided to CONSULTANT, the CONSULTANT shall maintain all expense charge documents for a period of three (3) years following the completion of this agreement and said documents shall only be forwarded to the CITY upon request.

- 6. Ownership of Documents. The CONSULTANT agrees that all materials and documents developed pursuant to this Agreement shall be the exclusive property of the CITY, and the CONSULTANT shall retain no property or copyright interest therein. Further, upon termination of this Agreement, the CONSULTANT shall deliver to the CITY all records, notes, memorandum, data, documents or any other materials received or obtained from the CITY in connection with services rendered pursuant to this Agreement.
- 7. Independent Consultant. This Agreement does not create an employee/employer relationship between the parties. It is the intention of the parties that the CONSULTANT will be an independent consultant and not the CITY's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the federal Internal Revenue Code, the provisions of the North Carolina revenue and taxation laws, the North Carolina Wage and Hour Act, the North Carolina Workers' Compensation Act, and the provisions of the North Carolina Employment Security Law. The CONSULTANT will retain sole and absolute discretion in the judgment of the manner and means of carrying out the CONSULTANT's activities and responsibilities hereunder. The CONSULTANT agrees that he/she/it is a separate and independent enterprise from the CITY; and that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the services described herein. This Agreement shall not be construed as creating any joint employment relationship between the CONSULTANT and the CITY, and the CITY will not be liable for any obligation incurred by the CONSULTANT, including but not limited to unpaid minimum wages and/or overtime premiums.
- 8. <u>Indemnity</u>. The CONSULTANT shall release, indemnify, keep and save harmless the CITY, its agents, officials and employees, from any and all responsibility or liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether agents, officials or employees of the CITY or third persons, and to all property proximately caused by, incident to, resulting from, arising out of, or occurring in connection with, directly or indirectly, the performance or nonperformance by CONSULTANT (or by any person acting for CONSULTANT or for whom CONSULTANT is or is alleged to be in any way responsible), whether such claim may be based in whole or in part upon contract, tort (including alleged active or passive negligence or participation in the wrong), or upon any alleged breach of any duty or obligation on the part of CONSULTANT, its agents, officials and employees or otherwise. The provisions of this Section shall include any claims for equitable relief or for damages (compensatory or punitive) against the CITY, its agents, officials, and employees including alleged injury to the business of any claimant and shall include any and all losses, damages, injuries, settlements, judgments, decrees, awards, fines, penalties, claims, costs and expenses. Expenses as used herein shall include without limitation the costs incurred

by the CITY, its agents, officials and employees, in connection with investigating any claim or defending any action, and shall also include reasonable attorneys' fees by reason of the assertion of any such claim against the CITY, its agents, officials or employees. The provisions of this Section shall also include any claims for losses, injuries or damages, and wages or overtime compensation due the CONSULTANT's employees in rendering services pursuant to this Agreement, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act or any other federal or state law. The intention of the parties is to apply and construe broadly in favor of the CITY the foregoing provisions subject to the limitations, if any, set forth in N.C.G.S. 22B-1.

Representatives of the Parties. Amanda Ohlensehlen, Community & Economic Development 9. Manager, is designated as the CITY's contract administrator for this Agreement.

The contract administrator shall work with requesting department for monitoring the CONSULTANT's performance, coordinating the CONSULTANT's activities, approving all administrative requests by the CONSULTANT and approving all payments to the CONSULTANT pursuant to this Agreement. Further, any notice required to the CITY under this Agreement shall be sufficient if mailed to the CITY by certified mail as indicated below:

Amanda Ohlensehlen, Community & Economic Development Manager City of New Bern P.O. Box 1129 New Bern, NC 28563

shall be the CONSULTANT's representative for this Agreement. Any notice required to the CONSULTANT under this Agreement shall be sufficient if mailed to the CONSULTANT by certified mail as indicated below:

Other Laws and Regulations. CONSULTANT will comply with any and all applicable 10. federal, state and local standards, regulations, laws, statutes and ordinances including those regarding toxic, hazardous and solid wastes and any pollutants; public and private nuisances; health or safety; and zoning, subdivision or other land use controls. CONSULTANT will take all reasonably necessary, proper or required safety, preventative and remedial measures in accordance with any and all relations and directives from the North Carolina Department of Human Resources, the United States Environmental Protection Agency, the North Carolina Department of Environmental Management, Health Departments, and any other federal, state or local agency having jurisdiction, to insure the prompt prevention or cessation (now or in the future) of violations of either the applicable provisions of such standards, regulations, laws, statutes, and ordinances or any permits or conditions issued thereunder. CONSULTANT specifically acknowledges and agrees that CONSULTANT, and any subconsultants it uses, has complied with and shall continue to comply with the provisions of the federal E-Verify program in compliance with Article 2 of Chapter 64 of the North Carolina General Statutes. CONSULTANT shall maintain adequate safeguards with respect to sensitive customer information in conformance with and pursuant to 16 C.F.R. §681.1 and in accordance with N.C. Gen. Stat. §132-1.10

## 11. <u>Insurance Requirements</u>.

## A. Commercial General Liability

- 1. CONSULTANT shall maintain Commercial General Liability (CGL) and if necessary, Commercial Umbrella Liability insurance with a total limit of not less than \$1,000,000.00 each occurrence for bodily injury and property damage. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location or the general aggregate shall be twice the required limit.
- 2. CGL insurance shall be written on Insurance Services Office (ISO) "occurrence" form CG 00 01 covering Commercial General Liability or its equivalent and shall cover the liability arising from premises, operations, independent CONSULTANTs, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
- 3. The City of New Bern, its officers, officials, agents, and employees are to be covered as additional insureds under the CGL by endorsement CG 20 10 or CG 20 33 AND CG 20 37 or an endorsement providing equivalent coverage as respects to liability arising out of activities performed by or on behalf of the CONSULTANT; products and completed operations of the CONSULTANT; premises owned, leased or used by the CONSULTANT; and under the commercial umbrella, if any. The coverage shall contain no special limitations on the scope of protection afforded to the City of New Bern, its officers, officials, agents, and employees.
- 4. There shall be no endorsement or modification of the CGL or Umbrella Liability limiting the scope of coverage for liability arising from explosion, collapse, underground property damage, or damage to the named insured's work, when those exposures exist.
- 5. The CONSULTANT's Commercial General Liability insurance shall be primary as respects the City of New Bern, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by the City of New Bern, its officers, officials, and employees shall be excess of and not contribute with the CONSULTANT's insurance.
- 6. The insurer shall agree to waive all rights of subrogation against the City of New Bern, its officers, officials, agents and employees for losses arising from work performed by the CONSULTANT for the City of New Bern.

## B. Workers' Compensation and Employer's Liability

- 1. CONSULTANT shall maintain Workers' Compensation as required by the general statutes of the State of North Carolina and Employer's Liability Insurance.
- 2. The Employer's Liability, and if necessary, Commercial Umbrella Liability insurance shall not be less than \$500,000.00 each accident for bodily injury by accident, \$500,000.00 each employee for bodily injury by disease, and \$500,000.00 policy limit.
- 3. The insurer shall agree to waive all rights of subrogation against the City of New Bern, its officers, officials, agents and employees for losses arising from work performed by the CONSULTANT for the City of New Bern.

- 4. The U.S. Longshore and Harborworkers Compensation Act endorsement shall be attached to the policy when the services will be on or in close proximity to navigable waterways.
- 5. The Maritime Coverage endorsement (WC 00 02 01) shall be attached to the policy when the contracted services involve the use of watercraft.

NOTE: Additional requirements needed if you have a borrowed servant, offshore platforms or federal act situations. (Federal Acts such as the Defense Base Act, Migrant and Seasonal Agricultural Worker Protection Act, and the Federal Coal Mine Health and Safety Act, etc.)

# C. <u>Business Auto Liability</u>

- 1. CONSULTANT shall maintain Business Auto Liability and, if necessary, Commercial Umbrella Liability insurance with a limit of not less than \$1,000,000.00 each accident.
- 2. Such insurance shall cover liability arising out of any auto, including owned, hired, and non-owned autos.
- 3. Business Auto coverage shall be written on ISO form CA 00 01, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in ISO form CA 00 01.
- 4. Pollution liability coverage equivalent to that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48) shall be provided, and the Motor Carrier Act endorsement (MCS 90) shall be attached when those exposures exist.
- 5. CONSULTANT waives all rights against the City of New Bern, its officers, officials, agents and employees for recovery of damages to the extent these damage are covered by the business auto liability or commercial umbrella liability insurance obtained by CONSULTANT pursuant to Section 11.C.1 of this agreement.
- 6. The CONSULTANT's Business Auto Liability insurance shall be primary as the City of New Bern, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by the City of New Bern, its officers, officials, and employees shall be excess of and not contribute with the CONSULTANT's insurance.

# D. <u>Professional Liability Insurance</u>

- 1. CONSULTANT shall maintain in force for the duration of this contract professional liability or errors and omissions liability insurance appropriate to the CONSULTANT's profession. Coverage as required in this paragraph shall apply to liability for a professional error, act, or omission arising out of the scope of the CONSULTANT's services as defined in this contract. Coverage shall be written subject to limits of not less than \$1,000,000.00 per claim.
- 2. If coverage required in paragraph 1. above is written on a claims-made basis, the CONSULTANT warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 (two) years beginning from the time that work under the contract is complete.

# E. <u>Deductibles</u> and Self-Insured Retentions

1. The CONSULTANT shall be solely responsible for the payment of all deductibles to which such policies are subject, whether or not the City of New Bern is an insured under the policy.

# F. <u>Miscellaneous Insurance Provisions</u>

The policies are to contain, or be endorsed to contain, the following provisions:

- 1. Each insurance policy required by this contract shall be endorsed to state that coverage shall not canceled by either party except after 30 days prior written notice has been given to the City of New Bern, PO Box 1129, New Bern, NC 28563.
- 2. If CONSULTANT's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

# G. Acceptability of Insurers

Insurance is to be placed with insurers licensed to do business in the State of North Carolina with an A.M. Best's rating of no less than A VII unless specific approval has been granted by the City of New Bern.

## H. Evidence of Insurance

- 1. The CONSULTANT shall furnish the City of New Bern with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements prior to commencing the work, and thereafter upon renewal or replacement of each certified coverage until all operations under this contract are deemed complete.
- 2. Evidence of additional insured status shall be noted on the certificate of insurance as per requirements in Section 11.
- 3. With respect to insurance maintained after final payment in compliance with requirements, an additional certificate(s) evidencing such coverage shall be provided to the City of New Bern with final application for payment and thereafter upon renewal or replacement of such insurance until the expiration of the period for which such insurance must be maintained.

#### I. Sub Consultants

CONSULTANT shall include all sub consultants as insureds under its policies or shall furnish separate certificates for each sub consultant. All coverage for sub consultants shall be subject to all of the requirements stated herein. Commercial General Liability coverage shall include independent CONSULTANT's coverage, and the CONSULTANT shall be responsible for assuring that all sub consultants are properly insured.

#### J. Conditions

- 1. The insurance required for this contract must be on forms acceptable to the City of New Bern.
- 2. The CONSULTANT shall provide that the insurance contributing to satisfaction of insurance requirements in Section 11. Minimum Scope and Insurance Requirements shall not be canceled, terminated or modified by the CONSULTANT without prior written approval of the City of New Bern.
- 3. The CONSULTANT shall promptly notify the Safety Officer at (252) 639-7574 of any accidents arising in the course of operations under the contract causing bodily injury or property damage.
- 4. The City of New Bern reserves the right to obtain complete, certified copies of all required insurance policies, at any time.
- 5. Failure of the City of New Bern to demand a certificate of insurance or other evidence of full compliance with these insurance requirements or failure of the City of New Bern to identify a deficiency from evidence that is provided shall not be construed as a waiver of CONSULTANT's obligation to maintain such insurance.
- 6. By requiring insurance herein, the City of New Bern does not represent that coverage and limits will necessarily be adequate to protect the CONSULTANT and such coverage and limits shall not be deemed as a limitation of CONSULTANT's liability under the indemnities granted to the City of New Bern in this contract.
- 7. The City of New Bern shall have the right, but not the obligation of prohibiting CONSULTANT or any sub consultant from entering the project site or withhold payment until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the City of New Bern.
- 12. <u>No Presumption</u>. None of the Parties shall be considered the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof. This Agreement was drafted with substantial input by all Parties and their counsel, and no reliance was placed on any representations other than those contained herein.
- 13. <u>Entire Agreement and Amendment</u>. This Agreement, including any Exhibits attached, which are incorporated herein and made a part hereof, constitutes the entire contract between the parties, and no warranties, inducements, considerations, promises or other inferences shall be implied or impressed upon this Agreement that are not set forth herein. This Agreement shall not be altered or amended except in writing signed by all Parties.
- 14. <u>No Assignment</u>. No party shall sell or assign any interest in or obligation under this Agreement without the prior express written consent of all the parties.
- 15. <u>Conflict of Interest</u>. No paid employee of the CITY shall have a personal or financial interest, direct or indirect, as a contracting party or otherwise, in the performance of this Agreement.
  - 16. <u>Non-Waiver of Rights</u>. It is agreed that the CITY's failure to insist upon the strict

performance of any provision of this Agreement, or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this Agreement.

- 17. <u>Binding Effect</u>. Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.
- 18. <u>Reference</u>. Use of the masculine includes feminine and neuter, singular includes plural; and captions and headings are inserted for convenience of reference and do not define, describe, extend or limit the scope of intent of this Agreement.
- 19. <u>Interpretation/Governing Law.</u> All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina without regard to any conflicts of law principles and subject to the exclusive jurisdiction of federal or state courts within the State of North Carolina. In the event of a conflict between the various terms and conditions contained herein or between these terms and other applicable provisions, then the more particular shall prevail over the general and the more stringent or higher standard shall prevail over the less stringent or lower standard. The place of this Agreement, its situs and forum, shall be New Bern, Craven County, North Carolina, and in said County and State shall all matters, whether sounding in contract or tort relating to the validity, construction, interpretation or enforcement of this Agreement be determined.
- 20. <u>Saving Clause</u>. If any section, subsection, paragraph, sentence, clause, phrase or portion of this Agreement is for any reason held invalid, unlawful, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.
  - 21. <u>Time</u>. Time is of the essence in this Agreement and each and all of its provisions.
- 22. <u>Immunity Not Waived</u>. This Agreement is governmental in nature, for the benefit of the public. CONSULTANT acknowledges that City reserves all immunities, defenses, rights or actions arising out of City's sovereign status under applicable law. No waiver of any such immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of City's entry into this Agreement.
- 23. <u>Non-Appropriation</u>. In the event no City funds or insufficient City funds are appropriated or otherwise available by any means whatsoever in any fiscal year for any payment due under this Agreement, then the City will immediately notify CONSULTANT of such occurrence and this Agreement shall create no further obligation of the City as to such fiscal year and shall be null and void, except as to the portions of payments for which funds shall have been appropriated and budgeted. In such event, this Agreement shall terminate on the last day of the fiscal year for which appropriations were received without penalty or expense to the City of any kind whatsoever.

- 24. Authority to Act/IDA Certification. Each of the persons executing this Agreement on behalf of CONSULTANT does hereby covenant, warrant and represent that the Organization is a duly organized and validly existing \_\_\_\_\_\_, that the \_\_\_\_\_\_ has full right and authority to enter into this Agreement, and that each and all persons signing on behalf of the CONSULTANT were authorized to do so. The undersigned certifies that CONTRACTOR is not listed on the Final Divestment List created by the N.C. State Treasurer pursuant to Chapter 147 (the Iran Divestment Act) of the North Carolina General Statutes.
- 25. <u>Non-Discrimination</u>. CONSULTANT will take affirmative action not to discriminate against any employee or applicant for employment or otherwise illegally deny any person participation in or the benefits of the program which is the subject of this agreement because of race, creed, color, sex, age, disability or national origin. To the extent applicable, CONSULTANT will comply with all provisions of Executive Order No. 11246 the Civil Rights Act of 1964, (P.L. 88-352) and 1968 (P.L. 90-284), and all applicable federal, state and local laws, ordinances, rules, regulations, orders, instructions, designations and other directives promulgated to prohibit discrimination. Violation of this provision, after notice, shall be a material breach of this agreement and may result, at CITY's option, in a termination or suspension of this agreement in whole or in part.
- 26. <u>E-Verify.</u> As a condition of payment for services rendered under this agreement, CONSULTANT shall comply with the requirements of Article 2 Chapter 64 of the General Statutes. Further, if Seller provides the services to the City utilizing a subcontractor, Seller shall require the subcontractor to comply with requirements of Article 2 Chapter 64 of the General Statutes as well.
- 27. <u>Iran Divestment Act Certificate.</u> CONSULTANT certifies that, as of the date of this agreement, it is not on the Final Divestment List as created by the State Treasurer pursuant to N.C.G.S. 147-86.58. In compliance with the requirements of the Iran Divestment Act and N.C.G.S. 147-86.59, CONSULTANT shall not utilize in the performance of the contract any subcontractor that is identified on the Final Divestment List.
- 28. <u>Counterparts.</u> This Agreement may be executed in several counterparts, including separate counterparts. Each shall be an original, but all of them together constitute the same instrument.

# 29. <u>Minority Business Enterprise (MBE)</u>

The CITY desires that minority business enterprises have the maximum opportunity to participate in the performance of this contract and will:

l. Promote affirmatively (where feasible) in accordance with North Carolina General Statute 143-129, together with all other applicable laws, statutes and constitutional provisions) the procurement of goods, services in connection with construction projects for minority owned business enterprises.

- 2. Insure that competitive and equitable bidding opportunities are followed to afford minority business enterprises participation. Strive to obtain contract and subcontract awards to minority business enterprises.
- 3. Identify and communicate to the minority business enterprises community procedures and contract requirements necessary for procurement of goods and services for construction projects and subcontracts.
- 4. Provide technical assistance as needed.
- 5. Promulgate and enforce contractual requirements that the general CONSULTANT or all construction projects shall exercise all necessary and reasonable steps to insure that minority business enterprises participate in the work required in such construction contracts.

The CONSULTANT shall insure that minority business enterprises have the maximum opportunity to compete for and perform portions of the work included in this contract and shall not discriminate on the basis of race, color, national origin or sex. The CONSULTANT shall include this special provision, Minority Business Enterprise (MBE), in all subcontracts for this contract. Failure on the part of the CONSULTANT to carry out the requirements set forth in this special provision may constitute a breach of contract and after proper notification may result in termination of the contract or other appropriate remedy.

A minority business enterprise is defined as a business, with at least fifty (51%) percent owned and controlled by minority group members. The minority ownership must exercise actual day-to-day management. Minority group members may consist of Black Americans (an individual of the Black race of African origin), Hispanic Americans (an individual of a Spanish speaking culture and origin at parentage), Asian Americans (an individual of a culture, origin or parentage traceable to the areas of the Far East, Southeast Asia, the Indian subcontinent and the Pacific Islands), Indian Americans (an individual who is an enrolled member of a Federally recognized Indian tribe, or recognized by the tribe as being an Indian, as evidenced by a certification of a tribal leader), American Aleuts or any recognized minority group approved by the CITY.

A Woman Business Enterprise is a business with at least fifty (51%) percent owned and controlled by women who exercise actual day-to-day management.

The CONSULTANT shall exercise all necessary and reasonable steps to insure that Minority Business Enterprises and Woman Business Enterprises participate in the work required in this contract. The CONSULTANT agrees by executing this contract that he will exercise all necessary and reasonable steps to insure that this special provision contained herein on Minority Business Enterprise is complied with.

IN WITNESS WHEREOF, the CITY and the CONSULTANT have each executed this Agreement in duplicate originals, one of which shall be retained by each of the parties.

| CITY OF NEW BERN   |
|--|
| By:  |
| By: Mark Stephens, City Manager  |
|  |
| FINANCE OFFICER'S CERTIFICATION STATEMENT  This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act. |
| This day of  |
| Lori Mullican, Interim Finance   |
| Project Number: Officer (if applicable)  |
| Account Number: (If applicable)  |
| Amount of Contract:  |
| Requisition/PO Number:   |
| Federal ID Number:   |
| STATE OF NORTH CAROLINA  |
| COUNTY OF CRAVEN   |
| I,, a Notary Public in said State and County, certify that Mark  |
| I,   |
| WITNESS my hand and notarial seal, this the day of, 2020.  |
| [SEAL]   |
| Notary Public  |
| My Commission Expires:   |

# CONSULTANT

| By:   |  |
|---|--|
| ·   | President/Vice President                         |
|   |  |
| STATE OF  |  |
| COUNTY OF   |  |
| I,, a Notary  | y Public, certify that                           |
| , personal  | ly came before me this day and acknowledged that |
| he (she) is President of                                  | , a corporation, and that by authority           |
| duly given and as the act of the corporation, he(she) exe | ecuted the foregoing instrument on behalf of the |
| corporation.  |  |
| Witness my hand and official seal, this the               | day of, 2020.                                    |
|   | Notary Public                                    |
| My Commission Expires:                                    |  |
|   | [SEAL]   |



# Scope of Work

Upon receiving a Notice to Proceed, our mitigation planners will conduct relevant research to become familiar with the plan documents and related information currently in place for the planning area. This information, along with ongoing team discussions, will help to finalize and implement a flexible, yet deliberate approach to the preparation of this Resiliency and Hazard Mitigation Plan.

M&N's general approach to preparing this plan will follow the phases and steps outlined in the RFQ and are covered below. Before the process begins, it will also be necessary to establish a planning team and appropriate points of contact within the community. M&N will assist the City of New Bern in identifying appropriate representatives for a local planning team. This is typically accomplished by reviewing the membership lists of previous mitigation planning teams; discussing the goals and desired outcomes of this planning cycle with relevant stakeholders; and considering all relevant departments, stakeholders, and potential resources that could and should contribute to the leadership of the steering committee.

The phases and tasks described below are flexible and can be modified, within reason, based upon further input from the steering committee.

# PHASE 1: DATA COLLECTION, ASSESSMENT AND PUBLIC ENGAGEMENT

## Task 1: Data Gathering

Goal: Collect, analyze, and leverage existing plan documents, studies, data, past mitigation activities, and other resources to form a foundation for the overall planning process.

Overview: It is important to characterize the general makeup of the planning area, including relevant geographic information, demographic data, economic profiles, building and parcel data, environmental characteristics, community assets, infrastructure, historic properties, land use patterns, major employers, high potential loss properties, plans for future development, etc. in relation to flood hazard risk. It is also important to conduct a thorough literature review of all relevant plans, policies, procedures, ordinances, etc. that relate to resiliency, flood risk reduction, and sustainable development.

This baseline information provides context for the planning area and thereby assists the planning team in recognizing the social, environmental, and economic factors that ultimately play a role in determining community vulnerability to identified hazards. This study will also include information on development trends and special infrastructure considerations, as well as historic properties, districts and sites; cultural assets; waterfront destinations; and other important community elements.

The M&N Team will work with the City to understand and clarify the scope of the analysis and the data required for the vulnerability and risk scoping assessment. This includes asset data such as property parcels and building footprints, and threat data such as various inundation model outputs. The data sources and methods of categorizing asset data are provided as a technical document for auditability.

#### Scope and Deliverables:

- Establish appropriate Geographic Information System (GIS) and data inventory
- Create a digital library of relevant plans, processes, ordinances, etc. as described above
- Develop a summary report/presentation on initial findings for discussion by the planning team



# Task 2: Public Input

*Goal:* Educate citizens and key stakeholders on the proposed planning process and solicit their input and participation; further strengthen collaboration and partnerships between targeted stakeholder groups across the planning area to identify, assess, communicate, and mitigate identified hazards.

Overview: Public involvement is vitally important in helping to inform and engage constituents about resilience. In our experience, we have found that broad public involvement can be best accomplished at strategic points in the planning process. Working with other cities, counties, and regions, we have seen the importance of communicating with three distinct groups: inward to City staff and key regional stakeholders; upward to elected officials; and outward to the general public.

It has also been our experience that in order to develop an effective plan and subsequent mitigation actions, meaningful input is required from key stakeholder groups, such as City staff, regional leaders, major employers, utilities, service providers, and economic interests. We define stakeholders as people and/or groups who meet the two "R's"—willing to accept Responsibility and able to assign Resources. We have seen that active working groups, supported by workshops, empower these stakeholders to accept responsibility and find ways to add their resources to the solution.

#### Scope and Deliverables:

- Five (5) planning team meetings
- Three (3) open public meetings (covering three distinct sectors of the community)
- One (1) additional stakeholder engagement meeting
- Documentation of the above activities

# Task 3: Vulnerability and Risk Assessment

Goal: Utilize the AccelAdapt vulnerability assessment software and methodology developed by proposed team member N+F. This will include identifying and communicating changes in perceived hazard risks.

Overview: M&N's planning process will bring to light, through clear maps, quantifiable data and a meaningful narrative, existing threats to the planning area and how those threats might change over time. This will be achieved in coordination with M&N's teaming partner, N+F. For the purposes of this task, resilience is defined as making the right community investments before a hazard event occurs, so that when one does occur, a community's capacity does not drop below a critical threshold, allowing the community to adapt and "bounce back" faster.

Our general approach to this task uses the framework our team developed in collaboration with NOAA for the U.S. Climate Resilience Toolkit – the "Steps to Resilience." N+F has worked with NOAA to establish this as the national standard for how communities should approach vulnerability assessments and resilience planning. The Steps to Resilience framework is a step-by-step process, each building on the previous step, designed to assist local governments identity climate and non-climate threats, assess vulnerabilities, develop strategies for addressing them, and prioritize specific mitigation and adaptation measures. The process focuses on building a group consensus through each step by providing useful decision support tools in workshop settings.

In a traditional vulnerability assessment, the analysis can be out-of-date as soon as it is delivered. To address this problem, N+F developed **AccelAdapt** in collaboration with ESRI. AccelAdapt is an interactive software product that regularly ingests new local asset data to provide a "living" risk assessment. Thus, with AccelAdapt, as a jurisdiction changes, so does its risk assessment.

#### CITY OF NEW BERN



All analysis outputs will be published to the City's ArcGIS Online account. The data used as part of this risk assessment will continue to belong to the City after the project is completed. Our team is closely partnered with ESRI to make this integration simple and secure. Because feature services are used as the core data services, the application is secured using user authentication that will be controlled by the City.

Furthermore, a report only represents one way of interacting with the risk assessment information. By providing a tailored interactive viewer, AccelAdapt Online maximizes insights to be gained from specific vulnerability assessments. The AccelAdapt Online viewer is built on the ESRI ArcGIS JavaScript API. N+F hosts and maintains the viewer so that there is no new software for the City to manage.

In addition to the expertise N+F will provide for the vulnerability assessment, The Craig Group will focus on the unique vulnerabilities and financial risks associated with historic buildings, properties, districts, sites, and assets. The natural forces to be addressed through this planning process and this risk and vulnerability assessment specifically threaten our North Carolina heritage with extreme storm events, sea level rise, wildfires, and other climate-related threats. These threats rapidly erode shorelines, cultural practices, archaeological sites, and the historic fabric of our communities.

The Craig Group's primary role in this technical approach will be to support the City of New Bern and its various community groups; cultural organizations; and state and national partners in valuing and protecting heritage assets within the planning area. The Craig Group specifically helps communities like New Bern decide what policies and plans are best suited to the protection of their historic places and how best to lead the effort to ensure a viable future for the past. This expertise will be applied strategically throughout the planning process, including the risk assessment, to ensure proper care is taken to address historic assets and potential mitigation techniques.

#### Scope:

- Utilize AccelAdapt software developed by proposed team member N+F
- Perform a detailed vulnerability and risk assessment at the local/asset level

#### Specific Details:

# Step 1: Data Integration, Exposure Analysis, and Socio-economic Assessment

Outcomes of this step will include:

- Understanding of the numbers of persons and assets that are exposed to each threat by sector
- Understanding of where those assets are exposed, and whether some neighborhoods are more exposed to hazards (such as flooding) than others
- Understanding of the socioeconomics of the region and how that influences local resilience
- Recommendations for additional beneficial datasets to be gathered

The M&N Team will perform a data quality assessment that identifies factors that alter the confidence in key risk assessment elements. This is also useful for other purposes beyond the risk assessment. For example, the team will identify any parcels that have an improved value but that do not have a corresponding building footprint. Furthermore, the team will recommend additional data investments such as key threat layers that could be created to increase the value of the analysis in the future.

Once cataloged and assessed, the team will then fully integrate the GIS data inventory for the analysis. N+F will perform the exposure assessment for the planning area for all relevant threats and assets for which data is available. Each asset will be intersected with each threat in order to determine its exposure (for example commercial properties

#### CITY OF NEW BERN



intersected with flood risk data). This analysis is performed at the parcel and structure-level and then aggregated to a census block group scale for comparability across the city.

These community assets will be placed into general categories and, as budget permits, a more detailed analysis can be performed using more nuanced categories for high-exposure assets. These community assets will be defined iteratively with the City, subject to data availability. Some example assets and threats include:

| Assets                           | Threats                         |  |
|----------------------------------|---------------------------------|--|
| Residential Property             | Tidal Nuisance Flooding         |  |
| Vulnerable Populations           | Extreme Heat/Urban Heat Islands |  |
| Commercial Property              | Riverine Flooding               |  |
| Cultural and Historic Properties | Sea Level Rise                  |  |
| Critical Facilities              | Rainfall-induced Flooding       |  |
| Road Infrastructure              | Storm Surge                     |  |
| And others                       | And others                      |  |

Additionally, a range of socioeconomic variables will be gathered for use as another lens to assess vulnerability of human systems and as a way of assessing equitable distribution of adaptation and resilience solutions.

#### Specific Deliverables:

- A virtual or in-person working session with key City staff and local GIS managers to facilitate data gathering and review relevant reports
- Interim report containing data inventory, technical documentation, and data quality assessment
- Interim exposure assessment report
- GIS and tabular data inventory of analysis outputs
- A facilitated on-site workshop for key City staff to present the findings of this phase and to gather necessary input for the next phase

## Step 2: Vulnerability and Risk Assessment

Outcomes of this step will include:

- A deeper understanding of asset vulnerability and risk to specific threats, including counts, proportions, and locations - all leading to a quantified understanding of the assets most vulnerable and at-risk to individual hazards
- Understanding of connectivity issues including people and businesses that may become isolated
- Expanded metrics including jobs and commercial revenue potentially impacted

In this second step, the team will perform a vulnerability and risk assessment for the most exposed Asset-Threat Pairs identified in Step 1. This task involves assessing a number of factors such as sensitivity and adaptive capacity to determine vulnerability. A similar but parallel scoping assessment for risk will be performed that combines the probability with the consequence of an event taking place. This is a high-level risk scoping estimate (as opposed to a more detailed and costly assessment). Both risk and vulnerability are combined to provide a comparable metric.

The project team will work with the City to gather as much input as possible to localize these rulesets to the planning area. This includes gathering information such as the timeline of ordinances passed within the jurisdiction, asset uses, emergency response times, asset values, and other factors. These rulesets will be combined and the assessments performed.

#### **CITY OF NEW BERN**



#### Specific Deliverables:

- Two virtual working sessions with key City staff to further refine rulesets for analysis
- Interim vulnerability assessment report
- GIS and tabular data inventory of analysis outputs
- A facilitated on-site workshop for key City staff to present the findings of this phase and to gather necessary input for the next phase

#### PHASE 2: ANALYSIS AND PLAN DEVELOPMENT

#### Task 4: Review of Possible Solutions

Goal: Prepare appropriate alternatives to address the problem statements developed as part of the vulnerability assessment.

Overview: Developing potential mitigation and climate adaptation strategies provides the foundation for detailed mitigation actions that link specific activities to locally assigned implementation mechanisms and target completion dates. This is designed to make the plan both strategic in nature (through the identification of long-term goals) and also functional (through the identification of short-term and immediate actions that guide day-to-day decisionmaking and project implementation).

In addition to the identification and prioritization of possible mitigation activities, emphasis is placed on the use of program and policy alternatives to help make the city less vulnerable to the damaging forces of flooding and other natural hazards while improving the economic, social, and environmental health of the planning area. The concept of multi-objective planning is typically emphasized throughout the planning process, particularly in identifying ways to link hazard mitigation policies and programs with complimentary community goals related to housing, economic development, downtown revitalization, recreational opportunities, transportation improvements, environmental quality, historic preservation, land development, and public health and safety.

This process will also include identification of the department or agency responsible for implementing the action, estimated budget information, general cost effectiveness, proposed timeframe for completion, and other key components of well-formed mitigation actions. It is also helpful to understand the specific capabilities of the community in terms of resources available to implement hazard mitigation projects, including planning and regulatory capabilities, staff and administrative resources, technical capabilities, fiscal resources, and political willpower. The purpose of this assessment is to identify any existing gaps, weaknesses, or conflicts in programs or activities that may hinder mitigation efforts, and to identify those activities that should be further built upon (such as participation in the National Flood Insurance Program) in establishing a successful and sustainable community hazard mitigation program.

A final element of this step is the identification of appropriate funding sources for each proposed mitigation action. Potential sources include, but are not limited to, the Hazard Mitigation Assistance (HMA) grants offered by FEMA, including the Hazard Mitigation Grant Program (HMGP), Flood Mitigation Assistance (FMA) program, Pre-Disaster Mitigation (PDM) program (ending in FY2019), and Building Resilient Infrastructure and Communities (BRIC) program (beginning in FY2020). Other potential sources of resiliency grants include HUD Community Development Block Grant (CDBG) funds, North Carolina Emergency Management (NCEM), Environmental Protection Agency (EPA), National Fish and Wildlife Foundation (NFWF), and others.



#### Scope:

- Develop, as appropriate, a set of attainable short-range projects to establish momentum, secure local buyin, and address immediate flood-related concerns
- Develop, as appropriate, a set of longer-range projects that meet multiple objectives over a longer period of time

#### Specific Details:

Outcomes of this step will include:

- Prioritized list of actions to build resilience, tailored to the needs of the City of New Bern
- Defensible prioritization based upon expert and stakeholder input

This phase involves identifying adaptation options that build resilience by reducing vulnerability, reducing risk, or enhancing response and recovery efforts in the event of a hazard or threat. These adaptation options will target the most vulnerable areas of the city by reducing exposure and/or by increasing adaptive capacity. Once effective options are identified, they will then be prioritized based upon how much they reduce vulnerability and risk, using classification criteria such as the ability of the option to be implemented. This task will be scoped out more fully as the project progresses, but prioritization techniques could be based upon STAPLEE criteria; overall risk reduction; general cost effectiveness; formal Benefit-Cost Analysis (BCA); local goals, priorities and commitments; funding availability; and other relevant criteria.

#### Specific Deliverables:

- A list of prioritized adaptation options for building community resilience
- One facilitated on-site workshop with key City staff to identify and prioritize options
- Interim report

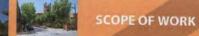
#### Task 5: Prepare Draft Plan

*Goal:* Prepare a complete first draft of the plan that captures the work performed as part of the previous steps. This initial draft may potentially include placeholders for any pending components or where further input may be required.

Overview: If the City's desire is to ultimately present this plan to NCEM and FEMA for approval as a DMA 2000-compliant local hazard mitigation plan, the draft plan will contain all relevant sections needed for plan approval for the flood hazard, including appropriate front matter, introduction, documentation of the planning process, community profile, risk assessment, capability assessment, mitigation strategy, mitigation action plan, plan maintenance procedures, and all relevant references and appendices. If the intent is not to present this as an official local hazard mitigation plan, the outline and content of the draft plan can more closely mirror the phases and tasks outlined by the City in the RFQ, or any outline agreed upon by the planning team as part of the planning process. In any event, efforts will be made to ensure that the content of the plan is presented in a thorough but concise and readable format, and which is easy to use on a daily basis as a guiding document for the community. It is important to note that for the plan to meet all of the mitigation planning requirements of the State and FEMA, it would need to cover all natural hazards that could potentially impact the planning area, not just flooding. Therefore, this draft plan will likely comprise a framework that can be expanded to include additional hazards at a later date when additional resources are available.







#### Scope:

- Complete draft outline of the plan document
- Complete first draft of the plan document for review and comment

# PHASE 3: PREPARATION OF RESILIENCY AND HAZARD MITIGATION PLAN

# Task 6: Public Review of Draft Plan

Goal: To solicit public input into the draft Resiliency and Hazard Mitigation Plan

Overview: A dedicated public meeting will be held to present key highlights of the draft plan and solicit further public input. Online resources may be utilized for information sharing and feedback as well, such as websites and social media, as appropriate.

#### Scope:

- Online survey/comment form with PDF version of the draft plan for review
- One (1) open public meeting1
- Documentation of the above activities

## Task 7: Prepare Final Plan

Goal: Prepare a complete final draft of the plan based upon feedback received on the first draft.

Overview: The draft plan developed as part of Task 6 will be updated to reflect all relevant input from the planning team as well as the general public and other stakeholders. The resulting product will be a final draft of the Resiliency and Hazard Mitigation Plan.

#### Scope:

Complete final draft of the plan document based upon review comments received from the planning team, general public, and key stakeholders.

<sup>&</sup>lt;sup>1</sup> One of the five planning team meetings will coincide with the open public meeting.

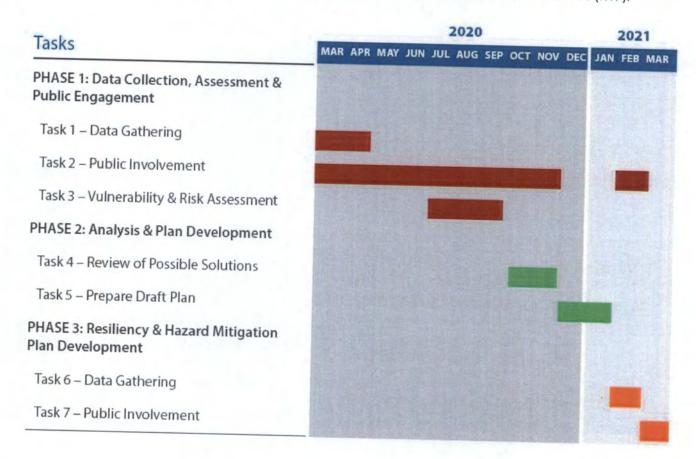




# **Project Schedule**

The project schedule presented below illustrates a preliminary timeline for completing the phases and tasks identified in the RFQ. A local resiliency and mitigation planning process can typically span anywhere from 9 to 18 months or longer depending on a variety of factors, including public input, stakeholder involvement, discoveries made through data collection and analysis, local meeting schedules, etc. Our proposed schedule is based on a 12-month timeframe.

Moffatt & Nichol is prepared to begin work immediately upon receipt of written Notice to Proceed (NTP).



# **AGENDA ITEM COVER SHEET**



# **Agenda Item Title:**

Consider Adopting a Resolution Approving an Amendment to a Letter of Engagement with Disaster Recovery Services, LLC for Professional Services – FEMA

|                            | 2020   | Ward # if applicable: N/A             |
|----------------------------|--|---------------------------------------|
| Department: Administration |  | Person Submitting Item: Mark Stephens |
| Call for Public Hearing    | : □Yes⊠No  | Date of Public Hearing:               |
|                            |  |                                       |
| Explanation of Item:       | Expand the scope of work provided by Disaster Recovery<br>Services, LLC to include FEMA recovery assistance for debris<br>removal and repairs to approximately 66 miles of drainage<br>ditches and waterways |                                       |
| Actions Needed by Board:   | Consider adopti  | ng resolution                         |
| Backup Attached:           | Memo and ame   | endment to letter of engagement       |
|                            |  |                                       |
| Is item time sensitive?    | ĭYes □No   |                                       |
| Will there be advocates/   | opponents at t   | he meeting? □Yes ☒ No                 |
|                            |  |                                       |
| Cost of Agenda Item: To    | otal project not to e  | exceed \$1,950,000                    |
|                            |  | peen budgeted and are funds available |
|                            |  | □Yes □ No                             |

**Additional Notes:** 

#### Aldermen

Sabrina Bengel Jameesha Harris Robert V. Aster Johnnie Ray Kinsey Barbara J. Best Jeffrey T. Odham



300 Pollock Street, P.O. Box 1129 New Bern, NC 28563-1129 (252) 636-4000 Dana E. Outlaw
Mayor
Mark A. Stephens
City Manager
Brenda E. Blanco
City Clerk
Mary M. Hogan
Director of Finance

# **MEMORANDUM**

TO:

Mayor and Board of Aldermen

FROM:

Mark A. Stephens, City Manager

DATE:

February 28, 2020

SUBJECT:

Amendment to Agreement with Disaster Recovery Services, LLC

Following Hurricane Florence in September 2018, the City entered into two agreements with Disaster Recovery Services, LLC to provide professional services. One covered services related to FEMA claims and the second was relative to insurance claims. It is requested that the Board authorize a letter of engagement amending the scope of work for the FEMA services to include debris removal and repairs to approximately 66 miles of drainage ditches and waterways. Based upon the expanded scope of work, DRS estimates that the updated project costs for FEMA recovery will not exceed \$1,950,000.

#### **RESOLUTION**

# BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

That the Amendment to Letter of Engagement for Professional Services – FEMA, dated October 2, 2018 by and between the City of New Bern and Disaster Recovery Services, LLC, a copy of which is attached hereto and incorporated herein by reference, be and the same is hereby approved, and the Mayor and the City Clerk are hereby authorized and directed to execute the same, in duplicate originals, for and on behalf of the City.

| ADOPTED THIS 10 <sup>TH</sup> DAY OF | MARCH, 2020.          |  |
|--------------------------------------|-----------------------|--|
|                                      | DANA E. OUTLAW, MAYOR |  |
| BRENDA E. BLANCO, CITY CLERK         | <u> </u>              |  |



January 23, 2020

# AMENDMENT TO LETTER OF ENGAGEMENT FOR PROFESSIONAL SERVICES – FEMA, DATED OCTOBER 2, 2018

RE: City of New Bern (CLIENT)

Loss event of September 14, 2018

New Bern, NC

This Contract Amendment is in reference to the Letter of Engagement for Professional Services – FEMA, dated October 2, 2018 and serves as written notification that the Scope of Work has expanded resulting in a change to the amended fee estimate provided on June 28, 2019.

The DRS Scope of Work now includes the following:

FEMA recovery assistance on the Category A debris removal project associated with 66 miles of City drainage ditches and waterways.

FEMA recovery assistance on the Category D repairs to approximately 66 miles of City drainage ditches and waterways.

Based upon the expanded Scope of Work, DRS estimates that the updated projects costs for FEMA recovery will not exceed \$1,950,000. Please note that this is a fee estimate only. Should the scope of work change, or circumstances occur that materially change the fee estimate, CLIENT will be advised. Please note that the fee charges to CLIENT will be based solely upon the actual hours of service provided and billed according to the terms of the original Letter of Engagement.

In the event of a conflict between the original Letter of Engagement and any Amendment, the most recent Amendment, and all accompanying Addenda, shall control.

This Amendment, the Letter of Engagement, and all Addenda represent the full and complete understanding and agreement of CLIENT and DRS. Upon signed acceptance, this Amendment

and all other terms and conditions of the Letter of Engagement and Addenda will govern DRS's provision of services for CLIENT.

| CITY OF NEW BERN     | DISASTER RECOVERY SERVICES, LLC |
|----------------------|---------------------------------|
| Ву:                  | By: fl m alust                  |
| Name:                | Name: John M. Albrecht          |
| Dana E. Outlaw       |                                 |
| Title:               | Title: CEO                      |
| Mayor                |                                 |
| Date: March 10, 2020 | Date: January 23, 2020          |
| (SEAL)<br>Attest:    |                                 |

Brenda E. Blanco, City Clerk

# **AGENDA ITEM COVER SHEET**



# **Agenda Item Title:**

Adopt a resolution approving a proposal for Professional Engineering Services for Phases II and IV of the Hurricane Florence Drainage System Project

| Date of Meeting: March 10, 2020  Department: Public Works |  | Ward # if applicable: All Wards  Person Submitting Item: Matt Montanye, Director of Public Works  |  |
|---|--|---|--|
|   |  |   |  |
|   |  |   |  |
| Explanation of Item:                                      | Engineering Serv<br>project related to<br>Associates of Ral<br>qualified firm and<br>services related to | rived submittals to an RFQ for Professional ices for the approximately \$32 Million FEMA the City's drainage system. Draper Aden and eigh, N.C. was selected to be the most I has submitted a proposal for engineering phases II and IV of this project (further on and design work related to Category A |  |
| Actions Needed by Board:                                  | Adopt a resolutio  | n   |  |
| Backup Attached:  | Memo, RFQ Scor   | ring Sheet, Proposal, Resolution  |  |
| Is item time sensitive?                                   | lVes □No   |   |  |
|   |  | e meeting?   Yes   No   |  |
| Cost of Agenda Item: No                                   | /A   |   |  |
|   |  | en budgeted and are funds available   |  |
| and certified by the Fina                                 | nce Director?  | ⊠Yes □ No   |  |

**Additional Notes:** 



Public Works Department
P.O. Box 1129, 1004 S. Glenburnie Road
New Bern, N.C. 28563-1129
Phone: (252) 639-7501
Fax: (252) 636-1848

February 27, 2020

Memo to: Mayor and Board of Aldermen

From: Matt Montanye, Director of Public Works

Re: Adopt a resolution approving a proposal for Professional Engineering

Services for phases II and IV of the Hurricane Florence Drainage System Project (further detailed inspection and design work related to Category A

Projects)

# **Background Information:**

Over the past year the City of New Bern has been working with Disaster Recovery Services to have FEMA accept an estimated \$32 Million project for repairs to the City's drainage system caused by Hurricane Florence. The City has received submittals to an RFQ for Professional Engineering Services for this project and Draper Aden and Associates of Raleigh, N.C., was selected to be the most qualified firm. Draper Aden and Associates has additionally submitted a proposal for engineering services related to the phases two and four of this project (further detailed inspection and design work related to Category A projects). Phase II of the project is proposed to be invoiced based on time and material at the rates identified in the attached proposal. In addition, this phase has a not to exceed price of \$850,000.00. Phase IV of the project is proposed to be invoiced based on time and material at the rates identified in the attached proposal.

This project is scheduled to begin on or about March 16, 2020.

# **Recommendations:**

The Public Works Department, along with Disaster Recovery Services, has reviewed the proposal and recommends that the Board consider approving this proposal.

#### RESOLUTION

THAT WHEREAS, a Request for Qualifications ("RFQ") for Engineering Services was publicly advertised on October 25, 2019 and submittals were received on November 13, 2019; and

WHEREAS, the following six submittals were received and scored:

| Draper Aden and Associates | 499 |
|----------------------------|-----|
| LDSI Engineering           | 494 |
| MBF Architects             | 482 |
| Avolis Engineering         | 423 |
| Summit Engineering         | 423 |
| Wethrell Engineering       | 410 |

WHEREAS, the Director of Public Works of the City of New Bern has since negotiated pricing for Phases II and IV of the Hurricane Florence Drainage System and recommends acceptance of the proposal from Draper Aden and Associates for professional engineering services based on time and material as outlined in the attached proposal.

# NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

That Proposal No. P19080319-020302 for Engineering Services from Draper Aden Associates City, a copy of which is attached hereto and incorporated herein by reference, is hereby accepted, and the City Manager is authorized to execute the agreement and authorization to proceed with engineering services for Phases II and IV of the Hurricane Florence Drainage System Project, which provides for further detailed inspection and design work related to Category A projects.

ADOPTED THIS 10th DAY OF MARCH 2020.

|                              | DANA E. OUTLAW, MAYOR | - |  |
|------------------------------|-----------------------|---|--|
|                              |                       |   |  |
| BRENDA E. BLANCO, CITY CLERK | _                     |   |  |

CONTRACT NO.: 20-007

#### STATE OF NORTH CAROLINA

## PROFESSIONAL SERVICES AGREEMENT

**COUNTY OF CRAVEN** 

THIS AGREEMENT (hereinafter the "Agreement") is made and entered into this 10th day of March 2020, by and between the City of New Bern, a North Carolina municipal corporation, hereinafter referred to as the "CITY", and Draper Aden & Associates, hereinafter referred to as the "CONSULTANT".

#### WITNESSETH

WHEREAS, the CITY desires to retain and engage the CONSULTANT to perform certain professional services hereinafter described, and further that the parties hereto desire to reduce the terms of this Agreement to writing:

NOW THEREFORE, for and in consideration of the mutual promises to each other, as hereinafter set forth, the parties hereto do mutually agree as follows:

- 1. <u>Term of Agreement</u>. The term of this Agreement shall commence as of the date set forth above and continue through to the completion of the project unless sooner terminated as provided herein.
- 2. <u>Consultant's Services</u>. The CONSULTANT hereby agrees to perform, in a manner satisfactory to the CITY, professional and timely services as set forth in Exhibit "A" and Federal Contracting Provisions attached hereto and incorporated herein by this reference. The parties hereto acknowledge that the terms outlined in Exhibit "A" shall be valid and enforceable to the extent they are not inconsistent with the provisions as set forth herein, and to the extent that they are inconsistent, the provisions as set forth in this Agreement shall control. The parties hereto further agree that the terms, conditions and requirements as set forth in any Request for Qualification ("RFQ") put forth by CITY and responded to by CONSULTANT shall be binding upon the parties to the extent that they do not conflict with the provisions as set forth herein, said RFQ, if applicable, being attached hereto as Exhibit "B" and incorporated herein by this reference.
- 3. <u>Compensation to Consultant</u>. The CITY hereby agrees to pay to CONSULTANT the amount not to exceed eight hundred and fifty thousand dollars (\$850,000.00) for all Phase II services provided herein and shall pay the CONSULTANT for all time and materials according to the 2020 Hourly Bill Rate Table and the 2020 Reimbursable Rate Table (both included in the attached P19080319-020302 Proposal for Engineering Services) for all Phase IV services provided herein. In the event that CONSULTANT should fail to provide the services as set forth above, CITY shall be entitled to a refund of its payment(s) to CONSULTANT. Payment will be made within 30 days after receipt of an approved invoice.
  - 4. <u>Termination</u>. CITY shall have the right to terminate this Agreement at any time and

without cause upon thirty (30) days written notice to the other party.

- 5. Records. The CITY has the right to audit all records pertaining to this Agreement both during its performance and after its completion. Further, upon termination of this Agreement, the CONSULTANT shall deliver to the CITY all records, notes, memorandum, data, documents or any other materials produced by CONSULTANT in connection with services rendered pursuant to this Agreement. If compensation for expenses shall be provided to CONSULTANT, the CONSULTANT shall maintain all expense charge documents for a period of three (3) years following the completion of this agreement and said documents shall only be forwarded to the CITY upon request.
- 6. Ownership of Documents. The CONSULTANT agrees that all materials and documents developed pursuant to this Agreement shall be the exclusive property of the CITY, and the CONSULTANT shall retain no property or copyright interest therein. Further, upon termination of this Agreement, the CONSULTANT shall deliver to the CITY all records, notes, memorandum, data, documents or any other materials received or obtained from the CITY in connection with services rendered pursuant to this Agreement.
- 7. This Agreement does not create an employee/employer <u>Independent</u> Consultant. relationship between the parties. It is the intention of the parties that the CONSULTANT will be an independent consultant and not the CITY's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the federal Internal Revenue Code, the provisions of the North Carolina revenue and taxation laws, the North Carolina Wage and Hour Act, the North Carolina Workers' Compensation Act, and the provisions of the North Carolina Employment Security Law. The CONSULTANT will retain sole and absolute discretion in the judgment of the manner and means of carrying out the CONSULTANT's activities and responsibilities hereunder. The CONSULTANT agrees that he/she/it is a separate and independent enterprise from the CITY; and that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the services described herein. This Agreement shall not be construed as creating any joint employment relationship between the CONSULTANT and the CITY, and the CITY will not be liable for any obligation incurred by the CONSULTANT, including but not limited to unpaid minimum wages and/or overtime premiums.
- 8. <u>Indemnity</u>. The CONSULTANT shall release, indemnify, keep and save harmless the CITY, its agents, officials and employees, from any and all responsibility or liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether agents, officials or employees of the CITY or third persons, and to all property proximately caused by, incident to, resulting from, arising out of, or occurring in connection with, directly or indirectly, the performance or nonperformance by CONSULTANT (or by any person acting for CONSULTANT or for whom CONSULTANT is or is alleged to be in any way responsible), whether such claim may be based in whole or in part upon contract, tort (including alleged active or passive negligence or participation in the wrong), or upon any alleged breach of any duty or obligation on the part of CONSULTANT, its agents, officials and employees or otherwise. The provisions of this Section shall include any claims for equitable relief or for damages (compensatory or punitive) against the CITY, its agents, officials, and employees including alleged injury to the business of any claimant and shall include any and all losses, damages, injuries, settlements, judgments, decrees, awards, fines, penalties,

claims, costs and expenses. Expenses as used herein shall include without limitation the costs incurred by the CITY, its agents, officials and employees, in connection with investigating any claim or defending any action, and shall also include reasonable attorneys' fees by reason of the assertion of any such claim against the CITY, its agents, officials or employees. The provisions of this Section shall also include any claims for losses, injuries or damages, and wages or overtime compensation due the CONSULTANT's employees in rendering services pursuant to this Agreement, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act or any other federal or state law. The intention of the parties is to apply and construe broadly in favor of the CITY the foregoing provisions subject to the limitations, if any, set forth in N.C.G.S. 22B-1.

9. Representatives of the Parties. Matt Montanye, Public Works Manager, is designated as the CITY's contract administrator for this Agreement. The contract administrator shall work with requesting department for monitoring the CONSULTANT's performance, coordinating the CONSULTANT's activities, approving all administrative requests by the CONSULTANT and approving all payments to the CONSULTANT pursuant to this Agreement. Further, any notice required to the CITY under this Agreement shall be sufficient if mailed to the CITY by certified mail as indicated below:

Matt Montanye, Director of Public Works
City of New Bern
P.O. Box 1129
New Bern, N.C. 28563

W. Charles Kreye II, P.E. shall be the CONSULTANT's representative for this Agreement. Any notice required to the CONSULTANT under this Agreement shall be sufficient if mailed to the CONSULTANT by certified mail as indicated below:

<u>Draper Aden Associates</u>
114 Edinburgh South Drive, Suite 200
Cary, N.C. 27511

Other Laws and Regulations. CONSULTANT will comply with any and all applicable 10. federal, state and local standards, regulations, laws, statutes and ordinances including those regarding toxic, hazardous and solid wastes and any pollutants; public and private nuisances; health or safety; and zoning, subdivision or other land use controls. CONSULTANT will take all reasonably necessary, proper or required safety, preventative and remedial measures in accordance with any and all relations and directives from the North Carolina Department of Human Resources, the United States Environmental Protection Agency, the North Carolina Department of Environmental Management, Health Departments, and any other federal, state or local agency having jurisdiction, to ensure the prompt prevention or cessation (now or in the future) of violations of either the applicable provisions of such standards, regulations, laws, statutes, and ordinances or any permits or conditions issued CONSULTANT specifically acknowledges and agrees that CONSULTANT, and any subconsultants it uses, has complied with and shall continue to comply with the provisions of the federal E-Verify program in compliance with Article 2 of Chapter 64 of the North Carolina General Statutes. CONSULTANT shall maintain adequate safeguards with respect to sensitive customer information in conformance with and pursuant to 16 C.F.R. §681.1 and in accordance with N.C. Gen. Stat. §132-1.10 and §75-65.

# 11. <u>Insurance Requirements</u>.

## A. <u>Commercial General Liability</u>

- 1. CONSULTANT shall maintain Commercial General Liability (CGL) and if necessary, Commercial Umbrella Liability insurance with a total limit of not less than \$1,000,000.00 each occurrence for bodily injury and property damage. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location or the general aggregate shall be twice the required limit.
- 2. CGL insurance shall be written on Insurance Services Office (ISO) "occurrence" form CG 00 01 covering Commercial General Liability or its equivalent and shall cover the liability arising from premises, operations, independent CONSULTANTs, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
- 3. The City of New Bern, its officers, officials, agents, and employees are to be covered as additional insureds under the CGL by endorsement CG 20 10 or CG 20 33 AND CG 20 37 or an endorsement providing equivalent coverage as respects to liability arising out of activities performed by or on behalf of the CONSULTANT; products and completed operations of the CONSULTANT; premises owned, leased or used by the CONSULTANT; and under the commercial umbrella, if any. The coverage shall contain no special limitations on the scope of protection afforded to the City of New Bern, its officers, officials, agents, and employees.
- 4. There shall be no endorsement or modification of the CGL or Umbrella Liability limiting the scope of coverage for liability arising from explosion, collapse, underground property damage, or damage to the named insured's work, when those exposures exist.
- 5. The CONSULTANT's Commercial General Liability insurance shall be primary as respects the City of New Bern, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by the City of New Bern, its officers, officials, and employees shall be excess of and not contribute with the CONSULTANT's insurance.
- 6. The insurer shall agree to waive all rights of subrogation against the City of New Bern, its officers, officials, agents and employees for losses arising from work performed by the CONSULTANT for the City of New Bern.

# B. Workers' Compensation and Employer's Liability

- 1. CONSULTANT shall maintain Workers' Compensation as required by the general statutes of the State of North Carolina and Employer's Liability Insurance.
- 2. The Employer's Liability, and if necessary, Commercial Umbrella Liability insurance shall not be less than \$500,000.00 each accident for bodily injury by accident, \$500,000.00 each employee for bodily injury by disease, and \$500,000.00 policy limit.
- 3. The insurer shall agree to waive all rights of subrogation against the City of New Bern, its officers, officials, agents and employees for losses arising from work performed by the CONSULTANT for the City of New Bern.
- 4. The U.S. Longshore and Harborworkers Compensation Act endorsement shall be attached to the policy when the services will be on or in close proximity to navigable waterways.
- 5. The Maritime Coverage endorsement (WC 00 02 01) shall be attached to the policy when the contracted services involve the use of watercraft.

NOTE: Additional requirements needed if you have a borrowed servant, offshore platforms or federal act situations. (Federal Acts such as the Defense Base Act, Migrant and Seasonal Agricultural Worker Protection Act, and the Federal Coal Mine Health and Safety Act, etc.)

## C. <u>Business Auto Liability</u>

- 1. CONSULTANT shall maintain Business Auto Liability and, if necessary, Commercial Umbrella Liability insurance with a limit of not less than \$1,000,000.00 each accident.
- 2. Such insurance shall cover liability arising out of any auto, including owned, hired, and non-owned autos.
- 3. Business Auto coverage shall be written on ISO form CA 00 01, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in ISO form CA 00 01.
- 4. Pollution liability coverage equivalent to that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48) shall be provided, and the Motor Carrier Act endorsement (MCS 90) shall be attached when those exposures exist.
- 5. CONSULTANT waives all rights against the City of New Bern, its officers, officials, agents and employees for recovery of damages to the extent these damages are covered by the business auto liability or commercial umbrella liability insurance obtained by CONSULTANT pursuant to Section 11.C.1 of this agreement.
- 6. The CONSULTANT's Business Auto Liability insurance shall be primary as the City of New Bern, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by the City of New Bern, its officers, officials, and employees shall be excess of and not contribute with the CONSULTANT's insurance.

## D. Professional Liability Insurance

- 1. CONSULTANT shall maintain in force for the duration of this contract professional liability or errors and omissions liability insurance appropriate to the CONSULTANT's profession. Coverage as required in this paragraph shall apply to liability for a professional error, act, or omission arising out of the scope of the CONSULTANT's services as defined in this contract. Coverage shall be written subject to limits of not less than \$1,000,000.00 per claim.
- 2. If coverage required in paragraph 1. above is written on a claims-made basis, the CONSULTANT warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 (two) years beginning from the time that work under the contract is complete.

## E. Deductibles and Self-Insured Retentions

1. The CONSULTANT shall be solely responsible for the payment of all deductibles to which such policies are subject, whether or not the City of New Bern is an insured under the policy.

## F. Miscellaneous Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- 1. Each insurance policy required by this contract shall be endorsed to state that coverage shall not canceled by either party except after 30 days prior written notice has been given to the City of New Bern, PO Box 1129, New Bern, NC 28563.
- 2. If CONSULTANT's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

# G. Acceptability of Insurers

Insurance is to be placed with insurers licensed to do business in the State of North Carolina with an A.M. Best's rating of no less than A VII unless specific approval has been granted by the City of New Bern.

## H. <u>Evidence of Insurance</u>

- 1. The CONSULTANT shall furnish the City of New Bern with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements prior to commencing the work, and thereafter upon renewal or replacement of each certified coverage until all operations under this contract are deemed complete.
- 2. Evidence of additional insured status shall be noted on the certificate of insurance as per requirements in Section 11.
- 3. With respect to insurance maintained after final payment in compliance with requirements, an additional certificate(s) evidencing such coverage shall be provided to the City of New Bern with final application for payment and thereafter upon renewal or replacement of such insurance until the expiration of the period for which such insurance must be maintained.

## I. Sub Consultants

CONSULTANT shall include all sub consultants as insureds under its policies or shall furnish separate certificates for each sub consultant. All coverage for sub consultants shall be subject to all of the requirements stated herein. Commercial General Liability coverage shall include independent CONSULTANT's coverage, and the CONSULTANT shall be responsible for assuring that all sub consultants are properly insured.

#### J. Conditions

- 1. The insurance required for this contract must be on forms acceptable to the City of New Bern.
- 2. The CONSULTANT shall provide that the insurance contributing to satisfaction of insurance requirements in Section 11. Minimum Scope and Insurance Requirements shall not be canceled, terminated or modified by the CONSULTANT without prior written approval of the City of New Bern.
- 3. The CONSULTANT shall promptly notify the Safety Officer at (252) 639-7574 of any accidents arising in the course of operations under the contract causing bodily injury or property damage.
- 4. The City of New Bern reserves the right to obtain complete, certified copies of all required insurance policies, at any time.

- 5. Failure of the City of New Bern to demand a certificate of insurance or other evidence of full compliance with these insurance requirements or failure of the City of New Bern to identify a deficiency from evidence that is provided shall not be construed as a waiver of CONSULTANT's obligation to maintain such insurance.
- 6. By requiring insurance herein, the City of New Bern does not represent that coverage and limits will necessarily be adequate to protect the CONSULTANT and such coverage and limits shall not be deemed as a limitation of CONSULTANT's liability under the indemnities granted to the City of New Bern in this contract.
- 7. The City of New Bern shall have the right, but not the obligation of prohibiting CONSULTANT or any sub consultant from entering the project site or withhold payment until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the City of New Bern.
- 12. <u>No Presumption</u>. None of the Parties shall be considered the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof. This Agreement was drafted with substantial input by all Parties and their counsel, and no reliance was placed on any representations other than those contained herein.
- 13. <u>Entire Agreement and Amendment</u>. This Agreement, including any Exhibits attached, which are incorporated herein and made a part hereof, constitutes the entire contract between the parties, and no warranties, inducements, considerations, promises or other inferences shall be implied or impressed upon this Agreement that are not set forth herein. This Agreement shall not be altered or amended except in writing signed by all Parties.
- 14. <u>No Assignment</u>. No party shall sell or assign any interest in or obligation under this Agreement without the prior express written consent of all the parties.
- 15. <u>Conflict of Interest</u>. No paid employee of the CITY shall have a personal or financial interest, direct or indirect, as a contracting party or otherwise, in the performance of this Agreement.
- 16. <u>Non-Waiver of Rights</u>. It is agreed that the CITY's failure to insist upon the strict performance of any provision of this Agreement, or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this Agreement.
- 17. <u>Binding Effect</u>. Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.
- 18. <u>Reference</u>. Use of the masculine includes feminine and neuter, singular includes plural; and captions and headings are inserted for convenience of reference and do not define, describe, extend or limit the scope of intent of this Agreement.
- 19. <u>Interpretation/Governing Law</u>. All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina without regard to any conflicts of law principles and subject to the exclusive jurisdiction of federal or state courts within the State of North Carolina. In the event of a conflict between the various terms and conditions contained herein or between these terms and other applicable provisions, then the more particular shall prevail over the general and the more stringent or higher standard shall prevail over the less stringent or lower standard. The place of this Agreement, its situs and forum, shall be New Bern, Craven County, North Carolina, and in said County and State shall all matters, whether sounding in contract or tort relating to the validity, construction, interpretation or enforcement of this Agreement be determined.

- 20. <u>Saving Clause</u>. If any section, subsection, paragraph, sentence, clause, phrase or portion of this Agreement is for any reason held invalid, unlawful, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.
  - 21. <u>Time</u>. Time is of the essence in this Agreement and each and all of its provisions.
- 22. <u>Immunity Not Waived</u>. This Agreement is governmental in nature, for the benefit of the public. CONSULTANT acknowledges that City reserves all immunities, defenses, rights or actions arising out of City's sovereign status under applicable law. No waiver of any such immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of City's entry into this Agreement.
- 23. <u>Non-Appropriation</u>. In the event no City funds or insufficient City funds are appropriated or otherwise available by any means whatsoever in any fiscal year for any payment due under this Agreement, then the City will immediately notify CONSULTANT of such occurrence and this Agreement shall create no further obligation of the City as to such fiscal year and shall be null and void, except as to the portions of payments for which funds shall have been appropriated and budgeted. In such event, this Agreement shall terminate on the last day of the fiscal year for which appropriations were received without penalty or expense to the City of any kind whatsoever.
- 24. <u>Authority to Act/IDA Certification</u>. Each of the persons executing this Agreement on behalf of CONSULTANT does hereby covenant, warrant and represent that the Organization is a duly organized and validly existing <u>corporation</u>, that the <u>Vice President</u> has full right and authority to enter into this Agreement, and that each and all persons signing on behalf of the CONSULTANT were authorized to do so. The undersigned certifies that CONTRACTOR is not listed on the Final Divestment List created by the N.C. State Treasurer pursuant to Chapter 147 (the Iran Divestment Act) of the North Carolina General Statutes.
- 25. <u>Non-Discrimination</u>. CONSULTANT will take affirmative action not to discriminate against any employee or applicant for employment or otherwise illegally deny any person participation in or the benefits of the program which is the subject of this agreement because of race, creed, color, sex, age, disability or national origin. To the extent applicable, CONSULTANT will comply with all provisions of Executive Order No. 11246 the Civil Rights Act of 1964, (P.L. 88-352) and 1968 (P.L. 90-284), and all applicable federal, state and local laws, ordinances, rules, regulations, orders, instructions, designations and other directives promulgated to prohibit discrimination. Violation of this provision, after notice, shall be a material breach of this agreement and may result, at CITY's option, in a termination or suspension of this agreement in whole or in part.
- 26. <u>E-Verify.</u> As a condition of payment for services rendered under this agreement, CONSULTANT shall comply with the requirements of Article 2 Chapter 64 of the General Statutes. Further, if Seller provides the services to the City utilizing a subcontractor, Seller shall require the subcontractor to comply with requirements of Article 2 Chapter 64 of the General Statutes as well.
- 27. <u>Counterparts.</u> This Agreement may be executed in several counterparts, including separate counterparts. Each shall be an original, but all of them together constitute the same instrument.
  - 28. <u>Minority Business Enterprise (MBE)</u>

The CITY desires that minority business enterprises have the maximum opportunity to participate in the performance of this contract and will:

1. Promote affirmatively (where feasible) in accordance with North Carolina General Statute 143-129, together with all other applicable laws, statutes and constitutional provisions) the procurement of goods, services in connection with construction projects for minority owned business enterprises.

- 2. Ensure that competitive and equitable bidding opportunities are followed to afford minority business enterprises participation. Strive to obtain contract and subcontract awards to minority business enterprises.
- 3. Identify and communicate to the minority business enterprises community procedures and contract requirements necessary for procurement of goods and services for construction projects and subcontracts.
- 4. Provide technical assistance as needed.
- 5. Promulgate and enforce contractual requirements that the general CONSULTANT or all construction projects shall exercise all necessary and reasonable steps to ensure that minority business enterprises participate in the work required in such construction contracts.

The CONSULTANT shall ensure that minority business enterprises have the maximum opportunity to compete for and perform portions of the work included in this contract and shall not discriminate on the basis of race, color, national origin or sex. The CONSULTANT shall include this special provision, Minority Business Enterprise (MBE), in all subcontracts for this contract. Failure on the part of the CONSULTANT to carry out the requirements set forth in this special provision may constitute a breach of contract and after proper notification may result in termination of the contract or other appropriate remedy.

A minority business enterprise is defined as a business, with at least fifty (51%) percent owned and controlled by minority group members. The minority ownership must exercise actual day-to-day management. Minority group members may consist of Black Americans (an individual of the Black race of African origin), Hispanic Americans (an individual of a Spanish speaking culture and origin at parentage), Asian Americans (an individual of a culture, origin or parentage traceable to the areas of the Far East, Southeast Asia, the Indian subcontinent and the Pacific Islands), Indian Americans (an individual who is an enrolled member of a Federally recognized Indian tribe, or recognized by the tribe as being an Indian, as evidenced by a certification of a tribal leader), American Aleuts or any recognized minority group approved by the CITY.

A Woman Business Enterprise is a business with at least fifty (51%) percent owned and controlled by women who exercise actual day-to-day management.

The CONSULTANT shall exercise all necessary and reasonable steps to ensure that Minority Business Enterprises and Woman Business Enterprises participate in the work required in this contract. The CONSULTANT agrees by executing this contract that he will exercise all necessary and reasonable steps to ensure that this special provision contained herein on Minority Business Enterprise is complied with.

IN WITNESS WHEREOF, the CITY and the CONSULTANT have each executed this Agreement in duplicate originals, one of which shall be retained by each of the parties.

# CITY OF NEW BERN

| By:Mark A. Stephens, City Manager  |  |  |  |
|--|--|--|--|
| STATE OF NORTH CAROLINA  |  |  |  |
| COUNTY OF CRAVEN   |  |  |  |
| I, Brenda Espinosa-Blanco, a Notary Public in said State and County, certify that Mark A. Stephens personally appeared before me this day and acknowledged that he is the City Manager of the City of New Bern, a North Carolina Municipal Corporation, and that by authority duly given and as the act of the City of New Bern, the foregoing instrument was signed in its named by him as its Manager. |  |  |  |
| WITNESS my hand and notarial seal, this the day of March, 2020.  |  |  |  |
| Brenda Espinosa-Blanco, Notary Public My Commission Expires: 03/09/2023  |  |  |  |
| FINANCE OFFICER'S CERTIFICATION STATEMENT  |  |  |  |
| This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act.  |  |  |  |
| This day of March, 2020.   |  |  |  |
| Mary M Hogan, Finance Officer  |  |  |  |
| Project Number: (if applicable) Account Number: Amount of Contract: Requisition/PO Number: Federal ID Number:  |  |  |  |

# CONSULTANT

| I  | Ву:                    |                                 |
|--|------------------------|---------------------------------|
|  | W. Charles Kreye,      | , II, P.E., Vice President      |
|  |                        |                                 |
| STATE OF   |                        |                                 |
| COUNTY OF  |                        |                                 |
|  |                        |                                 |
| I, CHARLES KREYE, II, personally came before me      | , a N                  | Notary Public, certify that W.  |
| CHARLES KREYE, II, personally came before me         | this day and acknowle  | edged that he is Vice President |
| of Draper Aden Associates, a corporation, and th     | at by authority duly   | given and as the act of the     |
| corporation, he executed the foregoing instrument on | behalf of the corporat | tion.                           |
|  | · · · · · ·            |                                 |
| Witness my hand and official seal, this the          | day of                 | , 2020.                         |
|  |                        |                                 |
|  |                        |                                 |
|  | Notary Public          |                                 |
| My Commission Expires:                               |                        |                                 |
|  | [S]                    | EAL]                            |
|  |                        |                                 |

# Exhibit A Federal Contracting Requirements

These Federal Contracting Requirements are incorporated into the Service Contract between the City 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 "Vendor" or "Provider" shall be deemed to mean the Contractor. By signing the Service Contract with the City, Contractor certifies that it has read and agrees to comply with all of the terms and conditions set forth below and that are incorporated into the Service Contract with the City and 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 document 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.CFR 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 sub-contractors, if any, hereby represent and covenant that they are 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 requirements in accordance with Drug Free Workplace Act of 1988 (Pub 100-690, Title V, Subtitle D). All contractors 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 City of New Bern or pass through entity in accordance with federal policy.

#### **Mandatory Disclosure**

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 agrees 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 City and understands and agrees that the City 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 these 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 USC § 1251-1387).

The Contractor agrees to report any violation to the City immediately upon discovery. The Contractor understands and agrees that the City will, in turn, report each violation as required to assure notification to the City, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency (EPA) Regional Office. Contractor must include this requirement in all subcontracts that exceed \$150,000.

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**

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the City, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representative's 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 representative's 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

The City 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 City, 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 sub-contractor who will be subject to its provisions.

#### Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this 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 sub-contractors who will be subject to the provisions.

#### Changes

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**

Termination Without Cause. The City 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 City. By giving written notice to the Contractor, the City 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 or provide the proof of insurance as required by this Agreement.

Cancellation of Orders and Subcontracts. In the event this Agreement is terminated by the City 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 City 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 City, 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 City all computer programs, files, documentation, data, media, related material and any other recording devices, information, or compact discs that are owned by the City; (b) deliver to the City all Work Product;

(c) allow the City or a new vendor access to the systems, software, infrastructure, or processes of the Contractor that are necessary to migrate the Services to a new vendor; and (d) refund to the City all pre-paid sums for Products or Services that have been cancelled and will not be delivered.

**No Suspension**. In the event that the City 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 City Manager or their designee is authorized to terminate this Agreement on behalf of the City.

Audit. During the term of the Agreement and for a period of one year after termination or expiration of this Agreement for any reason, the City shall have the right to audit, either itself or through a third party, all books and record (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 City's payment obligations. The City 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 City in excess of \$5,000 but for the audit, then the Contractor shall be required to reimburse the City for the cost.

#### Remedies

Liquidated Damages: The City and the Contractor acknowledge and agree that the City 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 City may be damaged by such failures, including loss of goodwill and administrative costs; but that (b) the costs that the City 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 City'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 City of such failure, the City 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 City in obtaining or performing the Services from any money then due or to become due the Contractor and, should the City's reasonable cost of obtaining or performing the services exceed the amount due the Contractor, collect the difference from the Contractor.

**Right to Withhold Payment.** If the Contractor materially breaches any provision of this Agreement, the City 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 City 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 City 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**

A contract award (see CFR 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 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR 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 CFR Part 180 and 2 CFR Part. 3000. As such, the Contractor is required to verify that none of the Contractor, its principals (defined at 2 CFR § 180.995), or its affiliates (defined at 2 CFR § 180.905) are excluded (defined at 2 CFR § 180.940) or disqualified (defined at 2 CFR § 180.935).

The Contractor is required to comply with 2 CFR Part 180, Subpart C and 2 CFR 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 proper certifies that:

This certification in this clause is a material representation of fact relied upon by the City. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available by the City, 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 CFR Part 180, Subpart C and 2 CFR 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**

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 vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **Davis-Bacon Requirements**

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 CFR 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 CFR 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 sub-contractors 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 officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
- (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 benefit 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 assets, in a separate account, for the meeting of obligations under the plan or program.

# 2. Withholding.

The City 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 sub-contractor 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 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records 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 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at 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 sub-contractors. 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 sub-contractor 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 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 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 CFR 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 sub-contractor 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, 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 CFR 5.12.

#### 4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, 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 to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or sub-Contractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the 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 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the

event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

# 5. Compliance with Copeland Act Requirements.

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

#### 6. Subcontracts.

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 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 CFR Part 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 CFR 5.12.

# 8. Compliance with Davis-Bacon and Related Act Requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

## 9. Disputes Concerning Labor Standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

#### 10. Certification of Eligibility.

(i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be

awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC 1001.

## Copeland "Anti-Kickback" Act

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 CFR 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 by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

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 provided in 29 CFR § 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 CFR Part 5).

- Overtime requirements. No Contractor or subcontractor contracting for any part of the
  contract work which may require or involve the employment of laborers or mechanics shall
  require or permit any such laborer or mechanic in any workweek in which he or she is
  employed on such work to work in excess of forty hours in such workweek unless such laborer
  or mechanic receives compensation at a rate not less than one and one-half times the basic rate
  of pay for all hours worked in excess of forty hours in such workweek.
- 2. <u>Violation; liability for unpaid wages; liquidated damages</u>. 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 forty 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. <u>Subcontractors</u>. 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 subcontracts to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any sub-contractors 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

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 CFR § 18.34 and 49 CFR § 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 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 and Cooperative Agreements," 37 CFR 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:

<u>General</u> - 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 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 and Cooperative Agreements," 37 CFR Part 401.

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**

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 CFR 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 CFR Part 247 whenever:

- 1. The contract requires procurement of \$10,000 or more of a designated item 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- designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <a href="https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program.">https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program.</a>"

# 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 seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without pre-approval by the specific federal agency.

#### **Insurance and Indemnity**

INSURANCE AND INDEMNITY. To the fullest extent permitted by laws and regulations, CONTRACTOR shall indemnify and hold harmless the CITY 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. Contractor shall also maintain Employers' Liability insurance limits of not less than \$500,000 per accident and \$500,000 each employee for injury by disease. Additionally, CONTRACTOR shall maintain, at its expense, the following minimum insurance coverage:

- (a) Commercial General Liability Insurance in an amount not less than\$1,000,000 per occurrence for bodily injury or property damage.
- (b) Professional Liability Insurance in an amount not less than \$1,000,000 per occurrence.
- (c) Workers Compensation Insurance in an amount \$500,000 per occurrence.
- (d) Commercial Automobile Insurance in an amount \$1,000,000 per occurrence as applicable.

CONTRACTOR, upon execution of this Contract, shall furnish to the CITY 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.

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

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient."

APPENDIX A, 44 C.F.R. PART 18 - CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000) The undersigned Contractor certifies, to the best of his or her knowledge, 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      |  |
|--|--|
| Name and Title of Contractor's Authorized Official |  |
| Date   |  |



October 25, 2019

**RE: Request for Qualifications** 

To Whom It May Concern:

The City of New Bern is seeking qualified consulting firms to provide architectural and engineering services for engineering, permitting, preparing bid documents and other necessary emergency clean-up activities associated with the removal of debris and sediment post Hurricane Florence. The debris and sediment are in approximately 66 miles of drainage areas within the corporate limits of the City of New Bern. Responding firms ("Engineer") must at a minimum, have performed similar work related to debris and sediment removal, permitting, and monitoring.

Attached you will find a "Request for Qualifications", which identifies the project(s) anticipated to be undertaken by City of New Bern during the contract period.

In order to be considered all responses must be submitted in writing no later than 4:00 PM (EST) on Wednesday, November 13, 2019. Firms mailing responses should allow delivery time to ensure timely receipt of their proposals. The responsibility for getting the response to the City of New Bern's Purchasing Department on or before the specified time and date is solely and strictly the responsibility of the responding firm. The City of New Bern will in no way be responsible for delays caused by any occurrence. Responses may be hand carried or mailed to:

City of New Bern
Purchasing Department
Attn: Lori Colon, Purchasing Manager
210 Kale Rd. New Bern, NC 28562

Firms wishing to make on-site visits prior to submitting a qualification package should contact Matt Montanye at 252-639-7500, to arrange a time and date for an on-site visit of the property/location.

Firms providing responses shall be licensed and responsible for complying with North Carolina laws, regulations, and local ordinances.

The City of New Bern reserves the right to waive any informalities, to reject any and all responses to the Request for Qualifications, and to accept any responses, which in its opinion may be in the best interest of the City of New Bern.

No responses to the Request for Qualifications will be received or accepted after 4:00 PM, EST, Wednesday, November 13, 2019. Late qualification packages will be deemed invalid and returned unopened to the firm.

Thank you,

Lori Colon, CLGPO Purchasing Manager

# REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL ARCHITECTURAL/ENGINEERING/PERMITTING SERVICES THE CITY OF NEW BERN

## I. INTRODUCTION

The City of New Bern is inviting interested architectural design/consulting engineering firms, licensed in the State of North Carolina, to submit their qualifications for consideration to provide professional architectural/engineering/permitting services related to Ditch Drainage:

#### SCOPE OF SERVICES

The City of New Bern is requesting statements of qualifications to enter into an Engineering Service contract for Ditch Drainage Project located within the City of New Bern's City Limits.

# Provide Engineering services as it relates to the following areas:

- 1. Analyzing approximately 66 miles of drainage ditches to identify any necessary repairs required to the drainage system for FEMA related Category D repairs. Repairs will include but shall not be limited to the slope stabilization, repair of bank erosion, failing retailing wall, failing head walls or any other issue that may arise. Repairs shall be outlined in each on the ten drainage areas outlined by the City of New Bern.
- 2. Provide a detailed plans and project scope for bidding purposes for Category D project identified in item No. 1 above.
- 3. Identifying and provide a scope of work for bidding purposes for the removal of all fallen tree and vegetation as well as for sediments removal from the drainage system. Project scopes will be divided into ten different projects consisting of between two miles and ten miles of drainage ways per project.
- 4. Coordinate all necessary permitting with the US Army Corps of Engineer, NCDWQ, CAMA and any other state or federal agency having jurisdiction within the drainage areas, as well as the coordination of any necessary biological studies endangered species or any other determined reason.

# **Timeline for deliverables:**

- 1. The identification of all Category D work will be submitted to the City of New Bern in a word or excel format including mapped location, pictures and project scope within 90 days of the notice to proceed.
- 2. The plans and project scope for all Category D projects shall be completed and submitted to the City of New Bern so that bids can be obtained for completing the work within 120 following the completion of identifying the Category D projects.
- 3. Identify and provide a scope of work for bidding purposes for the removal of fallen tree, vegetation and for sediments removal and other abnormality that may be discovered from the drainage system. Drainage systems that will not require permitting shall be submitted to the City of New Bern so that bids can be obtained for completing the work within 120 following the completion of identifying the Category D projects.
- 4. Identify and provide a scope of work for bidding purposes for the removal of fallen tree, vegetation and for sediments removal from the drainage system. Drainage systems that will require permitting shall be

identified and submitted for permits within 120 days following the completion of identifying the Category D projects. Once permits have been received, project scopes shall be and submitted to the City of New Bern so that bids can be obtained for completing the work following the issuance of all permits.

# II. SUBMISSION

- A. Submittals: Submit five (5) hard copies, marked "Engineering Services for Ditch Drainage" and one electronic. Submittals will be received no later than 4:00 PM EST, on Wednesday, November 13, 2019, at the office of the City of New Bern Purchasing Department, Attn: Lori Colon, 210 Kale Street, NC 28562.
- B. Qualification packages may be hand-delivered or mailed. If the submittal is sent by mail or commercial express, the Respondent shall be responsible for actual delivery of the qualification package to the proper City office before the deadline. All submittals become property of the City. Request for Qualification packages will not be accepted via fax machine or email.
- C. Mark outside of envelope with RFQ and proposal subject, "Engineering Services for Ditch Drainage Project".
- D. Time is of the essence and any proposal or addenda pertaining thereto received after the announced time and date for submittal, whether by mail or otherwise, will be rejected. It is the sole responsibility of the firm to ensure that their proposal is received by the Purchasing Department personnel before the deadline indicated above in Section 1.1. There is nothing in the RFQ that precludes the City from requesting additional information from firms at any time during the qualification process.
- E. Nothing herein is intended to exclude any responsibilities, in any way restrain, or restrict competition. On the contrary, all responsible firms/individuals are encouraged to submit responses. City of New Bern reserves the right to waive any informalities, to reject any and/or all proposals, and to accept any proposal, which in its opinion may be in the best interest of the City.
- F. Qualification packages may be withdrawn by written request prior to submittal deadline.

#### IV. PREPARATION

- A. Firms are to submit qualification packages, which present their qualifications and understanding of the services to be performed. Emphasis should be placed on completeness of services offered and clarity of content. All submittals should be complete and carefully worded and must convey all of the information requested by the City. If errors or exceptions are found in the firm's qualification package, or if the package fails to conform to the requirements of the RFQ, the City will be the sole judge as to whether that variance is significant enough to reject the firm's submittal.
- B. Qualification packages should be prepared simply and economically. All data, materials, and documentation shall be available in a clear, concise form. The City of New Bern does not expect nor will any more favorable consideration be given to submittals with fancy covers or binding, color photographs, sample plans, non-pertinent information on other accomplishments of the firm which have no direct bearing on these projects, resumes of individuals who will not be engaged in the work, or pages of other non-projected related material. Submittals shall be limited to 50 pages, double sided 8 ½ x 11, minimum 12-point font. Covers and dividers do not count in the 50 pages total.

- C. Firms requiring clarification or interpretation of this RFQ shall make a written request, which shall reach the City of New Bern Purchasing Department no later than the date and time for submittal of written questions (see Section V, paragraph C).
- D. Any interpretation, correction or change of this RFQ will be made by Addendum. Addenda will be mailed or delivered to all who are known by the City Purchasing Department to have received a complete set of RFQ documents. It is the responsibility of the firm to ensure that all Addenda were received.
- E. All submittals shall provide a straight forward, concise description of firm's ability to satisfy the requirements of the RFQ.
- F. Qualification packages (and copies) should be bound in a single volume where practical. All documentation submitted with the offer should be bound in that single volume.
- G. In addition to the transmittal letter, the Non-Collusion Affidavit must be signed by a principal of the firm or an officer of the corporation duly authorized to bind the corporation.
- H. If any offer includes comments over and above the specific information requested in this RFQ such comments must be included as a separate appendix.
- I. The firm is solely responsible for all costs and expenses associated with the preparation of the submittal and of any supplementary presentation (including any oral presentation) if requested by City.
- J. Qualification Packages must be made in the official name of the individual, firm, or corporation under which the business is conducted (showing official business address) and must be signed in ink by a person duly authorized to legally bind the business entity submitting the qualification.
- K. Submittals shall be typewritten or computer generated.
- L. The City may enter in a contract with more than one firm to provide the various professional services that will be required.

# V. GENERAL TERMS AND CONDITIONS

#### A. NON-COLLUSION AFFIDAVIT

Each qualification package must be accompanied by a notarized affidavit on non-collusion, executed by the firm or in the case of a corporation, by a duly authorized representative of said corporation. The Non-Collusion Affidavit is provided herein.

# B. ADDENDA/CHANGES

Any additions, deletions, modifications or changes made to this RFQ shall be processed through the City of New Bern Purchasing Department. Any deviation from this procedure may result in the disqualification of the firm's submittal or the cancellation of any contract resulting from this RFQ.

#### C. QUESTIONS

Questions concerning this RFQ should be in writing and directed to:

City of New Bern Purchasing
Attn: Lori Colon
210 Kale Rd
New Bern, NC 28562
Telephone (252) 639-2800
Fax (252) 639-2803
E-mail: colonl@newbernnc.gov

All questions pertaining to this RFQ must be submitted <u>in writing</u> no later than November 4, 2019 at 5:00 PM EST.

Only written questions will be considered formal. Any information given by telephone will be considered informal. Any questions that the City feels are pertinent to all proposers will be E-mailed as an addendum to the RFQ. Fax and e-mail messages will be treated as written questions.

# D. **PROPRIETARY INFORMATION:**

Trade secrets or proprietary information submitted by a firm in connection with a procurement transaction shall not be subject to the public disclosure under the North Carolina Public Records Act pursuant to NC General Statutes §66-152(3). However, the firm must invoke the protection of this section prior to or upon submission of the data or other materials, and must identify the data on other materials to be protected and state the reasons why protection is necessary. Each individual page considered a trade secret or proprietary information must be labeled "Confidential" in the top right corner.

#### E. MINORITY BUSINESSES

The City of New Bern encourages all businesses, including DBE, minority, and women-owned businesses to respond to all Request for Qualifications.

# F. AWARD/CONTRACT TIME

No part of this solicitation is to be considered part of a contract nor are any provisions contained herein to be binding of the City of New Bern.

Award shall be made to the responsible firm(s) whose qualifications are determined to be the most advantageous to the City, taking into consideration the evaluation factors set forth in the RFQ.

The City wishes to enter into an agreement with one firm which will be responsible for the work associated with this RFQ.

The City of New Bern anticipates award of contract and the detailed Scope of Work and schedule of deliverables shall be negotiated with the successful firms for each specified project.

#### G. CONTRACT DOCUMENT

The successful firms will be required to enter into an architectural, engineering and consultant services agreement. A copy of the City's standard Agreement for Consultant Services is attached.

## H. SUBCONSULTANTS

If any sub consultants will be used for the various projects, the successful firm shall provide to the Purchasing Manager a list of names of any of the intended sub consultants, their applicable license number(s) and a description of the work to be done by each sub consultant.

The successful firm shall not substitute other sub consultants without the written consent of the City.

The successful firm shall be responsible for all services performed by a sub-engineer as though the successful firm had performed them. Responsibilities include, but are not limited to, compliance with applicable licensing regulations.

If at any time the City determines that any sub-engineer is incompetent or undesirable, the City shall notify the successful firm accordingly, and the successful firm shall take immediate steps for cancellation of the subcontract and replacement.

Nothing contained in any contract resulting from this RFQ shall create any contractual relationship between any sub-engineer and the City of New Bern.

It shall be the successful firms' responsibility to ensure that all terms required in the attached contract are incorporated into all subcontracts.

#### I. INSURANCE

The selected firm shall purchase and maintain in force, at his own expense, such insurance as will protect the firm and the City, to include professional liability (E&O), from claims which may arise out of or result from the firm's execution of the work, whether such execution be by himself, his employees, agents, subcontractors/engineers, or by anyone for whose acts any of them may be liable. The insurance coverage shall be such as to fully protect the City, and the general public from any and all claims for injury and damage resulting by any actions on the part of the firm or its forces as enumerated above. See Sample Contract for additional information regarding insurance coverages and limits.

The selected firm shall furnish a copy of an original Certificate of Insurance, naming the City of New Bern as an additional insured. Should any of the policies be canceled before the expiration date, the issuing company will provide thirty (30) days written notice to the certificate holder. The firm shall furnish insurance in satisfactory limits, and on forms and of companies which are acceptable to the City of New Bern Purchasing Manager and shall require and show evidence of insurance coverage on behalf of any subcontractors/engineers (if applicable), before entering any agreement to sublet any part of the work to be completed under this contract.

# VII. QUALITY COMMITMENT

The City will utilize best management practices to ensure the highest quality of services is provided to its citizens. With this goal in mind, firms are required to demonstrate how they possess and utilize appropriate quality management systems, which result in customer satisfaction and continuous improvements.

To satisfy these requirements, firms must demonstrate its commitment to best manage practices and provide services with the highest possible level of quality throughout all phases of Work. Proposals must demonstrate, at a minimum, (1) a complete understanding of the processes utilized within the organization to ensure quality and (2) graphical demonstrations that outline quality and process management within the organization and how they relate with sub-consultants and with the Owner. The response to quality must be deliberate and contain sufficient evidence that the firm has adopted quality and best management practices as an integral part of the organization. As a part of the responses to this request, firms shall demonstrate the organizations design process, e.g. process map, flow chart.

Demonstrate processes in place to recognize, track and analyze project change orders due to errors and omissions (including those caused by any sub consultants) and discuss how these processes are utilized to minimize future occurrences.

# VIII. STATEMENT OF QUALIFICATIONS REQUIREMENTS

Interested engineering/consulting firms desiring to provide services should include the following with its Statement of Qualifications:

- 1. Firm name, address, telephone, fax number, contact person and e-mail address;
- 2. Year established and former firm names;
- 3. Names of principles of the firm and states in which they are registered;
- 4. Types of services for which the firm is qualified;
- 5. Understanding of the scope of work/services;
- 6. List of staff members and resumes of those persons who will be assigned to work with the City on the various projects. Include an Organizational Chart but do <u>not</u> include resumes or list of personnel who will not be assigned to these projects.
- 7. List of current ongoing projects. Include: Project start date; expected completion date, total project cost, your ability to devote staff resources to complete this project.
- 8. List and describe all of your firm's previous experience in engineering, permitting, bidding and other emergency clean-up activities associated with the removal of debris and sediments post hurricane event over the last three (3) years that are applicable to the proposed project list. For each project listed, the information should include:
  - Name and location of the project and the date the work was completed.
  - Name and telephone number of the facilities maintenance director or staff person whom your firm worked with on the project (projects references).
  - Name of the project manager assigned to each listed project.
  - Total final dollar amount of the work performed.
  - Number of change orders and total amount of change orders.
- 9. Names of outside consultants (sub-consultants) who would be involved to provide services required for these projects. Provide a one-page synopsis for each consultant to include the following information:
  - Individual's proposed role in the project.
  - A resume or brief description of the individual's previous experience as it relates to his/her role in the project.
  - For any proposed sub consultants, indicate how long your firm has worked with the sub-consultant on previous projects.

- 10. In order to be considered responsive for this RFQ, the firm must include the following information.
  - Description of the kind of work that can be subcontracted.
  - Willingness to affiliate with DBE, minority or women-owned businesses ("M/WBE").
  - Identify any sub-contractible work that could be performed by minority firms.
  - Name and address of the DBE and M/WBE firms that are anticipated to perform the subcontractible work.

# Note: Do not include sample Scope of Work, project approach or schedule with this submittal.

- 11. Quality Control and Assurance processes as stated above in Section VII.
- 12. Hourly billing rates charged by your firm each position type and reimbursable expenses.
- 13. Estimated timetable of project if awarded from contract award to completion.

# X. EVALUATION PROCESS:

Following the deadline for submittal of qualifications, a review of the submitted qualifications will be by a selection committee established by the City. The selection committee will review, analyze and rank all submittals based on their response to the information requested. The selection shall be made in order of preference based on criteria established herein.

If desired, the selection committee may short list the number of qualified firms. The City reserves the discretion to determine the number of firms that will be on the short list. The City may engage in individual discussions with two or more offerors deemed fully qualified, responsible, and suitable based on initial responses and with emphasis on professional competence to provide the required services. Interviews are not anticipated; however, the selection committee may schedule interviews if required in the selection process. Such offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts.

The selection committee may conduct discussions with the firm(s) submitting responses regarding the contract and shall select from among the firm(s) deemed most qualified to provide the required services. At the discretion of the City, the discussions with the firm(s) may consist of written questions and responses, and/or personal interviews with members of the firm(s). If personal interviews are required by the City, the persons proposed to be responsible for performing the work required herein shall attend the interview. If requested, firms should be prepared to submit financial status information, which shall be held in confidence.

The City will negotiate a stipulated sum fee for basic services and a rate schedule to be utilized for additional services and contingent additional services with the most qualified firm at a compensation, which is considered fair and reasonable to the City. These rates shall include all disciplines (example: architect, project manager, engineers, administrative staff, etc.). In making this decision, the City will take into account the established value, general scope, the complexity, and the professional nature of the services to be rendered. Should the City be unable to negotiate a satisfactory contract with the firm considered to be most qualified, negotiations with that firm shall be formally terminated.

Negotiations will then proceed with the remaining ranked firms in the same manner until an agreement is reached, unless it is determined by the committee that it is in the best interest of the City that the process be terminated or modified.

The City reserves the right to reject any and/or all submittals, and to waive defects, technicalities and/or irregularities in any submittal. The City reserves the right to finalize a contract

with one or more firms based on all factors involved in the written qualification submittal without further discussion or interviews.

#### XI. SELECTION PROCESS

The included criteria, but not limited to, may be used in the evaluation of qualification packages for development of a shortlist to be considered for potential negotiations. These criteria are not necessarily listed in order of importance.

- Firms qualifications and experience including location of offices and related staffing.
- Firms understanding of the project objectives.
- Previous work experience of similar projects and demonstrated experience.
- Firm's demonstration of ability to understand the specialized requirements with federal aviation administrative regulations, federally and state funded grant projects, etc.
- Proposed staff, including sub-engineers, proposed to perform the work.
- Financial stability of the consultant.
- Demonstration of Quality Control: Demonstrated systematic approach to quality assurance and interdisciplinary coordinator methodologies throughout the various phases of design and renovation administration.
- Demonstration of Cost Control: Demonstrated experience implementing cost saving measures that effectively maximized the utilization of funding from a variety of sources and minimized unnecessary expenses while achieving desired results.
- The ability of the consultant to begin work immediately and complete the projects in a timely manner.
- References: Evaluation of comments received from referenced previous clients.



PUBLIC WORKS DEPARTMENT 1004 South Glenburnie Road P.O. Box 1129 - New Bern NC 28562 (252-639-7501

# Hurricane Florence Drainage Repair Project

| Review Section   | Possible<br>Points    | Firm Name |
|--|-----------------------|-----------|
| a. General Qualifications, Competence & Reputation of Firm:  | T                     |           |
| - Age, size, staff qualifications and stability of firm(10)  |                       |           |
| - Projects to illustrate competence in similar scope(10)   | 10                    |           |
| - Availability of staff to handle the project(10) - Reputation with previous clients(10)   | 40                    | 0         |
| - Reputation with previous chents(10)  |                       |           |
| b. Experience of Involved Staff  |                       |           |
| - Experience with similar type projects(20)  | 1 40                  |           |
| Key personnel – roles and experience(20)   | 40                    | 0         |
| c. Ability to Address Local Needs  |                       |           |
| Grasp of project requirements(10)  |                       |           |
| Design approach/methodology(10)  Formiliarin with City CAY   |                       |           |
| Familiarity with City of New Bern's drainage system. Familiarity with state and federal permitting(10) Completed similar project(s) (10) | 40                    | 0         |
| Completed similar project(s) (10)  |                       |           |
| I. Availability  |                       |           |
| Ability to provide access to qualified project team members on a continual basis(10)   |                       |           |
| Ability to commit available resources (current workload) to the project(5)   | 15                    | 0         |
| Project Delivery Timeline (Old Airport Road)   |                       |           |
| Provide an estimated timeline for the completion design plans, and documents switch a selection  | 10                    |           |
| warded the Old Airport Road Project.   | 10                    | 0         |
| Project Delivery Timeline  |                       |           |
| See desired schedule of deliverables included as part of the RFQ.  | 10                    | 0         |
| Hourly Rate Schedule   | 1                     |           |
| Do not include a lump sum or not-to-exceed price(5)  | 10                    | 2         |
| Rates indicative of experience and capabilities(5)   | 10                    | 0         |
|  |                       |           |
|  | Total Score (165 Max) | 0         |

# RESPONDER'S CERTIFICATION FORM

I have carefully examined the Request for Qualifications, the sample Agreement for Consultant Services and any other documents accompanying or made a part of this Request for Qualification.

I hereby propose to furnish the professional engineering consultant services for City of New Bern in accordance with the instructions, terms, conditions, and requirements incorporated in this Request for Qualification. I certify that all information contained in this response is truthful to the best of my knowledge and belief. I further certify that I am duly authorized to submit this response on behalf of the firm as its act and deed and that the firm is ready, willing and able to perform if awarded the contract.

| NAME OF FIRM: |         |  |
|---------------|---------|--|
|               |         |  |
|               |         |  |
|               |         |  |
|               |         |  |
|               |         |  |
| FAX NUMBER:   |         |  |
|               | ACKNOWL | EDGEMENT OF ADDENDA ot of all Addenda through and including: |
| Addendum No.  | Date    | Acknowledgement  |
|               |         |  |
|               |         |  |

# NON-COLLUSION AFFIDAVIT

State of North Carolina

| , being first duly sworn, deposes and says that: |   |                |                    |  |  |  |
|--|---|----------------|--------------------|--|--|--|
| I.   | He/She is the   | (title) of     | (firm's name), the |  |  |  |
|  | responder that has submitted the attac  | ched 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 City of New Bern or any person interested in the proposed contract; and |                |                    |  |  |  |
| <u>NOTAR</u>                                     | <u>IZE</u>  | Title          |                    |  |  |  |
| Subscri  | bed and sworn to before me,   |                |                    |  |  |  |
| This   | day of,   | 20             |                    |  |  |  |
| Notary 1   | Public  | <del></del>    |                    |  |  |  |
| My Con   | mmission Expires:   |                |                    |  |  |  |

# City of New Bern Affidavit

# STATE OF NORTH CAROLINA AFFIDAVIT CITY OF NEW BERN

| I,and on behalf of  | (the individual at                                 | testing helow)                       | baina duly au                       | المساسمة                |
|---|--|--------------------------------------|-------------------------------------|-------------------------|
| and on behalf of  |  | (the entity bide                     | ling on project                     | Horized by              |
| "Employer") after first being duly  | sworn hereby swears                                | or affirms as fo                     | llows:                              | , neremanter            |
| 1. Employer understands that E-V  | Verify is the federal I                            | E-Verify program                     | m operated by                       | tha Ilmitad             |
| States Department of Homeland S<br>equivalent program used to verify<br>federal law in accordance with NO | security and other fedo<br>the work authorizati    | eral agencies or                     | 0011 0110000                        |                         |
| redefai faw in accordance with NC   | JUS 904-23(3).                                     |                                      |                                     |                         |
| 2. Employer understands that Employee to work in the United St through E-Verify in accordance w           | tates, shall verify the v                          | erify. Each em<br>work authorization | ployer, after hon of the empl       | iring an<br>oyee        |
| 3. Employer is a person, business and that employs 25 or more employa. YES, or b. NO                      | entity, or other organi<br>oyees in this State. (m | zation that trans<br>nark Yes or No) | acts business i                     | n this State            |
| 4. Employer's subcontractors com this project, Employer will ensure hired by Employer.                    | ply with E-Verify, an compliance with E-V          | d if Employer is ferify by any sub   | s the winning to<br>econtractors su | oidder on<br>bsequently |
| This day of   | , 20   |                                      |                                     |                         |
| Signature of Affiant  |  |                                      |                                     |                         |
| Print or Type Name  |  |                                      |                                     |                         |
| Notary Public Certification   |  |                                      |                                     |                         |
| State of  | . County of  |                                      |                                     |                         |
| State ofSign and sworn to (or affirmed) bef   | fore me, this the                                  | day                                  |                                     | , 20 .                  |
| Signature of Notary   |  |                                      |                                     |                         |
| Signature of Notary My Commission expires   |  |                                      |                                     |                         |
| • -   |  |                                      |                                     |                         |

#### **General Provisions**

| I-1. I-2. I-3. I-4. I-5. I-6. I-7. I-8. I-9. I-10. I-11. I-12. I-13. I-14. I-15. | Definitions E-Verify Conflicts of Interests Officials not to Benefit Oral Representations Non Appropriation Representations Advertisements Subcontracting Assignment Iran Divestment Act Permits and Licenses Non-Waiver or Defaults Indemnity Insurance | I-16. I-17. I-18. I-19. I-20. I-21. I-22. I-23. I-24. I-25. I-26. I-27. I-28. I-29. I-30. I-31. | Warranty Item Substitution and Variation Inspection and Acceptance Availability of Funds Invoicing and Payment Withholding Contractor Liability Termination Requests for Monetary or other Relief Notification of Debarment or Suspension Status Equal Employment Opportunity Drug-Free Work Place Accident Prevention, Fire Protection, and Sanitation Standards Force Majeure Federal Funds |
|--|--|---|---|
|--|--|---|---|

- I-1. **Definitions:** As used throughout this contract, the following terms shall have the meaning set out below:
  - A. "City" refers to the City of New Bern Government activities and organizations.
  - B. "Contract" Identifies this contract or any modification thereto.
  - C. "Contractor or vendor" means the individual, partnership, corporation, or other entity which is a party to this contract and who is responsible for all actions, performance and work there under, to include that of any subcontractor or vendor.
- I-2. **E-Verify:** As a condition of payment for services rendered under this agreement, Vendor or Contractor shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Further, if Vendor or Contractor provides the services to the City utilizing a subcontractor, Vendor or Contractor shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes as well. Vendor or Contractor shall verify, by affidavit, compliance of the terms of this section upon request by the City.
- I-3. Conflicts of Interests: Contractor warrants that no person or selling agency has been employed or retained to secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee excepting bona fide employees or bona fide established commercial selling agencies retained by contractor or vendor for the purpose of securing business. Contractor warrants that no gratuities (Entertainment, gifts, etc.) were or will be offered or given by the Contractor or any person representing the Contractor to any City of New Bern Alderman, employee, or spouse of an employee/Alderman. For breach of either of the warranties, City of New Bern may terminate this and all other City of New Bern Contracts for default and deduct from amounts due under this or other contracts, or bill contractor or vendor for the total value of any contingent fee or gratuity.
- I-4. Officials Not to Benefit: No person or Alderman involved in the purchasing process and/or contracting of this agreement, shall be admitted to any share or part of this contract, or to any benefit that may arise there from; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.
- I-5. Oral Representations: This written Contract includes the entire agreement between the parties. The City of New Bern will not be bound by any oral or written representation not included in the written contract or a change or amendments thereto. The City of New Bern will not be bound by any terms on contractor or vendor forms or letter unless such terms are specifically agreed to and incorporated in the contract and signed by the Finance Director.
- I-6. Non Appropriation: All funds for payment by the City under this Contract are subject to the availability of any annual appropriation for this purpose by the Board of Aldermen. In the event of non-appropriation of funds by the Board

Of Aldermen under the Contract, City will terminate the Contract, without termination charge or liability, on the last day of the then-current fiscal year or when the appropriation made for then-current year for the services/items covered by this Contract is spent, whichever occurs first. If at any time funds are not appropriated for the continuance of this Contract, cancellation shall be accepted upon three (3) days prior written notice, but failure to give such notice shall be of no effect and City shall not be obligated under this Contract beyond the date of termination.

- I-7. Representations: The Contractor will not represent itself to be an agent or representative of City of New Bern or any other agency or instrumentality of the US Government.
- I-8. Advertisements: The Contractor will not represent in any manner, expressly or by implication, those items or services purchased or sold under this contract are approved or endorsed by any element of City of New Bern Government. Any advertisement, including cents off coupons, by the Contractor which refers to City of New Bern activity will contain a statement that the advertisement was neither paid for nor sponsored, in whole or in part, by the particular activity.
- I-9. <u>Subcontracting:</u> Contractor shall not subcontract any part of the work to be performed without the prior written of the Finance Director. Any subcontractor or vendor used in connection with this contract is the agent of the Finance Director.
- I-10. <u>Assignment</u>: Contractor may not assign its rights or delegate its obligations under this contract without the prior written consent of the Finance Director.
- I-11. Iran Divestment Act: Seller certifies that: (i) Seller is not listed on the Iran Divestment List created by the State Treasurer pursuant to N.C.G.S. § 147-86.58 (the "Final Divestment List"), and (ii) Seller will not utilize any subcontractor performing work under this Purchase Order which is listed on the Final Divestment List. The Final Divestment List can be found on the State Treasurer's website at the address www.nctreasurer.com/Iran and should be updated every 180 days.
- I-12. **Permits and Licenses:** Contractor will, at his own expense, obtain all necessary permits, give all notices, pay all license fees and comply with all laws, rules, ordinances, and regulations relating to the preservation of the public health or applicable to the services or business carried on under this contract. The burden of determining applicability of licensing requirements, laws, ordinances, and regulations for Contractor and his employees rests with the Contractor.
- I-13. Non-Waiver or Defaults: Any failure by City of New Bern at any time to enforce or require strict performance of any terms or conditions of this contract will not constitute waiver thereof and will not affect or impair such terms and conditions in any way or City of New Bern's right at any time to avail itself of such remedies as it may have for breach or breaches of such terms and conditions.

#### I-14. Indemnity:

- A. Contractor shall indemnify, hold harmless and defend City of New Bern, their agents, representatives, employees and customers from any and all suits, judgments and claims, including those established by or pursuant to court decisions, to international agreements, or duly promulgated regulations of the United States Government, and all charges and expenses incident thereto which arise out of or in connection with:
  - 1. The alleged or established violation or infringement of any patent, copyright or trademark rights asserted by any third party with regard to items or services provided by Contractor:
  - Loss, death, damage or injury alleged or established to have arisen out of or in connection with products, services, or equipment provided by Contractor, unless such loss, death, damage, or injury was caused by City of New Bern, its representatives, or employees.
  - 3. Any loss, death, damage, or injury alleged or established to have arisen out of or in connection with any other acts or omissions of the Contractor, the Contractor's subcontractor or vendors, representatives, agents, or employees.
- B. City of New Bern will give Contractor notice and an opportunity to defend.
- I-15. **Insurance:** During the term of the Contract, the Contractor or vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the contract. As a minimum, the Contractor or vendor shall provide and maintain the following coverage and limits.
  - A. Worker's Compensation The Contractor or vendor shall provide and maintain worker's compensation insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$150,000, covering all of Contractor or vendor's employees who are engaged in any work under the contract. If any

- work is sublet, the Contractor or vendor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the contract.
- B. Commercial General Liability General Liability Coverage, on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$500,000.00 combined single limit (Defense cost shall be in excess of the limit of liability).
- C. Automobile Automobile Liability Insurance, to include liability coverage, covering all owned, hired and nonowned vehicles used in connection with the contract. The minimum combined single limit shall be \$150,000.00 bodily injury and property damage; \$150,000.00 uninsured/under-insured motorist; and \$1,000.00 medical payment.

# I-16. Warranty: Contractor warrants that:

- A. The items furnished shall be merchantable, and fit and sufficient for the use intended and are not "seconds" as the term is normally understood in the trade. This warranty shall survive acceptance by City of New Bern of the items and is in addition to other warranties of additional scope given by the Contractor to City of New Bern.
- B. The items or services furnished under this contract are covered by the most favorable warranties the Contractor gives to any customer for such items or services and that the rights and remedies provided in the Contractor's warranties are in addition to and do not limit any rights afforded to City of New Bern by any other clause of this contract.
- C. Where applicable, the items furnished under this contract have been manufactured in accordance with Underwriter's Laboratories, Inc. (UL) standard, or if manufactured overseas, the overseas equivalent of UL and the applicable item and/or component items carry the appropriate UL or overseas equivalent seal of approval.
- D. Items, packing, and packaging provided will comply with all contract terms and with all laws, rules, and regulations applicable to delivery for domestic resale. Contractor shall comply with the Magnuson-Moss Warranty Act on all sales to City of New Bern.
- I-17. Item Substitution and Variation in Quantity: No substitution or variation in the quantity of any item called for by this contract will be accepted unless authorized by the Finance Director.
- I-18. Inspection and Acceptance: the government per the following shall make inspection and acceptance:
  - A. The Contractor shall maintain an in process and end-item quantity control program to ensure shipments to City of New Bern activities do not include defective/non-conforming items.
  - B. Inspection and acceptance shall not be conclusive with respect to latent defects or fraud, or with respect to City of New Bern rights under the warranty provisions contained herein.
  - C. In case any supplies or services are defective in material or workmanship, or are otherwise not in conformity with the requirements of this contract, the City of New Bern shall have the right to reject such supplies or services, or to require replacement or correction. Rejected supplies shall be removed by and at the expense of the Contractor promptly after notice. When such rejection, correction or replacement requires transportation of the supplies or part thereof, all shipping and administrative costs to and from the Contractor's plant shall also be borne by the Contractor.
  - D. In case of refund, the Contractor shall be liable to the City of New Bern for the additional costs of re-procurement (if any). In no event will the liability of Contractor for cost and losses, and for re-procurement exceed an amount equal to the original purchase price of the defective item.
  - E. The provisions of this clause do not affect the rights or obligations of either party, as they may be provided for in other portions of this contract or otherwise under applicable law.
- Availability of Funds: Any and all payments to the Contractor or vendor are dependent upon and subject to the availability of funds to the City for the purposes set forth in this agreement.

# I-20. Invoice and Payment:

- A. Invoicing Instructions. In order to be considered proper invoices, invoices must be submitted as follows:
  - 1. Contractor must prepare a separate numbered invoice for each order or part of an order. Do not consolidate multiple purchase orders on one invoice. Additionally, when partial shipments are authorized, use a separate invoice. Do not duplicate an invoice number used for prior billings:
  - 2. Invoices must be issued by the company whose name is on the contract/order (unless otherwise authorized by Finance Director) and must contain the following minimum information to enable timely payment:
    - (a) Name of Contractor.
    - (b) Invoice Date. This cannot be a date earlier than the ship date required by the contract or purchase/deliver order. In the event that the invoice date is a date earlier than the required ship date, City of New Bern retains the right either to return the improper invoice to the Contractor for

correction or to change the invoice date to be the required ship date. In the event that an improper invoice is returned to a Contractor because the date on the invoice is earlier than the required ship date or because the invoice is improper for any other reason, the invoice date, will be considered to be the date of receipt of the corrected, proper invoice.

- (c) Contract/Order Number.
- (d) Item Description and Quantity Shipped/Delivered.
- (e) Contract/Order Line Item Cost and Total
- (f) Any applicable sales tax
- (g) Shipping and Discount Terms, and special allowance(s) if included in the contract. Special allowances must be shown on the invoice using percentage figures only. Do not deduct any of these from the item cost or from the invoice total.
- (h) "Ship To" address as shown on order or contract.
- (i) Freight charges (on FOB origin shipments).
- (j) Name, title and phone number of Contractor's contact person.
- (k) Complete "Remit To" mailing address on the invoice to indicate where Contractor's payment is to be sent. This address must be the same address as on the contract unless otherwise communicated from the Accounts Payable office
- 3. Correcting invoices and credit memos must be marked as such and must cross-reference the corrected invoice.

#### B. Payment.

- 1. A proper invoice is an invoice which contains all of the information/documentation, specified in paragraph A. (2) above, and is sent to the address specified in the contract or purchase/delivery order for the designated City of New Bern Accounting office. Improper invoices may be returned without payment to the Contractor.
- 2. The next payment date for City of New Bern Contracts is established at 30 days after receipt of a proper invoice.
- 3. Payment is made:
  - (a) The date a check for payment is dated.
  - (b) The date an electronic fund transfer is submitted to the financial institution, regardless of the date the financial institution posts the transfer.
  - (c) The date a withholding authorized by the contract is initiated by City of New Bern.
- 4. Any questions or inquiries concerning invoice payments should be directed to the City of New Bern Finance Account Payable department designated on the contract or purchase/deliver order.
- I-21. Withholding: City of New Bern may withhold payment for amounts due or creditable to City of New Bern under this contract, E.G., returns, damage.

# I-22. Contractor Liability:

- A. Except as set out specifically elsewhere in the contract, Contractor shall be liable for cost to City of New Bern associated with termination for default, rejection of items, and breach of warranty, in addition to reimbursement of payment of the purchase price and re-procurement costs.
- B. Contractor will not be liable for damages if the failure to perform arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, Acts of God or the public enemy, Acts of the Government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

#### I-23. Termination:

- A. Mutual Termination. This contract may be terminated at any time upon the mutual agreement of both parties.
- B. Termination for Convenience. City of New Bern by written notice may terminate this contract in whole or in part when it is in the best interest of the City of New Bern. To the extent that this contract is for services and is so terminated, City of New Bern shall be liable for payment as set forth in the payment provisions of the contract for services rendered prior to the effective date of termination
- C. Termination for Default. City of New Bern by written notice may terminate this contract in whole or in part for failure of the Contractor to perform any of the provisions hereof. In such event, the Contractor shall be liable for damages including the excess costs of re-procuring similar supplies and services provided that if
  - 1. the Contractor was not in default; or
  - 2. the Contractor's failure to perform is without his/her or his/her Subcontractor or vendor's control or negligence; then the termination shall be deemed a "Termination for Convenience."

- D. The rights and remedies of City of New Bern provided in this clause are in addition to any other rights and remedies provided by law or under other clauses of this contract.
- I-24. Request for Monetary or Other Relief: No request for monetary or other relief by Contractor shall be considered unless submitted in writing to the Finance Director within 90 days after termination or termination of performance under the contract, whichever comes first. This clause shall not extend any period for filing, which is further limited by another clause of the contract.
- I-25. Notification of Debarment or Suspension Status: The Contractor or Vendor shall provide immediate notice to the Finance Director in the event of being suspended, debarred, or declared ineligible by any state of NC or federal department or agency, or upon receipt of a notice of proposed debarment from another agency, during the performance of this contract.
- I-26. Equal Employment Opportunity: The contractor will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or disability.
- I-27. Drug-Free Work Place: The contractor or vendor agrees to make a good faith effort to establish and maintain a drugfree work place in connection with the performance of this contract. Consistent with the size and organization of its work force, contractor or vendor may wish to consider taking the following or other appropriate actions in establishing a drug-free work place: Publicizing a drug-free work place policy; initiating an employee drug awareness program or encouraging participation in existing community programs; informing employees of the general availability of drug counseling programs; etc.
- I-28. Accident Prevention. Fire Protection, and Sanitation: If this contract is performed in whole or in part on premises owned or under the control of the City of New Bern Government, the contractor or vendor shall conform to all safety regulations and requirements concerning such premises in effect any time during contract performance to prevent accidents. Any violations of safety regulations, unless immediately corrected as directed by the Finance Director, shall be grounds for termination of the contract under the "Termination for Default" Clause.
- I-29. Standards: All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate state inspector which customarily requires the label or re-examination listing or identification marking of the appropriate safety standard organization; such as the American Society of Mechanical Engineers for pressure vessels;

The Underwriters Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; or the American Gas Association for gas operated assemblies, where such approvals of listings have been established for the type of device offered and furnished. Further, all items furnished shall meet all requirements of the Occupational Safety and Health Act (OSHA), and state and federal requirements relating to clean air and water pollution.

All Codes, standards, and specifications such as the National Electrical Code, North Carolina State Building Code, ASTM specifications, etc. referred to in the project specification shall be the issue in effect on the date of the invitation for bid, request for quote, and/or award.

- I-30. Force Majeure: Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.
- I-31. Federal Funds: If the source of funds for this Agreement is federal funds, the following federal provisions apply pursuant to 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II (as may be applicable):
  - Equal Employment Opportunity (41 C.F.R. Part 60);
  - B. Davis-Bacon Act (40 U.S.C. 3141-3148);
  - C. Copeland "Anti-Kickback" Act (40 U.S.C. 3145);
  - Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708); D.
  - Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387); E.
  - Debarment and Suspension (Executive Orders 12549 and 12689); F.
  - G. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352);
  - Procurement of Recovered Materials (2 C.F.R. § 200.322); and H.
  - Record Retention Requirements (2 CFR § 200.324) I.

# Exhibit A Federal Contracting Requirements

These Federal Contracting Requirements are incorporated into the Service Contract between the City 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 "Vendor" or "Provider" shall be deemed to mean the Contractor. By signing the Service Contract with the City, Contractor certifies that it has read and agrees to comply with all of the terms and conditions set forth below and that are incorporated into the Service Contract with the City and 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 document 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.CFR 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 sub-contractors, if any, hereby represent and covenant that they are 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 requirements in accordance with Drug Free Workplace Act of 1988 (Pub 100-690, Title V, Subtitle D). All contractors 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 City of New Bern or pass through entity in accordance with federal policy.

#### **Mandatory Disclosure**

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 agrees 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 City and understands and agrees that the City 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 these 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 USC § 1251-1387).

The Contractor agrees to report any violation to the City immediately upon discovery. The Contractor understands and agrees that the City will, in turn, report each violation as required to assure notification to the City, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency (EPA) Regional Office. Contractor must include this requirement in all subcontracts that exceed \$150,000.

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**

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the City, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representative's 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 representative's 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

The City 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 City, 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 sub-contractor who will be subject to its provisions.

# Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this 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 sub-contractors who will be subject to the provisions.

#### **Changes**

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**

Termination Without Cause. The City 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 City. By giving written notice to the Contractor, the City 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 or provide the proof of insurance as required by this Agreement.

Cancellation of Orders and Subcontracts. In the event this Agreement is terminated by the City 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 City 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 City, 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 City all computer programs, files, documentation, data, media, related material and any other recording devices, information, or compact discs that are owned by the City; (b) deliver to the City all Work Product;

(c) allow the City or a new vendor access to the systems, software, infrastructure, or processes of the Contractor that are necessary to migrate the Services to a new vendor; and (d) refund to the City all pre-paid sums for Products or Services that have been cancelled and will not be delivered.

No Suspension. In the event that the City 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 City Manager or their designee is authorized to terminate this Agreement on behalf of the City.

Audit. During the term of the Agreement and for a period of one year after termination or expiration of this Agreement for any reason, the City shall have the right to audit, either itself or through a third party, all books and record (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 City's payment obligations. The City 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 City in excess of \$5,000 but for the audit, then the Contractor shall be required to reimburse the City for the cost.

#### **Remedies**

Liquidated Damages: The City and the Contractor acknowledge and agree that the City 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 City may be damaged by such failures, including loss of goodwill and administrative costs; but that (b) the costs that the City 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 City'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 City of such failure, the City 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 City in obtaining or performing the Services from any money then due or to become due the Contractor and, should the City's reasonable cost of obtaining or performing the services exceed the amount due the Contractor, collect the difference from the Contractor.

**Right to Withhold Payment.** If the Contractor materially breaches any provision of this Agreement, the City 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 City 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 City 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**

A contract award (see CFR 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 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR 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 CFR Part 180 and 2 CFR Part. 3000. As such, the Contractor is required to verify that none of the Contractor, its principals (defined at 2 CFR § 180.995), or its affiliates (defined at 2 CFR § 180.905) are excluded (defined at 2 CFR § 180.940) or disqualified (defined at 2 CFR § 180.935).

The Contractor is required to comply with 2 CFR Part 180, Subpart C and 2 CFR 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 proper certifies that:

This certification in this clause is a material representation of fact relied upon by the City. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available by the City, 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 CFR Part 180, Subpart C and 2 CFR 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**

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 vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### **Davis-Bacon Requirements**

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 CFR 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 CFR 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 sub-contractors 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 officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
- (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 benefit 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 assets, in a separate account, for the meeting of obligations under the plan or program.

#### 2. Withholding.

The City 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 sub-contractor 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 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records 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 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at 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 sub-contractors. 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 sub-contractor 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 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 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 CFR 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 sub-contractor 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, 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 CFR 5.12.

### 4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, 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 to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above. shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the iob site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or sub-Contractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the 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 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress. expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the

event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

## 5. Compliance with Copeland Act Requirements.

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

#### 6. Subcontracts.

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 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 CFR Part 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 CFR 5.12.

#### 8. Compliance with Davis-Bacon and Related Act Requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

#### 9. Disputes Concerning Labor Standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

#### 10. Certification of Eligibility.

(i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be

awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC 1001.

#### Copeland "Anti-Kickback" Act

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 CFR 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 byappropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

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 provided in 29 CFR § 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 CFR 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 forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- 2. <u>Violation; liability for unpaid wages; liquidated damages</u>. 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 forty 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. <u>Subcontractors</u>. 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 subcontracts to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any sub-contractors 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

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 CFR § 18.34 and 49 CFR § 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 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 and Cooperative Agreements," 37 CFR 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 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 and Cooperative Agreements," 37 CFR Part 401.

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**

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 CFR 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 CFR Part 247 whenever:

- 1. The contract requires procurement of \$10,000 or more of a designated item 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- designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <a href="https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program.">https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program.</a>"

#### **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 seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without pre-approval by the specific federal agency.

### **Insurance and Indemnity**

**INSURANCE AND INDEMNITY.** To the fullest extent permitted by laws and regulations, CONTRACTOR shall indemnify and hold harmless the CITY 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. Contractor shall also maintain Employers' Liability insurance limits of not less than \$500,000 per accident and \$500,000 each employee for injury by disease. Additionally, CONTRACTOR shall maintain, at its expense, the following minimum insurance coverage:

- (a) Commercial General Liability Insurance in an amount not less than\$1,000,000 per occurrence for bodily injury or property damage.
- (b) Professional Liability Insurance in an amount not less than \$1,000,000 per occurrence.
- (c) Workers Compensation Insurance in an amount \$500,000 per occurrence.
- (d) Commercial Automobile Insurance in an amount \$1,000,000 per occurrence as applicable.

CONTRACTOR, upon execution of this Contract, shall furnish to the CITY 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.

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

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient."

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)
The undersigned Contractor certifies, to the best of his or her knowledge, 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      |  |
|--|--|
| Name and Title of Contractor's Authorized Official |  |
| Date   |  |

## PROFESSIONAL SERVICES AGREEMENT

#### **COUNTY OF CRAVEN**

receipt of an approved invoice.

| THIS AGREEMENT (hereinafter the "Agreement") is made and entered into this day of, 20, by and between the City of New Bern, a North Carolina municipal corporation, hereinafter referred to as the "CITY", and, hereinafter referred to as the "CONSULTANT".   |
|--|
| WITNESSETH   |
| WHEREAS, the CITY desires to retain and engage the CONSULTANT to perform certain professional services hereinafter described, and further that the parties hereto desire to reduce the terms of this Agreement to writing:   |
| NOW THEREFORE, for and in consideration of the mutual promises to each other, as hereinafter set forth, the parties hereto do mutually agree as follows:   |
| 1. <u>Term of Agreement</u> . The term of this Agreement shall commence as of the date set forth above and continue through to the completion of the project unless sooner terminated as provided herein.  |
| 2. <u>Consultant's Services</u> . The CONSULTANT hereby agrees to perform, in a manner satisfactory to the CITY, professional and timely services as set forth in Exhibit "A" attached hereto and incorporated herein by this reference. The parties hereto acknowledge that the terms outlined in Exhibit "A" shall be valid and enforceable to the extent they are not inconsistent with the provisions as set forth herein, and to the extent that they are inconsistent, the provisions as set forth in this Agreement shall control. The parties hereto further agree that the terms, conditions and requirements as set forth in any Request for Qualification ("RFQ") put forth by CITY and responded to by CONSULTANT shall be binding upon the parties to the extent that they do not conflict with the provisions as set forth herein, said RFQ, if applicable, being attached hereto as Exhibit "B" and incorporated herein by this |
| reference.  3. Compensation to Consultant. The CITY hereby agrees to pay to CONSULTANT the   |
| amount not to exceed dollars (\$) for services as provided   |
| herein. In the event that CONSULTANT should fail to provide the services as set forth above, CITY shall  |
| be entitled to a refund of its payment(s) to CONSULTANT. Payment will be made within 30 days after   |

- 4. <u>Termination</u>. CITY shall have the right to terminate this Agreement at any time and without cause upon thirty (30) days written notice to the other party.
- 5. Records. The CITY has the right to audit all records pertaining to this Agreement both during its performance and after its completion. Further, upon termination of this Agreement, the

CONSULTANT shall deliver to the CITY all records, notes, memorandum, data, documents or any other materials produced by CONSULTANT in connection with services rendered pursuant to this Agreement. If compensation for expenses shall be provided to CONSULTANT, the CONSULTANT shall maintain all expense charge documents for a period of three (3) years following the completion of this agreement and said documents shall only be forwarded to the CITY upon request.

- 6. Ownership of Documents. The CONSULTANT agrees that all materials and documents developed pursuant to this Agreement shall be the exclusive property of the CITY, and the CONSULTANT shall retain no property or copyright interest therein. Further, upon termination of this Agreement, the CONSULTANT shall deliver to the CITY all records, notes, memorandum, data, documents or any other materials received or obtained from the CITY in connection with services rendered pursuant to this Agreement.
- 7. Independent Consultant. This Agreement does not create an employee/employer relationship between the parties. It is the intention of the parties that the CONSULTANT will be an independent consultant and not the CITY's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the federal Internal Revenue Code, the provisions of the North Carolina revenue and taxation laws, the North Carolina Wage and Hour Act, the North Carolina Workers' Compensation Act, and the provisions of the North Carolina Employment Security Law. The CONSULTANT will retain sole and absolute discretion in the judgment of the manner and means of carrying out the CONSULTANT's activities and responsibilities hereunder. The CONSULTANT agrees that he/she/it is a separate and independent enterprise from the CITY; and that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the services described herein. This Agreement shall not be construed as creating any joint employment relationship between the CONSULTANT and the CITY, and the CITY will not be liable for any obligation incurred by the CONSULTANT, including but not limited to unpaid minimum wages and/or overtime premiums.
- 8. <u>Indemnity</u>. The CONSULTANT shall release, indemnify, keep and save harmless the CITY, its agents, officials and employees, from any and all responsibility or liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether agents, officials or employees of the CITY or third persons, and to all property proximately caused by, incident to, resulting from, arising out of, or occurring in connection with, directly or indirectly, the performance or nonperformance by CONSULTANT (or by any person acting for CONSULTANT or for whom CONSULTANT is or is alleged to be in any way responsible), whether such claim may be based in whole or in part upon contract, tort (including alleged active or passive negligence or participation in the wrong), or upon any alleged breach of any duty or obligation on the part of CONSULTANT, its agents, officials and employees or otherwise. The provisions of this Section shall include any claims for equitable relief or for damages (compensatory or punitive) against the CITY, its agents, officials, and employees including alleged injury to the business of any claimant and shall include any and all losses, damages, injuries, settlements, judgments, decrees, awards, fines, penalties, claims, costs and expenses. Expenses as used herein shall include without limitation the costs incurred

by the CITY, its agents, officials and employees, in connection with investigating any claim or defending any action, and shall also include reasonable attorneys' fees by reason of the assertion of any such claim against the CITY, its agents, officials or employees. The provisions of this Section shall also include any claims for losses, injuries or damages, and wages or overtime compensation due the CONSULTANT's employees in rendering services pursuant to this Agreement, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act or any other federal or state law. The intention of the parties is to apply and construe broadly in favor of the CITY the foregoing provisions subject to the limitations, if any, set forth in N.C.G.S. 22B-1.

9. Representatives of the Parties. Matt Montayne, Director of Public Works, is designated as the CITY's contract administrator for this Agreement. The contract administrator shall work with requesting department for monitoring the CONSULTANT's performance, coordinating the CONSULTANT's activities, approving all administrative requests by the CONSULTANT and approving all payments to the CONSULTANT pursuant to this Agreement. Further, any notice required to the CITY under this Agreement shall be sufficient if mailed to the CITY by certified mail as indicated below:

Matt Montayne, Public Works Director City of New Bern P.O. Box 1129 New Bern, NC 28563

|                          | sha       | all be the CONSU | JLTANT's repre   | esentative for thi | is Agreement. | Any |
|--------------------------|-----------|------------------|------------------|--------------------|---------------|-----|
| notice required to the C | ONSULTANT | under this Agree | ment shall be si | afficient if maile | ed to the     | •   |
| CONSULTANT by cer        |           | _                |                  |                    |               |     |
| · ·                      |           |                  |                  |                    |               |     |
|                          |           |                  |                  |                    |               |     |
| -                        |           |                  | <del></del>      |                    |               |     |
| -                        |           |                  | <del></del>      |                    |               |     |
| -                        |           |                  | <del></del>      |                    |               |     |

10. Other Laws and Regulations. CONSULTANT will comply with any and all applicable federal, state and local standards, regulations, laws, statutes and ordinances including those regarding toxic, hazardous and solid wastes and any pollutants; public and private nuisances; health or safety; and zoning, subdivision or other land use controls. CONSULTANT will take all reasonably necessary. proper or required safety, preventative and remedial measures in accordance with any and all relations and directives from the North Carolina Department of Human Resources, the United States Environmental Protection Agency, the North Carolina Department of Environmental Management, Health Departments, and any other federal, state or local agency having jurisdiction, to insure the prompt prevention or cessation (now or in the future) of violations of either the applicable provisions of such standards, regulations, laws, statutes, and ordinances or any permits or conditions issued thereunder. CONSULTANT specifically acknowledges and agrees that CONSULTANT, and any subconsultants it uses, has complied with and shall continue to comply with the provisions of the federal E-Verify program in compliance with Article 2 of Chapter 64 of the North Carolina General Statutes. CONSULTANT shall maintain adequate safeguards with respect to sensitive customer information in conformance with and pursuant to 16 C.F.R. §681.1 and in accordance with N.C. Gen. Stat. §132-1.10

#### 11. <u>Insurance Requirements</u>.

#### A. Commercial General Liability

- 1. CONSULTANT shall maintain Commercial General Liability (CGL) and if necessary, Commercial Umbrella Liability insurance with a total limit of not less than \$1,000,000.00 each occurrence for bodily injury and property damage. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location or the general aggregate shall be twice the required limit.
- 2. CGL insurance shall be written on Insurance Services Office (ISO) "occurrence" form CG 00 01 covering Commercial General Liability or its equivalent and shall cover the liability arising from premises, operations, independent CONSULTANTs, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
- 3. The City of New Bern, its officers, officials, agents, and employees are to be covered as additional insureds under the CGL by endorsement CG 20 10 or CG 20 33 AND CG 20 37 or an endorsement providing equivalent coverage as respects to liability arising out of activities performed by or on behalf of the CONSULTANT; products and completed operations of the CONSULTANT; premises owned, leased or used by the CONSULTANT; and under the commercial umbrella, if any. The coverage shall contain no special limitations on the scope of protection afforded to the City of New Bern, its officers, officials, agents, and employees.
- 4. There shall be no endorsement or modification of the CGL or Umbrella Liability limiting the scope of coverage for liability arising from explosion, collapse, underground property damage, or damage to the named insured's work, when those exposures exist.
- 5. The CONSULTANT's Commercial General Liability insurance shall be primary as respects the City of New Bern, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by the City of New Bern, its officers, officials, and employees shall be excess of and not contribute with the CONSULTANT's insurance.
- 6. The insurer shall agree to waive all rights of subrogation against the City of New Bern, its officers, officials, agents and employees for losses arising from work performed by the CONSULTANT for the City of New Bern.

#### B. Workers' Compensation and Employer's Liability

- 1. CONSULTANT shall maintain Workers' Compensation as required by the general statutes of the State of North Carolina and Employer's Liability Insurance.
- 2. The Employer's Liability, and if necessary, Commercial Umbrella Liability insurance shall not be less than \$500,000.00 each accident for bodily injury by accident, \$500,000.00 each employee for bodily injury by disease, and \$500,000.00 policy limit.
- 3. The insurer shall agree to waive all rights of subrogation against the City of New Bern, its officers, officials, agents and employees for losses arising from work performed by the CONSULTANT for the City of New Bern.

- 4. The U.S. Longshore and Harborworkers Compensation Act endorsement shall be attached to the policy when the services will be on or in close proximity to navigable waterways.
- 5. The Maritime Coverage endorsement (WC 00 02 01) shall be attached to the policy when the contracted services involve the use of watercraft.

NOTE: Additional requirements needed if you have a borrowed servant, offshore platforms or federal act situations. (Federal Acts such as the Defense Base Act, Migrant and Seasonal Agricultural Worker Protection Act, and the Federal Coal Mine Health and Safety Act, etc.)

#### C. Business Auto Liability

- 1. CONSULTANT shall maintain Business Auto Liability and, if necessary, Commercial Umbrella Liability insurance with a limit of not less than \$1,000,000.00 each accident.
- 2. Such insurance shall cover liability arising out of any auto, including owned, hired, and non-owned autos.
- 3. Business Auto coverage shall be written on ISO form CA 00 01, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in ISO form CA 00 01.
- 4. Pollution liability coverage equivalent to that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48) shall be provided, and the Motor Carrier Act endorsement (MCS 90) shall be attached when those exposures exist.
- 5. CONSULTANT waives all rights against the City of New Bern, its officers, officials, agents and employees for recovery of damages to the extent these damage are covered by the business auto liability or commercial umbrella liability insurance obtained by CONSULTANT pursuant to Section 11.C.1 of this agreement.
- 6. The CONSULTANT's Business Auto Liability insurance shall be primary as the City of New Bern, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by the City of New Bern, its officers, officials, and employees shall be excess of and not contribute with the CONSULTANT's insurance.

#### D. <u>Professional Liability Insurance</u>

- 1. CONSULTANT shall maintain in force for the duration of this contract professional liability or errors and omissions liability insurance appropriate to the CONSULTANT's profession. Coverage as required in this paragraph shall apply to liability for a professional error, act, or omission arising out of the scope of the CONSULTANT's services as defined in this contract. Coverage shall be written subject to limits of not less than \$1,000,000.00 per claim.
- 2. If coverage required in paragraph 1. above is written on a claims-made basis, the CONSULTANT warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 (two) years beginning from the time that work under the contract is complete.

#### E. <u>Deductibles and Self-Insured Retentions</u>

1. The CONSULTANT shall be solely responsible for the payment of all deductibles to which such policies are subject, whether or not the City of New Bern is an insured under the policy.

#### F. <u>Miscellaneous Insurance Provisions</u>

The policies are to contain, or be endorsed to contain, the following provisions:

- 1. Each insurance policy required by this contract shall be endorsed to state that coverage shall not canceled by either party except after 30 days prior written notice has been given to the City of New Bern, PO Box 1129, New Bern, NC 28563.
- 2. If CONSULTANT's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

#### G. Acceptability of Insurers

Insurance is to be placed with insurers licensed to do business in the State of North Carolina with an A.M. Best's rating of no less than A VII unless specific approval has been granted by the City of New Bern.

#### H. Evidence of Insurance

- 1. The CONSULTANT shall furnish the City of New Bern with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements prior to commencing the work, and thereafter upon renewal or replacement of each certified coverage until all operations under this contract are deemed complete.
- 2. Evidence of additional insured status shall be noted on the certificate of insurance as per requirements in Section 11.
- 3. With respect to insurance maintained after final payment in compliance with requirements, an additional certificate(s) evidencing such coverage shall be provided to the City of New Bern with final application for payment and thereafter upon renewal or replacement of such insurance until the expiration of the period for which such insurance must be maintained.

#### I. Sub Consultants

CONSULTANT shall include all sub consultants as insureds under its policies or shall furnish separate certificates for each sub consultant. All coverage for sub consultants shall be subject to all of the requirements stated herein. Commercial General Liability coverage shall include independent CONSULTANT's coverage, and the CONSULTANT shall be responsible for assuring that all sub consultants are properly insured.

#### J. Conditions

- 1. The insurance required for this contract must be on forms acceptable to the City of New Bern.
- 2. The CONSULTANT shall provide that the insurance contributing to satisfaction of insurance requirements in Section 11. Minimum Scope and Insurance Requirements shall not be canceled, terminated or modified by the CONSULTANT without prior written approval of the City of New Bern.
- 3. The CONSULTANT shall promptly notify the Safety Officer at (252) 639-7574 of any accidents arising in the course of operations under the contract causing bodily injury or property damage.
- 4. The City of New Bern reserves the right to obtain complete, certified copies of all required insurance policies, at any time.
- 5. Failure of the City of New Bern to demand a certificate of insurance or other evidence of full compliance with these insurance requirements or failure of the City of New Bern to identify a deficiency from evidence that is provided shall not be construed as a waiver of CONSULTANT's obligation to maintain such insurance.
- 6. By requiring insurance herein, the City of New Bern does not represent that coverage and limits will necessarily be adequate to protect the CONSULTANT and such coverage and limits shall not be deemed as a limitation of CONSULTANT's liability under the indemnities granted to the City of New Bern in this contract.
- 7. The City of New Bern shall have the right, but not the obligation of prohibiting CONSULTANT or any sub consultant from entering the project site or withhold payment until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the City of New Bern.
- 12. <u>No Presumption</u>. None of the Parties shall be considered the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof. This Agreement was drafted with substantial input by all Parties and their counsel, and no reliance was placed on any representations other than those contained herein.
- 13. <u>Entire Agreement and Amendment</u>. This Agreement, including any Exhibits attached, which are incorporated herein and made a part hereof, constitutes the entire contract between the parties, and no warranties, inducements, considerations, promises or other inferences shall be implied or impressed upon this Agreement that are not set forth herein. This Agreement shall not be altered or amended except in writing signed by all Parties.
- 14. <u>No Assignment</u>. No party shall sell or assign any interest in or obligation under this Agreement without the prior express written consent of all the parties.
- 15. <u>Conflict of Interest</u>. No paid employee of the CITY shall have a personal or financial interest, direct or indirect, as a contracting party or otherwise, in the performance of this Agreement.
  - 16. Non-Waiver of Rights. It is agreed that the CITY's failure to insist upon the strict

performance of any provision of this Agreement, or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this Agreement.

- 17. <u>Binding Effect</u>. Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.
- 18. <u>Reference</u>. Use of the masculine includes feminine and neuter, singular includes plural; and captions and headings are inserted for convenience of reference and do not define, describe, extend or limit the scope of intent of this Agreement.
- 19. <u>Interpretation/Governing Law.</u> All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina without regard to any conflicts of law principles and subject to the exclusive jurisdiction of federal or state courts within the State of North Carolina. In the event of a conflict between the various terms and conditions contained herein or between these terms and other applicable provisions, then the more particular shall prevail over the general and the more stringent or higher standard shall prevail over the less stringent or lower standard. The place of this Agreement, its situs and forum, shall be New Bern, Craven County, North Carolina, and in said County and State shall all matters, whether sounding in contract or tort relating to the validity, construction, interpretation or enforcement of this Agreement be determined.
- 20. <u>Saving Clause</u>. If any section, subsection, paragraph, sentence, clause, phrase or portion of this Agreement is for any reason held invalid, unlawful, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.
  - 21. <u>Time</u>. Time is of the essence in this Agreement and each and all of its provisions.
- 22. <u>Immunity Not Waived</u>. This Agreement is governmental in nature, for the benefit of the public. CONSULTANT acknowledges that City reserves all immunities, defenses, rights or actions arising out of City's sovereign status under applicable law. No waiver of any such immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of City's entry into this Agreement.
- 23. <u>Non-Appropriation</u>. In the event no City funds or insufficient City funds are appropriated or otherwise available by any means whatsoever in any fiscal year for any payment due under this Agreement, then the City will immediately notify CONSULTANT of such occurrence and this Agreement shall create no further obligation of the City as to such fiscal year and shall be null and void, except as to the portions of payments for which funds shall have been appropriated and budgeted. In such event, this Agreement shall terminate on the last day of the fiscal year for which appropriations were received without penalty or expense to the City of any kind whatsoever.

- 24. <u>Authority to Act/IDA Certification.</u> Each of the persons executing this Agreement on behalf of CONSULTANT does hereby covenant, warrant and represent that the Organization is a duly organized and validly existing \_\_\_\_\_\_, that the \_\_\_\_\_\_ has full right and authority to enter into this Agreement, and that each and all persons signing on behalf of the CONSULTANT were authorized to do so. The undersigned certifies that CONTRACTOR is not listed on the Final Divestment List created by the N.C. State Treasurer pursuant to Chapter 147 (the Iran Divestment Act) of the North Carolina General Statutes.
- 25. Non-Discrimination. CONSULTANT will take affirmative action not to discriminate against any employee or applicant for employment or otherwise illegally deny any person participation in or the benefits of the program which is the subject of this agreement because of race, creed, color, sex, age, disability or national origin. To the extent applicable, CONSULTANT will comply with all provisions of Executive Order No. 11246 the Civil Rights Act of 1964, (P.L. 88-352) and 1968 (P.L. 90-284), and all applicable federal, state and local laws, ordinances, rules, regulations, orders, instructions, designations and other directives promulgated to prohibit discrimination. Violation of this provision, after notice, shall be a material breach of this agreement and may result, at CITY's option, in a termination or suspension of this agreement in whole or in part.
- 26. <u>E-Verify.</u> As a condition of payment for services rendered under this agreement, CONSULTANT shall comply with the requirements of Article 2 Chapter 64 of the General Statutes. Further, if Seller provides the services to the City utilizing a subcontractor, Seller shall require the subcontractor to comply with requirements of Article 2 Chapter 64 of the General Statutes as well.
- 27. <u>Iran Divestment Act Certificate.</u> CONSULTANT certifies that, as of the date of this agreement, it is not on the Final Divestment List as created by the State Treasurer pursuant to N.C.G.S. 147-86.58. In compliance with the requirements of the Iran Divestment Act and N.C.G.S. 147-86.59, CONSULTANT shall not utilize in the performance of the contract any subcontractor that is identified on the Final Divestment List.
- 28. <u>Counterparts.</u> This Agreement may be executed in several counterparts, including separate counterparts. Each shall be an original, but all of them together constitute the same instrument.

#### 29. <u>Minority Business Enterprise (MBE)</u>

The CITY desires that minority business enterprises have the maximum opportunity to participate in the performance of this contract and will:

l. Promote affirmatively (where feasible) in accordance with North Carolina General Statute 143-129, together with all other applicable laws, statutes and constitutional provisions) the procurement of goods, services in connection with construction projects for minority owned business enterprises.

- 2. Insure that competitive and equitable bidding opportunities are followed to afford minority business enterprises participation. Strive to obtain contract and subcontract awards to minority business enterprises.
- 3. Identify and communicate to the minority business enterprises community procedures and contract requirements necessary for procurement of goods and services for construction projects and subcontracts.
- 4. Provide technical assistance as needed.
- 5. Promulgate and enforce contractual requirements that the general CONSULTANT or all construction projects shall exercise all necessary and reasonable steps to insure that minority business enterprises participate in the work required in such construction contracts.

The CONSULTANT shall insure that minority business enterprises have the maximum opportunity to compete for and perform portions of the work included in this contract and shall not discriminate on the basis of race, color, national origin or sex. The CONSULTANT shall include this special provision, Minority Business Enterprise (MBE), in all subcontracts for this contract. Failure on the part of the CONSULTANT to carry out the requirements set forth in this special provision may constitute a breach of contract and after proper notification may result in termination of the contract or other appropriate remedy.

A minority business enterprise is defined as a business, with at least fifty (51%) percent owned and controlled by minority group members. The minority ownership must exercise actual day-to-day management. Minority group members may consist of Black Americans (an individual of the Black race of African origin), Hispanic Americans (an individual of a Spanish speaking culture and origin at parentage), Asian Americans (an individual of a culture, origin or parentage traceable to the areas of the Far East, Southeast Asia, the Indian subcontinent and the Pacific Islands), Indian Americans (an individual who is an enrolled member of a Federally recognized Indian tribe, or recognized by the tribe as being an Indian, as evidenced by a certification of a tribal leader), American Aleuts or any recognized minority group approved by the CITY.

A Woman Business Enterprise is a business with at least fifty (51%) percent owned and controlled by women who exercise actual day-to-day management.

The CONSULTANT shall exercise all necessary and reasonable steps to insure that Minority Business Enterprises and Woman Business Enterprises participate in the work required in this contract. The CONSULTANT agrees by executing this contract that he will exercise all necessary and reasonable steps to insure that this special provision contained herein on Minority Business Enterprise is complied with.

IN WITNESS WHEREOF, the CITY and the CONSULTANT have each executed this Agreement in duplicate originals, one of which shall be retained by each of the parties.

|  | CITY OF NEW BERN   |
|--|--|
|  | By:<br>Mark Stephens, City Manager   |
|  | CERTIFICATION STATEMENT ne manner required by The Local Government Budget 20   |
| Lori Mullic                                    | ean, Finance Officer   |
| Project Number:                                | if applicable)   |
| COUNTY OF CRAVEN                               |  |
| City of New Bern, a North Carolina Municipal C | Notary Public in said State and County, certify that Mark and acknowledged that he is the City Manager of the Corporation, and that by authority duly given and as the ment was signed in its named by him as its Manager. |
| WITNESS my hand and notarial seal, this        | s the day of, 2019.  |
| [SEAL]   | Notary Public  |
| My Commission Expires:                         |  |

#### CONSULTANT

| By:  |  |
|--|--|
|  | President/Vice President                         |
|  |  |
| STATE OF   |  |
| COUNTY OF  |  |
| I,, a Notar  | y Public, certify that                           |
| , personal   | ly came before me this day and acknowledged that |
| he (she) is President of                                 | , a corporation, and that by authority           |
| duly given and as the act of the corporation, he(she) ex | ecuted the foregoing instrument on behalf of the |
| corporation.   |  |
| Witness my hand and official seal, this the              | day of, 2019.                                    |
|  | Notary Public                                    |
| My Commission Expires:                                   |  |
|  | [SEAL]   |



114 Edinburgh South Drive Suite 200 Cary, North Carolina 27511 919,827,0864 www.daa.com

March 5, 2020

Mr. Matthew L. Montanye Director of Public Works City of New Bern 1004 S. Glenburnie Road New Bern, North Carolina 28563

RE: Proposal for Engineering Services
City of New Bern – Hurricane Florence FEMA Category A Debris Removal Inspections and Bid Document Preparation

Draper Aden Associates Proposal No. P19080319-020302

Dear Mr. Montanye.:

On behalf of Draper Aden Associates, thank you for allowing us the opportunity to present our proposal to the City of New Bern (City) for providing professional engineering services for the second phase of the overall Hurricane Florence recovery project to restore the City's drainage network to the predisaster condition. The overall Scope of Services presented within this proposal are in general accordance with the provided Engineering Services for Ditch Drainage Project Request for Qualifications (RFQ) documents issued as part of the solicitation dated October 25, 2019.

#### I. PROJECT DESCRIPTION

The project area has been divided into ten different drainage basins organized by outfall. Each of the ten drainage basins includes between half a mile and fifteen miles of drainage ways. The overall project is comprised of the following four phases:

Phase I: Further detailed inspections of all FEMA Category D damages to determine the extent of damage or quantify repairs to the City of New Bern's drainage network. FEMA Category D repairs are related to water control facilities and can include, but are not limited to, slope stabilization, repair of bank erosion, failing head walls, failing retaining walls, or other issues.

Phase II: Further detailed inspections of all FEMA Category A debris activities necessary to restore the City of New Bern's drainage network to the pre-disaster condition. These detailed inspections will determine the extent of debris and quantify the necessary removal activities. FEMA Category A debris removal activities include the removal of fallen trees, vegetation, sediment, and other abnormalities that may be discovered in the drainage system.

Mr. Matthew L. Montanye March 5, 2020 Page 2 of 6

Phase III: Development of plans, scope, technical specifications, and all required permitting documentation necessary for all identified FEMA Category D repairs and mitigation activities. This phase also includes all necessary bid administration, construction administration, environmental permitting activities, and construction monitoring activities for all identified FEMA Category D repairs and mitigation activities.

Phase IV: Development of plans, scope, technical specifications, and all required permitting documentation necessary to generate bid documents for all identified FEMA Category A debris removal activities. This phase also includes all necessary bid administration, construction administration, environmental permitting activities, and construction monitoring activities for all identified FEMA Category A debris removal activities.

The following Scope of Services, schedule, and fees are for the completion of Phase II and Phase IV of the project ONLY.

#### II. SCOPE OF SERVICES

**Phase II:** The Scope of Services for Phase II of the overall project will include the field assessment and further detailed inspection of all FEMA Category A debris removal activities necessary to restore the City of New Bern's drainage network to the pre-disaster condition. These detailed inspections will determine the extent of debris and quantify the necessary removal activities. The field assessment will be completed by a number of field teams and utilize a mobile field data collection application to collect all required information necessary to generate bid documents for all FEMA Category A debris removal activities throughout the project study area. For each necessary debris removal activity identified, field teams will note the drainage basin, record GPS coordinates, collect photographs, document a description of the identified debris, and identify the recommended method of debris removal. Prior to beginning the field assessment campaign, all field team members will participate in a training session in New Bern to ensure that all team members collect data in a consistent manner. At all times while field teams are in the field completing the field assessment, the Draper Aden Associates team Project Manager and/or Field Operations Specialist will be on site in New Bern to coordinate daily field activities.

**Phase IV:** The Scope of Services for Phase IV of the overall project will include development of plans, scope, technical specifications, and all required permitting documentation for the removal of Hurricane Florence related sediment and debris from the City of New Bern's drainage system. The Draper Aden Associates team will identify all applicable environmental permitting requirements necessary to complete the FEMA Category A debris removal activities. The Draper Aden Associates team will complete all required permit applications on behalf of the City and submit to the applicable permitting agencies.

The Phase IV Scope of Services will include the preparation of bid packages by drainage basin or other logical groupings as directed by the City. All bid packages will include specific information for both sediment removal and the removal of vegetative debris. For sediment removal, bid packages will include the following: estimated quantities of sediment, method of sediment removal, temporary storage requirements, sediment transportation requirements, identification of final disposal sites for all

Mr. Matthew L. Montanye March 5, 2020 Page 3 of 6

sediment, method of compliance with required monitoring activities, and any additional activities that the contractor may be required to perform in the completion of the specified work. Similar specifications for vegetative debris removal will be included in addition to any temporary staging areas necessary for woody debris reduction. Bid packages will also include details for all required environmental compliance and site access activities necessary to perform the sediment and vegetative debris removal. The bid packages will contain three following three sections for cost bidding:

- 1. Cost/cubic yard for sediment removal per the estimated quantities including all costs from removal to final disposal as calculated at the final disposal site.
- 2. Cost/ton for vegetative debris per the estimated quantities including all costs from removal to final disposal as calculated at the final disposal site. If Cost/cubic yard is used, final cubic yardage is calculated following all reduction activities.
- 3. Costs for mobilization/demobilization, permitting compliance, site access requirements, and all other activities required for each bid package.

The Phase IV Scope of Services will also include all necessary bid administration, construction administration, and construction monitoring activities to ensure that all work adheres to the requirements necessary to receive FEMA funding. Draper Aden Associates will monitor all contractor activities to the extent necessary to assure compliance with all bid specifications and permitting requirements. At the conclusion of each project, Draper Aden Associates will certify that the contractor has performed all work per the bid specifications and adhered to all permitting requirements. Draper Aden Associates will complete the project closeout activities necessary following the completion of each project.

The City is eager to start the debris removal activities as soon as possible considering that storm debris impacts the ability of the City's drainage system to convey stormwater and prevent flooding during future storms. Draper Aden Associates will work with City staff to identify areas of the overall drainage system that can be assembled into logical groupings and combined into single bid packages. These bid packages will include sufficient work to allow for cost-effective bidding while allowing for the overall project to be completed in sections rather than one large project. The City believes that this method will allow for portions of the project to begin quickly, allow cost-effective bidding, allow competition from small and local contractors, and allow for the overall project to be completed quicker. Thus, Draper Aden Associates will generate bid packages for logical groupings one at a time so that portions of the overall drainage system can begin being restored.

#### III. SCHEDULE

**Phase II:** The Draper Aden Associates team is prepared to begin work upon approval of our proposal. Based on a Notice to Proceed (NTP) no later than March 16, 2020, our team will complete the Phase II Scope of Services outlined above within 120 calendar days.

**Phase IV:** The Draper Aden Associates team will submit bid packages for the first logical grouping identified within 45 days following NTP, two additional logical groupings within 90 days following NTP, two additional logical groupings within 120 days following NTP, and all logical groupings within 180 days following the NTP.

Mr. Matthew L. Montanye March 5, 2020 Page 4 of 6

#### IV. FEES

**Phase II:** The Draper Aden Associates team proposes to complete the Phase II Scope of Services described in Section II for a Not to Exceed (NTE) fee of \$850,000. Project fees will be billed according to the attached 2020 Hourly Bill Rate Table and 2020 Reimbursable Rate Schedule. Fees will be billed monthly for actual project work incurred during the billing period. All services will be provided in accordance with the attached Engineering Services for Ditch Drainage Project RFQ documents.

**Phase IV:** Because the overall scope of work for the generation of each bid package and associated bid administration, construction administration, and construction monitoring activities will not be known until after the completion of the Phase II Scope of Services above, individual proposals will be developed for the Phase IV Scope of Services for each identified logical grouping. After reviewing the level of detail of the scope of work for each individual proposal, the City may request Draper Aden Associates to submit a lump sum cost to perform all services outlined in the individual proposal. Otherwise, these proposals will each include a NTE fee and be billed according to the attached 2020 Hourly Bill Rate Table and 2020 Reimbursable Rate Schedule. Fees will be billed monthly for actual project work incurred during the billing period. All services will be provided in accordance with the attached Engineering Services for Ditch Drainage Project RFQ documents.

#### V. DELIVERABLES

For Phase II of the Scope of Services, the Draper Aden Associates team will complete and provide summary reports (one electronic copy of each) documenting the detailed inspections of all FEMA Category A debris removal activities for each of the ten drainage basins shown on the Project Area figure. These reports will identify the required quantities of sediment and vegetative debris, and the site access requirements necessary to generate bid packages.

For Phase IV of the Scope of Services, deliverables will include all bid packages and proof of permit applications. Additional deliverables necessary to complete all required bid administration, construction administration, and construction monitoring activities will be identified in the individual Phase IV Scope of Services proposal for each logical grouping.

#### VI. ASSUMPTIONS / LIMITATIONS

This proposal is based on the following assumptions:

- Reimbursable expenses such as lodging, meals and incidentals, mileage, printing and postage, and supplies are included in the provided NTE price.
- Lodging will be billed at the federal per diem rate of \$96/night + tax
- Meals and incidentals will be billed at the per diem rate of \$55/day
- Mileage will be billed at the federal rate of \$0.575/mile
- MiFi Devices will be billed on a prorated basis for the portion of the total monthly bill that each device is in use on the project.
- The City will provide the Draper Aden Associates team with an office space with wireless internet access to use for coordinating field work.

- The project extent is included in the attached Project Area figure. No Phase II Scope of Services
  work will be completed within areas outside of the project extent identified in the Project Area
  figure. Within this project extent, Draper Aden Associates will evaluate all elements of the
  drainage system including streams and culverts.
- The Phase IV schedule above assumes no significant delay in the approval of the individual Phase IV proposals.
- The Phase IV schedule above includes the submission of permit applications to the applicable agencies as specified based upon the following assumptions:
  - All required permit agencies agree to a predetermined permitting procedure during the meeting currently scheduled on March 25, 2020 at the NCDEQ – Washington Regional Office
  - o Extensive ecological studies are not required for the submission of any permits
  - Seasonal data collection studies are not required for the submission of any permits that would exceed the schedule above
- The Phase IV Schedule does not include the approval of any required permits.
- Permit review may require revisions to the bid documentation and scope description for sediment and vegetative debris removal activities. Draper Aden Associates highly recommends that the projects not be bid prior to all applicable permits being approved.

On behalf of Draper Aden Associates, thank you for giving us the opportunity to provide our proposal for engineering services. If this proposal meets with your approval, please sign the Authorization to Proceed below and return it to us. Please keep a copy of the proposal for your records. Please note that it is the policy of Draper Aden Associates that no deliverables or other products of service will be submitted without a formal agreement between parties or written authorization acknowledging the scope of work and fees associated with the proposed work. We appreciate your efforts toward this end. We look forward to working with you on this project. Please do not hesitate to contact us if you have any questions or require any additional information.

Sincerely,

**Draper Aden Associates** 

Matthew C. Burnette, PG Senior Project Manager

W. Charles Kreye II, PE

Vice President / Managing Principal / Division Manager

Attachments: 2020 Hourly Bill Rate Schedule

2020 Reimbursable Rate Schedule

**Project Area Figure** 

City of New Bern – Professional Services Agreement Engineering Services for Ditch Drainage Project RFQ

#### **AUTHORIZATION TO PROCEED**

# Proposal for Engineering Services City of New Bern – Hurricane Florence FEMA Category A Debris Removal Inspections and Bid Document Preparation Draper Aden Associates Proposal No. P19080319-020302

I/We agree and accept Draper Aden Associates' proposal to provide the above described services. We understand the Scope of Services as provided herein and agree to the fees estimated for these services. We further acknowledge that Draper Aden Associates will provide a proposal for any change in the Scope of Services described herein and that a signed agreement to provide those additional services will be executed prior to any work being performed.

| Printed Name | Title | Title |  |
|--------------|-------|-------|--|
|              |       |       |  |
|              |       |       |  |
| <u> </u>     |       |       |  |
| Signature    | Date  |       |  |



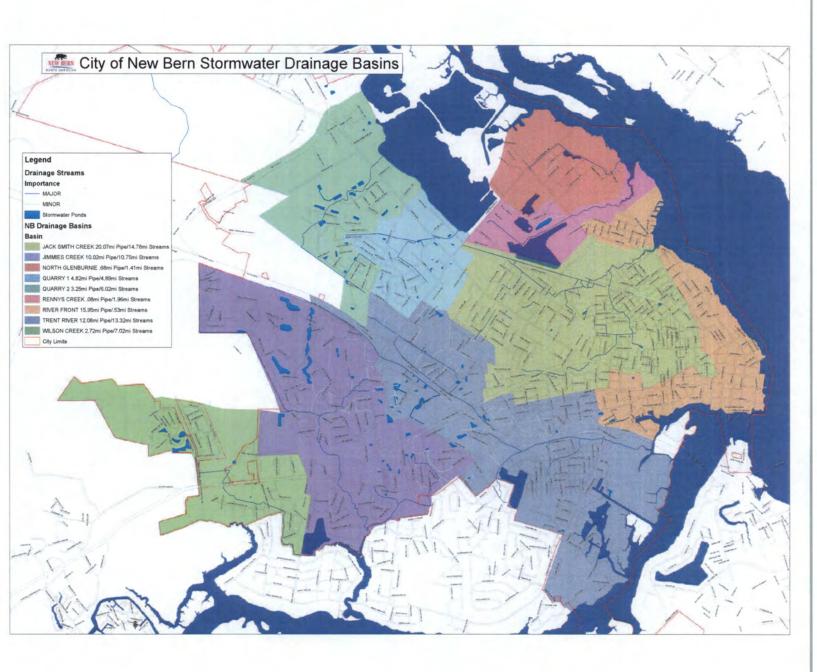
### 2020 Hourly Bill Rate Table

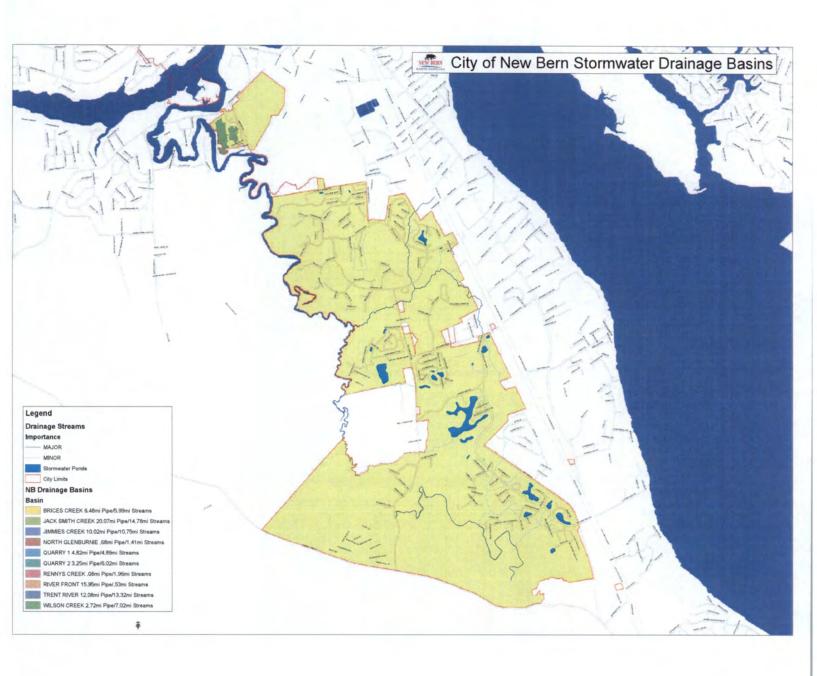
| Staff Category                    | Hourly Rate    |
|-----------------------------------|----------------|
| Administrative Assistant          | \$81           |
| Aerial/Scanning - Project Manager | \$145          |
| Aerial/Scanning - Technician      | \$134          |
| Construction - Manager            | \$129          |
| Construction - Project Specialist | \$124          |
| Construction - Specialist         | \$113          |
| Contract Specialist               | \$127          |
| Debris Monitoring Specialist      | \$60           |
| Designer - Staff                  | \$90           |
| Engineer - V                      | \$197          |
| Engineer - IV                     | \$175          |
| Engineer - III                    | \$152          |
| Engineer - II                     | \$118          |
| Engineer - I                      | \$99           |
| Engineer - Senior Design          | \$143          |
| Engineer - Design                 | \$129          |
| Engineer - Senior Project         | \$165          |
| Engineer - Project                | \$149          |
| Environmental Scientist - Project | \$115          |
| Environmental Scientist           | \$91           |
| Field Operations Specialist       | \$100          |
| Geologist - Senior                | \$178          |
| Geologist - Project               | \$119          |
| Geologist - Staff                 | \$98           |
| GIS Administrator - Senior        | \$124          |
| Grant Management Specialist       | \$143          |
| Landscape Architect - Senior      | \$165          |
| Landscape Architect               | \$118          |
| Permitting Scientist - Senior     | \$118          |
|                                   | \$75           |
| Permitting Scientist - Project    |                |
| Post Disaster Program Manager     | \$138<br>\$185 |
| Project Manager                   |                |
| SUE - Project Manager             | \$129          |
| SUE - Designation Crew (2 person) | \$176          |
| Survey - Team leader              | \$186          |
| Surveyor - Senior Project         | \$129          |
| Surveyor - Project                | \$103<br>\$150 |
| Survey Crew (2 person)            |                |
| Technical Advisor - Senior        | \$213          |
| Technical Advisor                 | \$190          |
| Technician - Project              | \$84           |
| Technician - Staff                | \$61           |
| Water Resources Engineer - Senior | \$200          |
| Water Resources Engineer - II     | \$150          |
| Water Resources Engineer - I      | \$127          |



### 2020 Reimburseable Rate Table

| ltem                              | Billing  |
|-----------------------------------|--|
| 8" x 11" Color Copies             |  |
| 8" x 11" Black and White Copies   | \$0.95 / Page                                    |
| Mileage                           | \$0.15 / Page                                    |
| Per Diem - Meals and Incidentals  | \$0.575 / Mile                                   |
| Por Diem Ladrius                  | \$55 / Day                                       |
| Per Diem - Lodging                | \$96 / Night + tax                               |
| Express Mail & Courier Services   | Cost   |
| Four MiFi Devices                 | \$45 / Unit / Month                              |
| Other Additional Project Supplies | Cost   |
|                                   |  |
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- 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      | Mar  |
|--|--|
| Name and Title of Contractor's Authorized Official | W. Charles Kreye II, P.E. / Vice President |
| Date   | 27 FEB 2020                                |

### **AGENDA ITEM COVER SHEET**



### **Agenda Item Title:**

Adopt a resolution approving a proposal for Professional Engineering Services for Phase III of the Hurricane Florence Drainage System Project (design work related to Category D projects).

| Date of Meeting: March 10, 2020   |  | Ward # if applicable: All Wards                                 |  |  |
|---|--|---|--|--|
| <b>Department:</b> Public Works   |  | Person Submitting Item: Matt Montanye, Director of Public Works |  |  |
| Call for Public Hearing: □Yes⊠No  |  | Date of Public Hearing: N/A                                     |  |  |
|   |  |   |  |  |
| Explanation of Item:  | The City has received submittals to an RFQ for Professional Engineering Services for the approximately \$32 Million FEMA project related to the City's drainage system. Draper Aden and Associates of Raleigh, N.C., was selected to be the most qualified firm and has submitted a proposal for engineering services related to phase III of this project (Design work related to Category D Projects). |   |  |  |
| Actions Needed by Board:  | Adopt a resolution   |   |  |  |
| Backup Attached:  | Memo, RFQ Scor   | ring Sheet, Proposal, Resolution                                |  |  |
| Is item time consistive?  | Vos DNo  |   |  |  |
| Is item time sensitive? \( \begin{aligned} \text{Yes}  \text{No} \\ \text{Will there be advocates/opponents at the meeting? }  \text{Yes} \text{\text{No}} \\ \text{No} \end{aligned} |  |   |  |  |
|   |  |   |  |  |
| Cost of Agenda Item: N  |  |   |  |  |
|   |  | en budgeted and are funds available                             |  |  |
| and certified by the Fina   | nce Director?  | <b>⊻Yes</b> □ No  |  |  |

**Additional Notes:** 



Public Works Department P.O. Box 1129, 1004 S. Glenburnie Road New Bern, N.C. 28563-1129 Phone: (252) 639-7501

Fax: (252) 636-1848

February 27, 2020

Memo to:

Mayor and Board of Aldermen

From:

Matt Montanye, Director of Public Works

Re:

Adopt a Resolution approving a proposal for Professional Engineering Services for phase

three of the Hurricane Florence Drainage System Project (Design work related to

Category D Projects)

#### **Background Information:**

Over the past year the City of New Bern has been working with Disaster Recovery Services to have FEMA accept an estimated \$32 Million project for repairs to the City's drainage system caused by Hurricane Florence. The City has received submittals to an RFQ for Professional Engineering Services for this project and Draper Aden and Associates of Raleigh, N.C., was selected to be the most qualified firm. Draper Aden and Associates has additionally submitted a proposal for engineering services related to phase three of this project (Design work related to Category D Projects). This phase of the project is proposed to be invoiced based on time and material at the rates identified in the attached proposal.

This project is scheduled to begin on or about March 16, 2020.

#### **Recommendations:**

The Public Works Department, along with Disaster Recovery Services, has reviewed the proposal and recommends that the Board consider approving this proposal.

#### **RESOLUTION**

THAT WHEREAS, a Request for Qualifications ("RFQ") for Engineering Services was publicly advertised on October 25, 2019 and submittals were received on November 13, 2019; and

WHEREAS, the following six submittals were received and scored:

| Draper Aden and Associates | 499 |
|----------------------------|-----|
| LDSI Engineering           | 494 |
| MBF Architects             | 482 |
| Avolis Engineering         | 423 |
| Summit Engineering         | 423 |
| Wethrell Engineering       | 410 |

WHEREAS, the Director of Public Works of the City of New Bern has since negotiated pricing for Phase III of the Hurricane Florence Drainage System and recommends acceptance of the proposal from Draper Aden and Associates for professional engineering services based on time and material as outlined in the attached agreement.

### NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

That Proposal No. P19080319-030302 for Engineering Services from Draper Aden Associates City, a copy of which is attached hereto and incorporated herein by reference, is hereby accepted, and the City Manager is authorized to execute the agreement and authorization to proceed with engineering services for Phase III of the Hurricane Florence Drainage System Project, which provides for design work related to category D projects.

ADOPTED THIS 10th DAY OF MARCH 2020.

|                              | DANA E. OUTLAW, MAYOR |  |
|------------------------------|-----------------------|--|
|                              |                       |  |
| BRENDA E. BLANCO, CITY CLERK | _                     |  |

CONTRACT NO.: 20-007

STATE OF NORTH CAROLINA

#### PROFESSIONAL SERVICES AGREEMENT

**COUNTY OF CRAVEN** 

THIS AGREEMENT (hereinafter the "Agreement") is made and entered into this 10th day of March 2020, by and between the City of New Bern, a North Carolina municipal corporation, hereinafter referred to as the "CITY", and Draper Aden & Associates, hereinafter referred to as the "CONSULTANT".

#### WITNESSETH

WHEREAS, the CITY desires to retain and engage the CONSULTANT to perform certain professional services hereinafter described, and further that the parties hereto desire to reduce the terms of this Agreement to writing:

NOW THEREFORE, for and in consideration of the mutual promises to each other, as hereinafter set forth, the parties hereto do mutually agree as follows:

- 1. <u>Term of Agreement</u>. The term of this Agreement shall commence as of the date set forth above and continue through to the completion of the project unless sooner terminated as provided herein.
- 2. <u>Consultant's Services</u>. The CONSULTANT hereby agrees to perform, in a manner satisfactory to the CITY, professional and timely services as set forth in Exhibit "A" and Federal Contracting Provisions attached hereto and incorporated herein by this reference. The parties hereto acknowledge that the terms outlined in Exhibit "A" shall be valid and enforceable to the extent they are not inconsistent with the provisions as set forth herein, and to the extent that they are inconsistent, the provisions as set forth in this Agreement shall control. The parties hereto further agree that the terms, conditions and requirements as set forth in any Request for Qualification ("RFQ") put forth by CITY and responded to by CONSULTANT shall be binding upon the parties to the extent that they do not conflict with the provisions as set forth herein, said RFQ, if applicable, being attached hereto as Exhibit "B" and incorporated herein by this reference.
- 3. <u>Compensation to Consultant.</u> The CITY hereby agrees to pay to CONSULTANT for all time and according to the 2020 Hourly Bill Rate Table and the 2020 Reimbursable Rate Table (both included in the attached P19080319-030302 Proposal for Engineering Services) for services provided herein. In the event that CONSULTANT should fail to provide the services as set forth above, CITY shall be entitled to a refund of its payment(s) to CONSULTANT. Payment will be made within 30 days after receipt of an approved invoice.
- 4. <u>Termination</u>. CITY shall have the right to terminate this Agreement at any time and without cause upon thirty (30) days written notice to the other party.
  - 5. Records. The CITY has the right to audit all records pertaining to this Agreement both

during its performance and after its completion. Further, upon termination of this Agreement, the CONSULTANT shall deliver to the CITY all records, notes, memorandum, data, documents or any other materials produced by CONSULTANT in connection with services rendered pursuant to this Agreement. If compensation for expenses shall be provided to CONSULTANT, the CONSULTANT shall maintain all expense charge documents for a period of three (3) years following the completion of this agreement and said documents shall only be forwarded to the CITY upon request.

- 6. Ownership of Documents. The CONSULTANT agrees that all materials and documents developed pursuant to this Agreement shall be the exclusive property of the CITY, and the CONSULTANT shall retain no property or copyright interest therein. Further, upon termination of this Agreement, the CONSULTANT shall deliver to the CITY all records, notes, memorandum, data, documents or any other materials received or obtained from the CITY in connection with services rendered pursuant to this Agreement.
- 7. This Agreement does not create an employee/employer Independent Consultant. relationship between the parties. It is the intention of the parties that the CONSULTANT will be an independent consultant and not the CITY's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the federal Internal Revenue Code, the provisions of the North Carolina revenue and taxation laws, the North Carolina Wage and Hour Act, the North Carolina Workers' Compensation Act, and the provisions of the North Carolina Employment Security Law. The CONSULTANT will retain sole and absolute discretion in the judgment of the manner and means of carrying out the CONSULTANT's activities and responsibilities hereunder. The CONSULTANT agrees that he/she/it is a separate and independent enterprise from the CITY; and that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the services described herein. This Agreement shall not be construed as creating any joint employment relationship between the CONSULTANT and the CITY, and the CITY will not be liable for any obligation incurred by the CONSULTANT, including but not limited to unpaid minimum wages and/or overtime premiums.
- Indemnity. The CONSULTANT shall release, indemnify, keep and save harmless the CITY, its agents, officials and employees, from any and all responsibility or liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether agents, officials or employees of the CITY or third persons, and to all property proximately caused by, incident to, resulting from, arising out of, or occurring in connection with, directly or indirectly, the performance or nonperformance by CONSULTANT (or by any person acting for CONSULTANT or for whom CONSULTANT is or is alleged to be in any way responsible), whether such claim may be based in whole or in part upon contract, tort (including alleged active or passive negligence or participation in the wrong), or upon any alleged breach of any duty or obligation on the part of CONSULTANT, its agents, officials and employees or otherwise. The provisions of this Section shall include any claims for equitable relief or for damages (compensatory or punitive) against the CITY, its agents, officials, and employees including alleged injury to the business of any claimant and shall include any and all losses, damages, injuries, settlements, judgments, decrees, awards, fines, penalties, claims, costs and expenses. Expenses as used herein shall include without limitation the costs incurred by the CITY, its agents, officials and employees, in connection with investigating any claim or defending any action, and shall also include reasonable attorneys' fees by reason of the assertion of any such claim

against the CITY, its agents, officials or employees. The provisions of this Section shall also include any claims for losses, injuries or damages, and wages or overtime compensation due the CONSULTANT's employees in rendering services pursuant to this Agreement, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act or any other federal or state law. The intention of the parties is to apply and construe broadly in favor of the CITY the foregoing provisions subject to the limitations, if any, set forth in N.C.G.S. 22B-1.

9. Representatives of the Parties. Matt Montanye, Public Works Manager, is designated as the CITY's contract administrator for this Agreement. The contract administrator shall work with requesting department for monitoring the CONSULTANT's performance, coordinating the CONSULTANT's activities, approving all administrative requests by the CONSULTANT and approving all payments to the CONSULTANT pursuant to this Agreement. Further, any notice required to the CITY under this Agreement shall be sufficient if mailed to the CITY by certified mail as indicated below:

Matt Montanye, Director of Public Works
City of New Bern
P.O. Box 1129
New Bern, N.C. 28563

W. Charles Kreye II, P.E. shall be the CONSULTANT's representative for this Agreement. Any notice required to the CONSULTANT under this Agreement shall be sufficient if mailed to the CONSULTANT by certified mail as indicated below:

<u>Draper Aden Associates</u> 114 Edinburgh South Drive, Suite 200 Cary, N.C. 27511

- 10. Other Laws and Regulations. CONSULTANT will comply with any and all applicable federal, state and local standards, regulations, laws, statutes and ordinances including those regarding toxic, hazardous and solid wastes and any pollutants; public and private nuisances; health or safety; and zoning, subdivision or other land use controls. CONSULTANT will take all reasonably necessary, proper or required safety, preventative and remedial measures in accordance with any and all relations and directives from the North Carolina Department of Human Resources, the United States Environmental Protection Agency, the North Carolina Department of Environmental Management, Health Departments, and any other federal, state or local agency having jurisdiction, to ensure the prompt prevention or cessation (now or in the future) of violations of either the applicable provisions of such standards, regulations, laws, statutes, and ordinances or any permits or conditions issued thereunder. CONSULTANT specifically acknowledges and agrees that CONSULTANT, and any subconsultants it uses, has complied with and shall continue to comply with the provisions of the federal E-Verify program in compliance with Article 2 of Chapter 64 of the North Carolina General Statutes. CONSULTANT shall maintain adequate safeguards with respect to sensitive customer information in conformance with and pursuant to 16 C.F.R. §681.1 and in accordance with N.C. Gen. Stat. §132-1.10 and §75-65.
  - 11. <u>Insurance Requirements</u>.
  - A. <u>Commercial General Liability</u>

- 1. CONSULTANT shall maintain Commercial General Liability (CGL) and if necessary, Commercial Umbrella Liability insurance with a total limit of not less than \$1,000,000.00 each occurrence for bodily injury and property damage. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location or the general aggregate shall be twice the required limit.
- 2. CGL insurance shall be written on Insurance Services Office (ISO) "occurrence" form CG 00 01 covering Commercial General Liability or its equivalent and shall cover the liability arising from premises, operations, independent CONSULTANTs, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
- 3. The City of New Bern, its officers, officials, agents, and employees are to be covered as additional insureds under the CGL by endorsement CG 20 10 or CG 20 33 AND CG 20 37 or an endorsement providing equivalent coverage as respects to liability arising out of activities performed by or on behalf of the CONSULTANT; products and completed operations of the CONSULTANT; premises owned, leased or used by the CONSULTANT; and under the commercial umbrella, if any. The coverage shall contain no special limitations on the scope of protection afforded to the City of New Bern, its officers, officials, agents, and employees.
- 4. There shall be no endorsement or modification of the CGL or Umbrella Liability limiting the scope of coverage for liability arising from explosion, collapse, underground property damage, or damage to the named insured's work, when those exposures exist.
- 5. The CONSULTANT's Commercial General Liability insurance shall be primary as respects the City of New Bern, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by the City of New Bern, its officers, officials, and employees shall be excess of and not contribute with the CONSULTANT's insurance.
- 6. The insurer shall agree to waive all rights of subrogation against the City of New Bern, its officers, officials, agents and employees for losses arising from work performed by the CONSULTANT for the City of New Bern.

#### B. Workers' Compensation and Employer's Liability

- 1. CONSULTANT shall maintain Workers' Compensation as required by the general statutes of the State of North Carolina and Employer's Liability Insurance.
- 2. The Employer's Liability, and if necessary, Commercial Umbrella Liability insurance shall not be less than \$500,000.00 each accident for bodily injury by accident, \$500,000.00 each employee for bodily injury by disease, and \$500,000.00 policy limit.
- 3. The insurer shall agree to waive all rights of subrogation against the City of New Bern, its officers, officials, agents and employees for losses arising from work performed by the CONSULTANT for the City of New Bern.
- 4. The U.S. Longshore and Harborworkers Compensation Act endorsement shall be attached to the policy when the services will be on or in close proximity to navigable waterways.
- 5. The Maritime Coverage endorsement (WC 00 02 01) shall be attached to the policy when the contracted services involve the use of watercraft.

NOTE: Additional requirements needed if you have a borrowed servant, offshore platforms or federal act situations. (Federal Acts such as the Defense Base Act, Migrant and Seasonal Agricultural Worker Protection Act, and the Federal Coal Mine Health and Safety Act, etc.)

#### C. <u>Business Auto Liability</u>

- 1. CONSULTANT shall maintain Business Auto Liability and, if necessary, Commercial Umbrella Liability insurance with a limit of not less than \$1,000,000.00 each accident.
- 2. Such insurance shall cover liability arising out of any auto, including owned, hired, and non-owned autos.
- 3. Business Auto coverage shall be written on ISO form CA 00 01, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in ISO form CA 00 01.
- 4. Pollution liability coverage equivalent to that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48) shall be provided, and the Motor Carrier Act endorsement (MCS 90) shall be attached when those exposures exist.
- 5. CONSULTANT waives all rights against the City of New Bern, its officers, officials, agents and employees for recovery of damages to the extent these damages are covered by the business auto liability or commercial umbrella liability insurance obtained by CONSULTANT pursuant to Section 11.C.1 of this agreement.
- 6. The CONSULTANT's Business Auto Liability insurance shall be primary as the City of New Bern, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by the City of New Bern, its officers, officials, and employees shall be excess of and not contribute with the CONSULTANT's insurance.

#### D. <u>Professional Liability Insurance</u>

- 1. CONSULTANT shall maintain in force for the duration of this contract professional liability or errors and omissions liability insurance appropriate to the CONSULTANT's profession. Coverage as required in this paragraph shall apply to liability for a professional error, act, or omission arising out of the scope of the CONSULTANT's services as defined in this contract. Coverage shall be written subject to limits of not less than \$1,000,000.00 per claim.
- 2. If coverage required in paragraph 1. above is written on a claims-made basis, the CONSULTANT warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 (two) years beginning from the time that work under the contract is complete.

#### E. <u>Deductibles and Self-Insured Retentions</u>

1. The CONSULTANT shall be solely responsible for the payment of all deductibles to which such policies are subject, whether or not the City of New Bern is an insured under the policy.

#### F. <u>Miscellaneous Insurance Provisions</u>

The policies are to contain, or be endorsed to contain, the following provisions:

- 1. Each insurance policy required by this contract shall be endorsed to state that coverage shall not canceled by either party except after 30 days prior written notice has been given to the City of New Bern, PO Box 1129, New Bern, NC 28563.
- 2. If CONSULTANT's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

#### G. Acceptability of Insurers

Insurance is to be placed with insurers licensed to do business in the State of North Carolina with an A.M. Best's rating of no less than A VII unless specific approval has been granted by the City of New Bern.

#### H. Evidence of Insurance

- 1. The CONSULTANT shall furnish the City of New Bern with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements prior to commencing the work, and thereafter upon renewal or replacement of each certified coverage until all operations under this contract are deemed complete.
- 2. Evidence of additional insured status shall be noted on the certificate of insurance as per requirements in Section 11.
- 3. With respect to insurance maintained after final payment in compliance with requirements, an additional certificate(s) evidencing such coverage shall be provided to the City of New Bern with final application for payment and thereafter upon renewal or replacement of such insurance until the expiration of the period for which such insurance must be maintained.

#### I. Sub Consultants

CONSULTANT shall include all sub consultants as insureds under its policies or shall furnish separate certificates for each sub consultant. All coverage for sub consultants shall be subject to all of the requirements stated herein. Commercial General Liability coverage shall include independent CONSULTANT's coverage, and the CONSULTANT shall be responsible for assuring that all sub consultants are properly insured.

#### J. Conditions

- 1. The insurance required for this contract must be on forms acceptable to the City of New Bern.
- 2. The CONSULTANT shall provide that the insurance contributing to satisfaction of insurance requirements in Section 11. Minimum Scope and Insurance Requirements shall not be canceled, terminated or modified by the CONSULTANT without prior written approval of the City of New Bern.
- 3. The CONSULTANT shall promptly notify the Safety Officer at (252) 639-7574 of any accidents arising in the course of operations under the contract causing bodily injury or property damage.
- 4. The City of New Bern reserves the right to obtain complete, certified copies of all required insurance policies, at any time.

- 5. Failure of the City of New Bern to demand a certificate of insurance or other evidence of full compliance with these insurance requirements or failure of the City of New Bern to identify a deficiency from evidence that is provided shall not be construed as a waiver of CONSULTANT's obligation to maintain such insurance.
- 6. By requiring insurance herein, the City of New Bern does not represent that coverage and limits will necessarily be adequate to protect the CONSULTANT and such coverage and limits shall not be deemed as a limitation of CONSULTANT's liability under the indemnities granted to the City of New Bern in this contract.
- 7. The City of New Bern shall have the right, but not the obligation of prohibiting CONSULTANT or any sub consultant from entering the project site or withhold payment until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the City of New Bern.
- 12. <u>No Presumption</u>. None of the Parties shall be considered the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof. This Agreement was drafted with substantial input by all Parties and their counsel, and no reliance was placed on any representations other than those contained herein.
- 13. <u>Entire Agreement and Amendment</u>. This Agreement, including any Exhibits attached, which are incorporated herein and made a part hereof, constitutes the entire contract between the parties, and no warranties, inducements, considerations, promises or other inferences shall be implied or impressed upon this Agreement that are not set forth herein. This Agreement shall not be altered or amended except in writing signed by all Parties.
- 14. <u>No Assignment</u>. No party shall sell or assign any interest in or obligation under this Agreement without the prior express written consent of all the parties.
- 15. <u>Conflict of Interest</u>. No paid employee of the CITY shall have a personal or financial interest, direct or indirect, as a contracting party or otherwise, in the performance of this Agreement.
- 16. <u>Non-Waiver of Rights</u>. It is agreed that the CITY's failure to insist upon the strict performance of any provision of this Agreement, or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this Agreement.
- 17. <u>Binding Effect</u>. Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.
- 18. <u>Reference</u>. Use of the masculine includes feminine and neuter, singular includes plural; and captions and headings are inserted for convenience of reference and do not define, describe, extend or limit the scope of intent of this Agreement.
- 19. <u>Interpretation/Governing Law.</u> All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina without regard to any conflicts of law principles and subject to the exclusive jurisdiction of federal or state courts within the State of North Carolina. In the event of a conflict between the various terms and conditions contained herein or between these terms and other applicable provisions, then the more particular shall prevail over the general and the more stringent or higher standard shall prevail over the less stringent or lower standard. The place of this Agreement, its situs and forum, shall be New Bern, Craven County, North Carolina, and in said County and State shall all matters, whether sounding in contract or tort relating to the validity, construction, interpretation or enforcement of this Agreement be determined.

- 20. <u>Saving Clause</u>. If any section, subsection, paragraph, sentence, clause, phrase or portion of this Agreement is for any reason held invalid, unlawful, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.
  - 21. <u>Time</u>. Time is of the essence in this Agreement and each and all of its provisions.
- 22. <u>Immunity Not Waived</u>. This Agreement is governmental in nature, for the benefit of the public. CONSULTANT acknowledges that City reserves all immunities, defenses, rights or actions arising out of City's sovereign status under applicable law. No waiver of any such immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of City's entry into this Agreement.
- 23. <u>Non-Appropriation</u>. In the event no City funds or insufficient City funds are appropriated or otherwise available by any means whatsoever in any fiscal year for any payment due under this Agreement, then the City will immediately notify CONSULTANT of such occurrence and this Agreement shall create no further obligation of the City as to such fiscal year and shall be null and void, except as to the portions of payments for which funds shall have been appropriated and budgeted. In such event, this Agreement shall terminate on the last day of the fiscal year for which appropriations were received without penalty or expense to the City of any kind whatsoever.
- 24. <u>Authority to Act/IDA Certification</u>. Each of the persons executing this Agreement on behalf of CONSULTANT does hereby covenant, warrant and represent that the Organization is a duly organized and validly existing <u>corporation</u>, that the <u>Vice President</u> has full right and authority to enter into this Agreement, and that each and all persons signing on behalf of the CONSULTANT were authorized to do so. The undersigned certifies that CONTRACTOR is not listed on the Final Divestment List created by the N.C. State Treasurer pursuant to Chapter 147 (the Iran Divestment Act) of the North Carolina General Statutes.
- 25. <u>Non-Discrimination</u>. CONSULTANT will take affirmative action not to discriminate against any employee or applicant for employment or otherwise illegally deny any person participation in or the benefits of the program which is the subject of this agreement because of race, creed, color, sex, age, disability or national origin. To the extent applicable, CONSULTANT will comply with all provisions of Executive Order No. 11246 the Civil Rights Act of 1964, (P.L. 88-352) and 1968 (P.L. 90-284), and all applicable federal, state and local laws, ordinances, rules, regulations, orders, instructions, designations and other directives promulgated to prohibit discrimination. Violation of this provision, after notice, shall be a material breach of this agreement and may result, at CITY's option, in a termination or suspension of this agreement in whole or in part.
- 26. <u>E-Verify.</u> As a condition of payment for services rendered under this agreement, CONSULTANT shall comply with the requirements of Article 2 Chapter 64 of the General Statutes. Further, if Seller provides the services to the City utilizing a subcontractor, Seller shall require the subcontractor to comply with requirements of Article 2 Chapter 64 of the General Statutes as well.
- 27. <u>Counterparts.</u> This Agreement may be executed in several counterparts, including separate counterparts. Each shall be an original, but all of them together constitute the same instrument.
- 28. <u>Minority Business Enterprise (MBE)</u>
  The CITY desires that minority business enterprises have the maximum opportunity to participate in the performance of this contract and will:
  - 1. Promote affirmatively (where feasible) in accordance with North Carolina General Statute 143-129, together with all other applicable laws, statutes and constitutional

provisions) the procurement of goods, services in connection with construction projects for minority owned business enterprises.

- 2. Ensure that competitive and equitable bidding opportunities are followed to afford minority business enterprises participation. Strive to obtain contract and subcontract awards to minority business enterprises.
- 3. Identify and communicate to the minority business enterprises community procedures and contract requirements necessary for procurement of goods and services for construction projects and subcontracts.
- 4. Provide technical assistance as needed.
- 5. Promulgate and enforce contractual requirements that the general CONSULTANT or all construction projects shall exercise all necessary and reasonable steps to ensure that minority business enterprises participate in the work required in such construction contracts.

The CONSULTANT shall ensure that minority business enterprises have the maximum opportunity to compete for and perform portions of the work included in this contract and shall not discriminate on the basis of race, color, national origin or sex. The CONSULTANT shall include this special provision, Minority Business Enterprise (MBE), in all subcontracts for this contract. Failure on the part of the CONSULTANT to carry out the requirements set forth in this special provision may constitute a breach of contract and after proper notification may result in termination of the contract or other appropriate remedy.

A minority business enterprise is defined as a business, with at least fifty (51%) percent owned and controlled by minority group members. The minority ownership must exercise actual day-to-day management. Minority group members may consist of Black Americans (an individual of the Black race of African origin), Hispanic Americans (an individual of a Spanish speaking culture and origin at parentage), Asian Americans (an individual of a culture, origin or parentage traceable to the areas of the Far East, Southeast Asia, the Indian subcontinent and the Pacific Islands), Indian Americans (an individual who is an enrolled member of a Federally recognized Indian tribe, or recognized by the tribe as being an Indian, as evidenced by a certification of a tribal leader), American Aleuts or any recognized minority group approved by the CITY.

A Woman Business Enterprise is a business with at least fifty (51%) percent owned and controlled by women who exercise actual day-to-day management.

The CONSULTANT shall exercise all necessary and reasonable steps to ensure that Minority Business Enterprises and Woman Business Enterprises participate in the work required in this contract. The CONSULTANT agrees by executing this contract that he will exercise all necessary and reasonable steps to ensure that this special provision contained herein on Minority Business Enterprise is complied with.

IN WITNESS WHEREOF, the CITY and the CONSULTANT have each executed this Agreement in duplicate originals, one of which shall be retained by each of the parties.

#### CITY OF NEW BERN

| By:  |
|--|
| By: Mark A. Stephens, City Manager   |
| STATE OF NORTH CAROLINA  |
| COUNTY OF CRAVEN   |
| I, Brenda Espinosa-Blanco, a Notary Public in said State and County, certify that Mark A. Stephens personally appeared before me this day and acknowledged that he is the City Manager of the City of New Bern, a North Carolina Municipal Corporation, and that by authority duly given and as the act of the City of New Bern, the foregoing instrument was signed in its named by him as its Manager. |
| WITNESS my hand and notarial seal, this the day of March, 2020.  |
| Brenda Espinosa-Blanco, Notary Public  My Commission Expires: 03/09/2023   |
| FINANCE OFFICER'S CERTIFICATION STATEMENT  |
| This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act.  |
| This day of March, 2020.   |
| Mary M Hogan, Finance Officer  |
| Project Number: (if applicable) Account Number: Amount of Contract: Requisition/PO Number: Federal ID Number:  |

#### CONSULTANT

|   | By:                  |                                 |
|---|----------------------|---------------------------------|
|   | W. Charles Krey      | ve, II, P.E., Vice President    |
| STATE OF                                    |                      |                                 |
| COUNTY OF                                   |                      |                                 |
| I,  | that by authority du | lly given and as the act of the |
| Witness my hand and official seal, this the | day of               | , 2020.                         |
|   | Notary Public        |                                 |
| My Commission Expires:                      | [                    | SEAL]                           |

## Exhibit A Federal Contracting Requirements

These Federal Contracting Requirements are incorporated into the Service Contract between the City 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 "Vendor" or "Provider" shall be deemed to mean the Contractor. By signing the Service Contract with the City, Contractor certifies that it has read and agrees to comply with all of the terms and conditions set forth below and that are incorporated into the Service Contract with the City and 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 document 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.CFR 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 sub-contractors, if any, hereby represent and covenant that they are 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 requirements in accordance with Drug Free Workplace Act of 1988 (Pub 100-690, Title V, Subtitle D). All contractors 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 City of New Bern or pass through entity in accordance with federal policy.

#### **Mandatory Disclosure**

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 agrees 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 City and understands and agrees that the City 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 these 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 USC § 1251-1387).

The Contractor agrees to report any violation to the City immediately upon discovery. The Contractor understands and agrees that the City will, in turn, report each violation as required to assure notification to the City, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency (EPA) Regional Office. Contractor must include this requirement in all subcontracts that exceed \$150,000.

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**

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the City, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representative's 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 representative's 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

The City 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 City, 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 sub-contractor who will be subject to its provisions.

# Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this 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 sub-contractors who will be subject to the provisions.

#### **Changes**

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**

Termination Without Cause. The City 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 City. By giving written notice to the Contractor, the City 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 or provide the proof of insurance as required by this Agreement.

Cancellation of Orders and Subcontracts. In the event this Agreement is terminated by the City 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 City 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 City, 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 City all computer programs, files, documentation, data, media, related material and any other recording devices, information, or compact discs that are owned by the City; (b) deliver to the City all Work Product;

(c) allow the City or a new vendor access to the systems, software, infrastructure, or processes of the Contractor that are necessary to migrate the Services to a new vendor; and (d) refund to the City all pre-paid sums for Products or Services that have been cancelled and will not be delivered.

**No Suspension**. In the event that the City 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 City Manager or their designee is authorized to terminate this Agreement on behalf of the City.

Audit. During the term of the Agreement and for a period of one year after termination or expiration of this Agreement for any reason, the City shall have the right to audit, either itself or through a third party, all books and record (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 City's payment obligations. The City 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 City in excess of \$5,000 but for the audit, then the Contractor shall be required to reimburse the City for the cost.

#### Remedies

Liquidated Damages: The City and the Contractor acknowledge and agree that the City 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 City may be damaged by such failures, including loss of goodwill and administrative costs; but that (b) the costs that the City 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 City'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 City of such failure, the City 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 City in obtaining or performing the Services from any money then due or to become due the Contractor and, should the City's reasonable cost of obtaining or performing the services exceed the amount due the Contractor, collect the difference from the Contractor.

**Right to Withhold Payment.** If the Contractor materially breaches any provision of this Agreement, the City 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 City 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 City 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**

A contract award (see CFR 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 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR 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 CFR Part 180 and 2 CFR Part. 3000. As such, the Contractor is required to verify that none of the Contractor, its principals (defined at 2 CFR § 180.995), or its affiliates (defined at 2 CFR § 180.905) are excluded (defined at 2 CFR§ 180.940) or disqualified (defined at 2 CFR § 180.935).

The Contractor is required to comply with 2 CFR Part 180, Subpart C and 2 CFR 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 proper certifies that:

This certification in this clause is a material representation of fact relied upon by the City. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available by the City, 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 CFR Part 180, Subpart C and 2 CFR 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**

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 vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### **Davis-Bacon Requirements**

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 CFR 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 CFR 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 sub-contractors 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 officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
- (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 benefit 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 assets, in a separate account, for the meeting of obligations under the plan or program.

## 2. Withholding.

The City 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 sub-contractor 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 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records 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 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at 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 sub-contractors. 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 sub-contractor 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 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 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 CFR 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 sub-contractor 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, 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 CFR 5.12.

#### 4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, 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 to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or sub-Contractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the 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 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the

event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

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

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

#### 6. Subcontracts.

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 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 CFR Part 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 CFR 5.12.

#### 8. Compliance with Davis-Bacon and Related Act Requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

#### 9. Disputes Concerning Labor Standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

#### 10. Certification of Eligibility.

(i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be

awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC 1001.

#### Copeland "Anti-Kickback" Act

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 CFR 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 by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

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 provided in 29 CFR § 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 CFR Part 5).

- Overtime requirements. No Contractor or subcontractor contracting for any part of the
  contract work which may require or involve the employment of laborers or mechanics shall
  require or permit any such laborer or mechanic in any workweek in which he or she is
  employed on such work to work in excess of forty hours in such workweek unless such laborer
  or mechanic receives compensation at a rate not less than one and one-half times the basic rate
  of pay for all hours worked in excess of forty hours in such workweek.
- 2. <u>Violation; liability for unpaid wages; liquidated damages</u>. 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 forty 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. <u>Subcontractors</u>. 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 subcontracts to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any sub-contractors 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

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 CFR § 18.34 and 49 CFR § 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 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 and Cooperative Agreements," 37 CFR 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:

<u>General</u> - 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 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 and Cooperative Agreements," 37 CFR Part 401.

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**

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 CFR 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 CFR Part 247 whenever:

- 1. The contract requires procurement of \$10,000 or more of a designated item 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- designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <a href="https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program.">https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program.</a>"

#### **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 seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without pre-approval by the specific federal agency.

#### **Insurance and Indemnity**

INSURANCE AND INDEMNITY. To the fullest extent permitted by laws and regulations, CONTRACTOR shall indemnify and hold harmless the CITY 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. Contractor shall also maintain Employers' Liability insurance limits of not less than \$500,000 per accident and \$500,000 each employee for injury by disease. Additionally, CONTRACTOR shall maintain, at its expense, the following minimum insurance coverage:

- (a) Commercial General Liability Insurance in an amount not less than\$1,000,000 per occurrence for bodily injury or property damage.
- (b) Professional Liability Insurance in an amount not less than \$1,000,000 per occurrence.
- (c) Workers Compensation Insurance in an amount \$500,000 per occurrence.
- (d) Commercial Automobile Insurance in an amount \$1,000,000 per occurrence as applicable.

CONTRACTOR, upon execution of this Contract, shall furnish to the CITY 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.

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

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient."

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000) The undersigned Contractor certifies, to the best of his or her knowledge, 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      |  |
|--|--|
| Name and Title of Contractor's Authorized Official |  |
| Date   |  |



October 25, 2019

**RE: Request for Qualifications** 

To Whom It May Concern:

The City of New Bern is seeking qualified consulting firms to provide architectural and engineering services for engineering, permitting, preparing bid documents and other necessary emergency clean-up activities associated with the removal of debris and sediment post Hurricane Florence. The debris and sediment are in approximately 66 miles of drainage areas within the corporate limits of the City of New Bern. Responding firms ("Engineer") must at a minimum, have performed similar work related to debris and sediment removal, permitting, and monitoring.

Attached you will find a "Request for Qualifications", which identifies the project(s) anticipated to be undertaken by City of New Bern during the contract period.

In order to be considered all responses must be submitted in writing no later than 4:00 PM (EST) on Wednesday, November 13, 2019. Firms mailing responses should allow delivery time to ensure timely receipt of their proposals. The responsibility for getting the response to the City of New Bern's Purchasing Department on or before the specified time and date is solely and strictly the responsibility of the responding firm. The City of New Bern will in no way be responsible for delays caused by any occurrence. Responses may be hand carried or mailed to:

City of New Bern Purchasing Department Attn: Lori Colon, Purchasing Manager 210 Kale Rd. New Bern, NC 28562

Firms wishing to make on-site visits prior to submitting a qualification package should contact Matt Montanye at 252-639-7500, to arrange a time and date for an on-site visit of the property/location.

Firms providing responses shall be licensed and responsible for complying with North Carolina laws, regulations, and local ordinances.

The City of New Bern reserves the right to waive any informalities, to reject any and all responses to the Request for Qualifications, and to accept any responses, which in its opinion may be in the best interest of the City of New Bern.

No responses to the Request for Qualifications will be received or accepted after 4:00 PM, EST, Wednesday, November 13, 2019. Late qualification packages will be deemed invalid and returned unopened to the firm.

Thank you,

Lori Colon, CLGPO Purchasing Manager

# REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL ARCHITECTURAL/ENGINEERING/PERMITTING SERVICES THE CITY OF NEW BERN

#### I. INTRODUCTION

The City of New Bern is inviting interested architectural design/consulting engineering firms, licensed in the State of North Carolina, to submit their qualifications for consideration to provide professional architectural/engineering/permitting services related to Ditch Drainage:

#### SCOPE OF SERVICES

The City of New Bern is requesting statements of qualifications to enter into an Engineering Service contract for Ditch Drainage Project located within the City of New Bern's City Limits.

## Provide Engineering services as it relates to the following areas:

- 1. Analyzing approximately 66 miles of drainage ditches to identify any necessary repairs required to the drainage system for FEMA related Category D repairs. Repairs will include but shall not be limited to the slope stabilization, repair of bank erosion, failing retailing wall, failing head walls or any other issue that may arise. Repairs shall be outlined in each on the ten drainage areas outlined by the City of New Bern.
- 2. Provide a detailed plans and project scope for bidding purposes for Category D project identified in item No. 1 above.
- 3. Identifying and provide a scope of work for bidding purposes for the removal of all fallen tree and vegetation as well as for sediments removal from the drainage system. Project scopes will be divided into ten different projects consisting of between two miles and ten miles of drainage ways per project.
- 4. Coordinate all necessary permitting with the US Army Corps of Engineer, NCDWQ, CAMA and any other state or federal agency having jurisdiction within the drainage areas, as well as the coordination of any necessary biological studies endangered species or any other determined reason.

#### Timeline for deliverables:

- 1. The identification of all Category D work will be submitted to the City of New Bern in a word or excel format including mapped location, pictures and project scope within 90 days of the notice to proceed.
- 2. The plans and project scope for all Category D projects shall be completed and submitted to the City of New Bern so that bids can be obtained for completing the work within 120 following the completion of identifying the Category D projects.
- 3. Identify and provide a scope of work for bidding purposes for the removal of fallen tree, vegetation and for sediments removal and other abnormality that may be discovered from the drainage system. Drainage systems that will not require permitting shall be submitted to the City of New Bern so that bids can be obtained for completing the work within 120 following the completion of identifying the Category D projects.
- 4. Identify and provide a scope of work for bidding purposes for the removal of fallen tree, vegetation and for sediments removal from the drainage system. Drainage systems that will require permitting shall be

identified and submitted for permits within 120 days following the completion of identifying the Category D projects. Once permits have been received, project scopes shall be and submitted to the City of New Bern so that bids can be obtained for completing the work following the issuance of all permits.

#### II. SUBMISSION

- A. Submittals: Submit five (5) hard copies, marked "Engineering Services for Ditch Drainage" and one electronic. Submittals will be received no later than 4:00 PM EST, on Wednesday, November 13, 2019, at the office of the City of New Bern Purchasing Department, Attn: Lori Colon, 210 Kale Street, NC 28562.
- B. Qualification packages may be hand-delivered or mailed. If the submittal is sent by mail or commercial express, the Respondent shall be responsible for actual delivery of the qualification package to the proper City office before the deadline. All submittals become property of the City. Request for Qualification packages will not be accepted via fax machine or email.
- C. Mark outside of envelope with RFQ and proposal subject, "Engineering Services for Ditch Drainage Project".
- D. Time is of the essence and any proposal or addenda pertaining thereto received after the announced time and date for submittal, whether by mail or otherwise, will be rejected. It is the sole responsibility of the firm to ensure that their proposal is received by the Purchasing Department personnel before the deadline indicated above in Section 1.1. There is nothing in the RFQ that precludes the City from requesting additional information from firms at any time during the qualification process.
- E. Nothing herein is intended to exclude any responsibilities, in any way restrain, or restrict competition. On the contrary, all responsible firms/individuals are encouraged to submit responses. City of New Bern reserves the right to waive any informalities, to reject any and/or all proposals, and to accept any proposal, which in its opinion may be in the best interest of the City.
- F. Qualification packages may be withdrawn by written request prior to submittal deadline.

#### IV. PREPARATION

- A. Firms are to submit qualification packages, which present their qualifications and understanding of the services to be performed. Emphasis should be placed on completeness of services offered and clarity of content. All submittals should be complete and carefully worded and must convey all of the information requested by the City. If errors or exceptions are found in the firm's qualification package, or if the package fails to conform to the requirements of the RFQ, the City will be the sole judge as to whether that variance is significant enough to reject the firm's submittal.
- B. Qualification packages should be prepared simply and economically. All data, materials, and documentation shall be available in a clear, concise form. The City of New Bern does not expect nor will any more favorable consideration be given to submittals with fancy covers or binding, color photographs, sample plans, non-pertinent information on other accomplishments of the firm which have no direct bearing on these projects, resumes of individuals who will not be engaged in the work, or pages of other non-projected related material. Submittals shall be limited to 50 pages, double sided 8 ½ x 11, minimum 12-point font. Covers and dividers do not count in the 50 pages total.

- C. Firms requiring clarification or interpretation of this RFQ shall make a written request, which shall reach the City of New Bern Purchasing Department no later than the date and time for submittal of written questions (see Section V, paragraph C).
- D. Any interpretation, correction or change of this RFQ will be made by Addendum. Addenda will be mailed or delivered to all who are known by the City Purchasing Department to have received a complete set of RFQ documents. It is the responsibility of the firm to ensure that all Addenda were received.
- E. All submittals shall provide a straight forward, concise description of firm's ability to satisfy the requirements of the RFQ.
- F. Qualification packages (and copies) should be bound in a single volume where practical. All documentation submitted with the offer should be bound in that single volume.
- G. In addition to the transmittal letter, the Non-Collusion Affidavit must be signed by a principal of the firm or an officer of the corporation duly authorized to bind the corporation.
- H. If any offer includes comments over and above the specific information requested in this RFQ such comments must be included as a separate appendix.
- I. The firm is solely responsible for all costs and expenses associated with the preparation of the submittal and of any supplementary presentation (including any oral presentation) if requested by City.
- J. Qualification Packages must be made in the official name of the individual, firm, or corporation under which the business is conducted (showing official business address) and must be signed in ink by a person duly authorized to legally bind the business entity submitting the qualification.
- K. Submittals shall be typewritten or computer generated.
- L. The City may enter in a contract with more than one firm to provide the various professional services that will be required.

#### V. GENERAL TERMS AND CONDITIONS

#### A. NON-COLLUSION AFFIDAVIT

Each qualification package must be accompanied by a notarized affidavit on non-collusion, executed by the firm or in the case of a corporation, by a duly authorized representative of said corporation. The Non-Collusion Affidavit is provided herein.

#### B. ADDENDA/CHANGES

Any additions, deletions, modifications or changes made to this RFQ shall be processed through the City of New Bern Purchasing Department. Any deviation from this procedure may result in the disqualification of the firm's submittal or the cancellation of any contract resulting from this RFQ.

#### C. **QUESTIONS**

Questions concerning this RFQ should be in writing and directed to:

City of New Bern Purchasing Attn: Lori Colon 210 Kale Rd New Bern, NC 28562 Telephone (252) 639-2800 Fax (252) 639-2803

E-mail: colonl@newbernnc.gov

All questions pertaining to this RFQ must be submitted in writing no later than November 4, 2019 at 5:00 PM EST.

Only written questions will be considered formal. Any information given by telephone will be considered informal. Any questions that the City feels are pertinent to all proposers will be E-mailed as an addendum to the RFQ. Fax and e-mail messages will be treated as written questions.

#### D. PROPRIETARY INFORMATION:

Trade secrets or proprietary information submitted by a firm in connection with a procurement transaction shall not be subject to the public disclosure under the North Carolina Public Records Act pursuant to NC General Statutes §66-152(3). However, the firm must invoke the protection of this section prior to or upon submission of the data or other materials, and must identify the data on other materials to be protected and state the reasons why protection is necessary. Each individual page considered a trade secret or proprietary information must be labeled "Confidential" in the top right corner.

#### E. **MINORITY BUSINESSES**

The City of New Bern encourages all businesses, including DBE, minority, and women-owned businesses to respond to all Request for Qualifications.

#### F. AWARD/CONTRACT TIME

No part of this solicitation is to be considered part of a contract nor are any provisions contained herein to be binding of the City of New Bern.

Award shall be made to the responsible firm(s) whose qualifications are determined to be the most advantageous to the City, taking into consideration the evaluation factors set forth in the RFQ.

The City wishes to enter into an agreement with one firm which will be responsible for the work associated with this RFQ.

The City of New Bern anticipates award of contract and the detailed Scope of Work and schedule of deliverables shall be negotiated with the successful firms for each specified project.

#### G. CONTRACT DOCUMENT

The successful firms will be required to enter into an architectural, engineering and consultant services agreement. A copy of the City's standard Agreement for Consultant Services is attached.

#### H. SUBCONSULTANTS

If any sub consultants will be used for the various projects, the successful firm shall provide to the Purchasing Manager a list of names of any of the intended sub consultants, their applicable license number(s) and a description of the work to be done by each sub consultant.

The successful firm shall not substitute other sub consultants without the written consent of the City.

The successful firm shall be responsible for all services performed by a sub-engineer as though the successful firm had performed them. Responsibilities include, but are not limited to, compliance with applicable licensing regulations.

If at any time the City determines that any sub-engineer is incompetent or undesirable, the City shall notify the successful firm accordingly, and the successful firm shall take immediate steps for cancellation of the subcontract and replacement.

Nothing contained in any contract resulting from this RFQ shall create any contractual relationship between any sub-engineer and the City of New Bern.

It shall be the successful firms' responsibility to ensure that all terms required in the attached contract are incorporated into all subcontracts.

#### I. INSURANCE

The selected firm shall purchase and maintain in force, at his own expense, such insurance as will protect the firm and the City, to include professional liability (E&O), from claims which may arise out of or result from the firm's execution of the work, whether such execution be by himself, his employees, agents, subcontractors/engineers, or by anyone for whose acts any of them may be liable. The insurance coverage shall be such as to fully protect the City, and the general public from any and all claims for injury and damage resulting by any actions on the part of the firm or its forces as enumerated above. See Sample Contract for additional information regarding insurance coverages and limits.

The selected firm shall furnish a copy of an original Certificate of Insurance, naming the City of New Bern as an additional insured. Should any of the policies be canceled before the expiration date, the issuing company will provide thirty (30) days written notice to the certificate holder. The firm shall furnish insurance in satisfactory limits, and on forms and of companies which are acceptable to the City of New Bern Purchasing Manager and shall require and show evidence of insurance coverage on behalf of any subcontractors/engineers (if applicable), before entering any agreement to sublet any part of the work to be completed under this contract.

#### VII. QUALITY COMMITMENT

The City will utilize best management practices to ensure the highest quality of services is provided to its citizens. With this goal in mind, firms are required to demonstrate how they possess and utilize appropriate quality management systems, which result in customer satisfaction and continuous improvements.

To satisfy these requirements, firms must demonstrate its commitment to best manage practices and provide services with the highest possible level of quality throughout all phases of Work. Proposals must demonstrate, at a minimum, (1) a complete understanding of the processes utilized within the organization to ensure quality and (2) graphical demonstrations that outline quality and process management within the organization and how they relate with sub-consultants and with the Owner. The response to quality must be deliberate and contain sufficient evidence that the firm has adopted quality and best management practices as an integral part of the organization. As a part of the responses to this request, firms shall demonstrate the organizations design process, e.g. process map, flow chart.

Demonstrate processes in place to recognize, track and analyze project change orders due to errors and omissions (including those caused by any sub consultants) and discuss how these processes are utilized to minimize future occurrences.

#### VIII. STATEMENT OF QUALIFICATIONS REQUIREMENTS

Interested engineering/consulting firms desiring to provide services should include the following with its Statement of Qualifications:

- 1. Firm name, address, telephone, fax number, contact person and e-mail address;
- 2. Year established and former firm names;
- 3. Names of principles of the firm and states in which they are registered;
- 4. Types of services for which the firm is qualified;
- 5. Understanding of the scope of work/services;
- 6. List of staff members and resumes of those persons who will be assigned to work with the City on the various projects. Include an Organizational Chart but do <u>not</u> include resumes or list of personnel who will not be assigned to these projects.
- 7. List of current ongoing projects. Include: Project start date; expected completion date, total project cost, your ability to devote staff resources to complete this project.
- 8. List and describe all of your firm's previous experience in engineering, permitting, bidding and other emergency clean-up activities associated with the removal of debris and sediments post hurricane event over the last three (3) years that are applicable to the proposed project list. For each project listed, the information should include:
  - Name and location of the project and the date the work was completed.
  - Name and telephone number of the facilities maintenance director or staff person whom your firm worked with on the project (projects references).
  - Name of the project manager assigned to each listed project.
  - Total final dollar amount of the work performed.
  - Number of change orders and total amount of change orders.
- 9. Names of outside consultants (sub-consultants) who would be involved to provide services required for these projects. Provide a one-page synopsis for each consultant to include the following information:
  - Individual's proposed role in the project.
  - A resume or brief description of the individual's previous experience as it relates to his/her role in the project.
  - For any proposed sub consultants, indicate how long your firm has worked with the sub-consultant on previous projects.

- 10. In order to be considered responsive for this RFQ, the firm must include the following information.
  - Description of the kind of work that can be subcontracted.
  - Willingness to affiliate with DBE, minority or women-owned businesses ("M/WBE").
  - Identify any sub-contractible work that could be performed by minority firms.
  - Name and address of the DBE and M/WBE firms that are anticipated to perform the subcontractible work.

# Note: Do not include sample Scope of Work, project approach or schedule with this submittal.

- 11. Quality Control and Assurance processes as stated above in Section VII.
- 12. Hourly billing rates charged by your firm each position type and reimbursable expenses.
- 13. Estimated timetable of project if awarded from contract award to completion.

#### X. EVALUATION PROCESS:

Following the deadline for submittal of qualifications, a review of the submitted qualifications will be by a selection committee established by the City. The selection committee will review, analyze and rank all submittals based on their response to the information requested. The selection shall be made in order of preference based on criteria established herein.

If desired, the selection committee may short list the number of qualified firms. The City reserves the discretion to determine the number of firms that will be on the short list. The City may engage in individual discussions with two or more offerors deemed fully qualified, responsible, and suitable based on initial responses and with emphasis on professional competence to provide the required services. Interviews are not anticipated; however, the selection committee may schedule interviews if required in the selection process. Such offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts.

The selection committee may conduct discussions with the firm(s) submitting responses regarding the contract and shall select from among the firm(s) deemed most qualified to provide the required services. At the discretion of the City, the discussions with the firm(s) may consist of written questions and responses, and/or personal interviews with members of the firm(s). If personal interviews are required by the City, the persons proposed to be responsible for performing the work required herein shall attend the interview. If requested, firms should be prepared to submit financial status information, which shall be held in confidence.

The City will negotiate a stipulated sum fee for basic services and a rate schedule to be utilized for additional services and contingent additional services with the most qualified firm at a compensation, which is considered fair and reasonable to the City. These rates shall include all disciplines (example: architect, project manager, engineers, administrative staff, etc.). In making this decision, the City will take into account the established value, general scope, the complexity, and the professional nature of the services to be rendered. Should the City be unable to negotiate a satisfactory contract with the firm considered to be most qualified, negotiations with that firm shall be formally terminated.

Negotiations will then proceed with the remaining ranked firms in the same manner until an agreement is reached, unless it is determined by the committee that it is in the best interest of the City that the process be terminated or modified.

The City reserves the right to reject any and/or all submittals, and to waive defects, technicalities and/or irregularities in any submittal. The City reserves the right to finalize a contract

with one or more firms based on all factors involved in the written qualification submittal without further discussion or interviews.

#### XI. SELECTION PROCESS

The included criteria, but not limited to, may be used in the evaluation of qualification packages for development of a shortlist to be considered for potential negotiations. These criteria are not necessarily listed in order of importance.

- Firms qualifications and experience including location of offices and related staffing.
- Firms understanding of the project objectives.
- Previous work experience of similar projects and demonstrated experience.
- Firm's demonstration of ability to understand the specialized requirements with federal aviation administrative regulations, federally and state funded grant projects, etc.
- Proposed staff, including sub-engineers, proposed to perform the work.
- Financial stability of the consultant.
- Demonstration of Quality Control: Demonstrated systematic approach to quality assurance and interdisciplinary coordinator methodologies throughout the various phases of design and renovation administration.
- Demonstration of Cost Control: Demonstrated experience implementing cost saving measures that effectively maximized the utilization of funding from a variety of sources and minimized unnecessary expenses while achieving desired results.
- The ability of the consultant to begin work immediately and complete the projects in a timely manner.
- References: Evaluation of comments received from referenced previous clients.



PUBLIC WORKS DEPARTMENT 1004 South Glenburnie Road P.O. Box 1129 - New Bern NC 28562 (252-639-7501

#### **Hurricane Florence Drainage Repair Project**

| Reviewer:   |                    |           |
|---|--------------------|-----------|
| Review Section  | Possible<br>Points | Firm Name |
| a. General Qualifications, Competence & Reputation of Firm:  - Age, size, staff qualifications and stability of firm(10)  - Projects to illustrate competence in similar scope(10)  - Availability of staff to handle the project(10)  - Reputation with previous clients(10) | 40                 | 0         |
| b. Experience of Involved Staff - Experience with similar type projects(20) - Key personnel – roles and experience(20)  | 40                 | 0         |
| c. Ability to Address Local Needs - Grasp of project requirements(10) - Design approach/methodology(10) - Familiarity with City of New Bern's drainage system. Familiarity with state and federal permitting(10) - Completed similar project(s) (10)                          | 40                 | 0         |
| d. Availability  - Ability to provide access to qualified project team members on a continual basis(10)  - Ability to commit available resources (current workload) to the project(5)   | 15                 | 0         |
| e. Project Delivery Timeline (Old Airport Road)  - Provide an estimated timeline for the completion design, plans, and documents suitable of bidding purposes if awarded the Old Airport Road Project.  | 10                 | 0         |
| f. Project Delivery Timeline - See desired schedule of deliverables included as part of the RFQ.  | 10                 | 0         |
| f. Hourly Rate Schedule  - Do not include a lump sum or not-to-exceed price(5)  - Rates indicative of experience and capabilities(5)  | 10                 | 0         |

Total Score (165 Max)

#### RESPONDER'S CERTIFICATION FORM

I have carefully examined the Request for Qualifications, the sample Agreement for Consultant Services and any other documents accompanying or made a part of this Request for Qualification.

I hereby propose to furnish the professional engineering consultant services for City of New Bern in accordance with the instructions, terms, conditions, and requirements incorporated in this Request for Qualification. I certify that all information contained in this response is truthful to the best of my knowledge and belief. I further certify that I am duly authorized to submit this response on behalf of the firm as its act and deed and that the firm is ready, willing and able to perform if awarded the contract.

| NAME OF FIRM:       |      |             |                                      |                                       |  |
|---------------------|------|-------------|--------------------------------------|---------------------------------------|--|
| BY: (printed name)  |      |             |                                      |                                       |  |
| SIGNATURE:          |      |             |                                      |                                       |  |
| MAILING ADDRESS:    |      |             |                                      | · · · · · · · · · · · · · · · · · · · |  |
| CITY/STATE/ZIP CODE | ::   |             |                                      |                                       |  |
| TELEPHONE NUMBER:   | :    |             |                                      |                                       |  |
| FAX NUMBER:         |      | ,           |                                      |                                       |  |
| Responder hereby    |      |             | E <b>DGEMENT</b><br>pt of all Addend |                                       |  |
| Addendum No.        | Date |             | Acknowledge                          | ment                                  |  |
|                     |      | <del></del> |                                      |                                       |  |
|                     |      |             |                                      |                                       |  |

## NON-COLLUSION AFFIDAVIT

#### State of North Carolina

|             | , t  | peing first duly sworn, deposes and   | says that:   |
|-------------|--|---|--|
| 1.          | He/She is the  | (title) of  | (firm's name), the   |
|             | responder that has submitted   | the attached response;  |  |
| 2.          | He/She is fully informed repertinent circumstances respe   |   | ntents of the attached response and of all   |
| 3.          | Such response is genuine and   | is not a collusive or sham response   | e;   |
| 4.          | parties in interest, including to<br>indirectly, with any other re-<br>with the contract for which<br>connection with such contract<br>of communication or conferent<br>attached response, if applica-<br>of the response price of the | this affiant, has in any way collude<br>sponder firm or Person to submit<br>the attached response has been<br>at, or has in any manner, directly or<br>ence with any other responder, firm<br>ble, or of any other responders, or<br>response, if applicable, of any oth<br>nlawful agreement any advantage | wners, agents, representatives, employees or<br>ed, conspired, connived or agreed, directly or<br>a collusive or sham response in connection<br>submitted or to refrain from responding in<br>a indirectly sought by agreement or collusion<br>on or person to fix the price or prices in the<br>art to fix any overhead, profit or cost element<br>er responder or to secure through collusion,<br>against the City of New Bern or any person |
|             |  | Signature   |  |
| <u>NOTA</u> | ARIZE  | Title   |  |
| Subsc       | cribed and sworn to before me,   |   |  |
| This_       | day of   | , 20  |  |
| Notar       | y Public   |   |  |
| Му С        | commission Expires:  |   |  |

# City of New Bern Affidavit

# STATE OF NORTH CAROLINA AFFIDAVIT CITY OF NEW BERN

| I,  | (the individual attesting                                   | g below), being duly authorized by   |
|---|---|--|
| and on behalf of  |   | entity bidding on project hereinafter  |
| "Employer") after first being duly  | sworn hereby swears or aff                                  | irms as follows:   |
| States Department of Homeland   | Security and other federal age by the work authorization of | fy program operated by the United gencies, or any successor or newly hired employees pursuant to |
| 2. Employer understands that En employee to work in the United S through E-Verify in accordance v | States, shall verify the work a                             |  |
| 3. Employer is a person, business and that employs 25 or more emp a. YES, or b. NO                | •   | that transacts business in this State (es or No)   |
|   |   | Employer is the winning bidder on by any subcontractors subsequently                             |
| This day of   | , 20  |  |
| Signature of Affiant  |   |  |
| Print or Type Name  |   | <del></del>  |
| Notary Public Certification   |   |  |
| State of  | , County of   |  |
| State of  | efore me, this the  | day, 20  |
| Signature of Notary   |   |  |
| My Commission expires   |   | After sest here  |
|   |   |  |

#### General Provisions

| I-1.  | Definitions              | I-16. | Warranty   |
|-------|--------------------------|-------|--|
| I-2.  | E-Verify                 | I-17. | Item Substitution and Variation                      |
| I-3.  | Conflicts of Interests   | I-18. | Inspection and Acceptance                            |
| I-4.  | Officials not to Benefit | I-19. | Availability of Funds                                |
| I-5.  | Oral Representations     | I-20. | Invoicing and Payment                                |
| I-6.  | Non Appropriation        | I-21. | Withholding  |
| I-7.  | Representations          | I-22. | Contractor Liability                                 |
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- I-1. **Definitions:** As used throughout this contract, the following terms shall have the meaning set out below:
  - A. "City" refers to the City of New Bern Government activities and organizations.
  - B. "Contract" Identifies this contract or any modification thereto.
  - C. "Contractor or vendor" means the individual, partnership, corporation, or other entity which is a party to this contract and who is responsible for all actions, performance and work there under, to include that of any subcontractor or vendor.
- I-2. **E-Verify:** As a condition of payment for services rendered under this agreement, Vendor or Contractor shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Further, if Vendor or Contractor provides the services to the City utilizing a subcontractor, Vendor or Contractor shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes as well. Vendor or Contractor shall verify, by affidavit, compliance of the terms of this section upon request by the City.
- I-3. Conflicts of Interests: Contractor warrants that no person or selling agency has been employed or retained to secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee excepting bona fide employees or bona fide established commercial selling agencies retained by contractor or vendor for the purpose of securing business. Contractor warrants that no gratuities (Entertainment, gifts, etc.) were or will be offered or given by the Contractor or any person representing the Contractor to any City of New Bern Alderman, employee, or spouse of an employee/Alderman. For breach of either of the warranties, City of New Bern may terminate this and all other City of New Bern Contracts for default and deduct from amounts due under this or other contracts, or bill contractor or vendor for the total value of any contingent fee or gratuity.
- I-4. Officials Not to Benefit: No person or Alderman involved in the purchasing process and/or contracting of this agreement, shall be admitted to any share or part of this contract, or to any benefit that may arise there from; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.
- I-5. Oral Representations: This written Contract includes the entire agreement between the parties. The City of New Bern will not be bound by any oral or written representation not included in the written contract or a change or amendments thereto. The City of New Bern will not be bound by any terms on contractor or vendor forms or letter unless such terms are specifically agreed to and incorporated in the contract and signed by the Finance Director.
- I-6. Non Appropriation: All funds for payment by the City under this Contract are subject to the availability of any annual appropriation for this purpose by the Board of Aldermen. In the event of non-appropriation of funds by the Board

Of Aldermen under the Contract, City will terminate the Contract, without termination charge or liability, on the last day of the then-current fiscal year or when the appropriation made for then-current year for the services/items covered by this Contract is spent, whichever occurs first. If at any time funds are not appropriated for the continuance of this Contract, cancellation shall be accepted upon three (3) days prior written notice, but failure to give such notice shall be of no effect and City shall not be obligated under this Contract beyond the date of termination.

- I-7. Representations: The Contractor will not represent itself to be an agent or representative of City of New Bern or any other agency or instrumentality of the US Government.
- I-8. Advertisements: The Contractor will not represent in any manner, expressly or by implication, those items or services purchased or sold under this contract are approved or endorsed by any element of City of New Bern Government. Any advertisement, including cents off coupons, by the Contractor which refers to City of New Bern activity will contain a statement that the advertisement was neither paid for nor sponsored, in whole or in part, by the particular activity.
- I-9. <u>Subcontracting:</u> Contractor shall not subcontract any part of the work to be performed without the prior written consent of the Finance Director. Any subcontractor or vendor used in connection with this contract is the agent of the Finance Director.
- I-10. <u>Assignment:</u> Contractor may not assign its rights or delegate its obligations under this contract without the prior written consent of the Finance Director.
- I-11. Iran Divestment Act: Seller certifies that: (i) Seller is not listed on the Iran Divestment List created by the State Treasurer pursuant to N.C.G.S. § 147-86.58 (the "Final Divestment List"), and (ii) Seller will not utilize any subcontractor performing work under this Purchase Order which is listed on the Final Divestment List. The Final Divestment List can be found on the State Treasurer's website at the address www.nctreasurer.com/Iran and should be updated every 180 days.
- I-12. Permits and Licenses: Contractor will, at his own expense, obtain all necessary permits, give all notices, pay all license fees and comply with all laws, rules, ordinances, and regulations relating to the preservation of the public health or applicable to the services or business carried on under this contract. The burden of determining applicability of licensing requirements, laws, ordinances, and regulations for Contractor and his employees rests with the Contractor.
- I-13. Non-Waiver or Defaults: Any failure by City of New Bern at any time to enforce or require strict performance of any terms or conditions of this contract will not constitute waiver thereof and will not affect or impair such terms and conditions in any way or City of New Bern's right at any time to avail itself of such remedies as it may have for breach or breaches of such terms and conditions.

#### I-14. Indemnity:

- A. Contractor shall indemnify, hold harmless and defend City of New Bern, their agents, representatives, employees and customers from any and all suits, judgments and claims, including those established by or pursuant to court decisions, to international agreements, or duly promulgated regulations of the United States Government, and all charges and expenses incident thereto which arise out of or in connection with:
  - 1. The alleged or established violation or infringement of any patent, copyright or trademark rights asserted by any third party with regard to items or services provided by Contractor:
  - 2. Loss, death, damage or injury alleged or established to have arisen out of or in connection with products, services, or equipment provided by Contractor, unless such loss, death, damage, or injury was caused by City of New Bern, its representatives, or employees.
  - 3. Any loss, death, damage, or injury alleged or established to have arisen out of or in connection with any other acts or omissions of the Contractor, the Contractor's subcontractor or vendors, representatives, agents, or employees.
- B. City of New Bern will give Contractor notice and an opportunity to defend.
- I-15. <u>Insurance</u>: During the term of the Contract, the Contractor or vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the contract. As a minimum, the Contractor or vendor shall provide and maintain the following coverage and limits.
  - A. Worker's Compensation The Contractor or vendor shall provide and maintain worker's compensation insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$150,000, covering all of Contractor or vendor's employees who are engaged in any work under the contract. If any

- work is sublet, the Contractor or vendor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the contract.
- B. <u>Commercial General Liability</u> General Liability Coverage, on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$500,000.00 combined single limit (Defense cost shall be in excess of the limit of liability).
- C. <u>Automobile</u> Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles used in connection with the contract. The minimum combined single limit shall be \$150,000.00 bodily injury and property damage; \$150,000.00 uninsured/under-insured motorist; and \$1,000.00 medical payment.

#### I-16. Warranty: Contractor warrants that:

- A. The items furnished shall be merchantable, and fit and sufficient for the use intended and are not "seconds" as the term is normally understood in the trade. This warranty shall survive acceptance by City of New Bern of the items and is in addition to other warranties of additional scope given by the Contractor to City of New Bern.
- B. The items or services furnished under this contract are covered by the most favorable warranties the Contractor gives to any customer for such items or services and that the rights and remedies provided in the Contractor's warranties are in addition to and do not limit any rights afforded to City of New Bern by any other clause of this contract.
- C. Where applicable, the items furnished under this contract have been manufactured in accordance with Underwriter's Laboratories, Inc. (UL) standard, or if manufactured overseas, the overseas equivalent of UL and the applicable item and/or component items carry the appropriate UL or overseas equivalent seal of approval.
- D. Items, packing, and packaging provided will comply with all contract terms and with all laws, rules, and regulations applicable to delivery for domestic resale. Contractor shall comply with the Magnuson-Moss Warranty Act on all sales to City of New Bern.
- I-17. <u>Item Substitution and Variation in Ouantity</u>: No substitution or variation in the quantity of any item called for by this contract will be accepted unless authorized by the Finance Director.
- I-18. <u>Inspection and Acceptance</u>: the government per the following shall make inspection and acceptance:
  - A. The Contractor shall maintain an in process and end-item quantity control program to ensure shipments to City of New Bern activities do not include defective/non-conforming items.
  - B. Inspection and acceptance shall not be conclusive with respect to latent defects or fraud, or with respect to City of New Bern rights under the warranty provisions contained herein.
  - C. In case any supplies or services are defective in material or workmanship, or are otherwise not in conformity with the requirements of this contract, the City of New Bern shall have the right to reject such supplies or services, or to require replacement or correction. Rejected supplies shall be removed by and at the expense of the Contractor promptly after notice. When such rejection, correction or replacement requires transportation of the supplies or part thereof, all shipping and administrative costs to and from the Contractor's plant shall also be borne by the Contractor.
  - D. In case of refund, the Contractor shall be liable to the City of New Bern for the additional costs of re-procurement (if any). In no event will the liability of Contractor for cost and losses, and for re-procurement exceed an amount equal to the original purchase price of the defective item.
  - E. The provisions of this clause do not affect the rights or obligations of either party, as they may be provided for in other portions of this contract or otherwise under applicable law.
- I-19. Availability of Funds: Any and all payments to the Contractor or vendor are dependent upon and subject to the availability of funds to the City for the purposes set forth in this agreement.

#### I-20. Invoice and Payment:

- A. Invoicing Instructions. In order to be considered proper invoices, invoices must be submitted as follows:
  - 1. Contractor must prepare a separate numbered invoice for each order or part of an order. Do not consolidate multiple purchase orders on one invoice. Additionally, when partial shipments are authorized, use a separate invoice. Do not duplicate an invoice number used for prior billings:
  - 2. Invoices must be issued by the company whose name is on the contract/order (unless otherwise authorized by Finance Director) and must contain the following minimum information to enable timely payment:
    - (a) Name of Contractor.
    - (b) Invoice Date. This cannot be a date earlier than the ship date required by the contract or purchase/deliver order. In the event that the invoice date is a date earlier than the required ship date, City of New Bern retains the right either to return the improper invoice to the Contractor for

correction or to change the invoice date to be the required ship date. In the event that an improper invoice is returned to a Contractor because the date on the invoice is earlier than the required ship date or because the invoice is improper for any other reason, the invoice date, will be considered to be the date of receipt of the corrected, proper invoice.

- (c) Contract/Order Number.
- (d) Item Description and Quantity Shipped/Delivered.
- (e) Contract/Order Line Item Cost and Total
- (f) Any applicable sales tax
- (g) Shipping and Discount Terms, and special allowance(s) if included in the contract. Special allowances must be shown on the invoice using percentage figures only. Do not deduct any of these from the item cost or from the invoice total.
- (h) "Ship To" address as shown on order or contract.
- (i) Freight charges (on FOB origin shipments).
- (j) Name, title and phone number of Contractor's contact person.
- (k) Complete "Remit To" mailing address on the invoice to indicate where Contractor's payment is to be sent. This address must be the same address as on the contract unless otherwise communicated from the Accounts Payable office
- Correcting invoices and credit memos must be marked as such and must cross-reference the corrected invoice.

#### B. Payment.

- 1. A proper invoice is an invoice which contains all of the information/documentation, specified in paragraph A. (2) above, and is sent to the address specified in the contract or purchase/delivery order for the designated City of New Bern Accounting office. Improper invoices may be returned without payment to the Contractor.
- 2. The next payment date for City of New Bern Contracts is established at 30 days after receipt of a proper invoice.
- 3. Payment is made:
  - (a) The date a check for payment is dated.
  - (b) The date an electronic fund transfer is submitted to the financial institution, regardless of the date the financial institution posts the transfer.
  - (c) The date a withholding authorized by the contract is initiated by City of New Bern.
- 4. Any questions or inquiries concerning invoice payments should be directed to the City of New Bern Finance Account Payable department designated on the contract or purchase/deliver order.
- I-21. Withholding: City of New Bern may withhold payment for amounts due or creditable to City of New Bern under this contract, E.G., returns, damage.

#### I-22. Contractor Liability:

- A. Except as set out specifically elsewhere in the contract, Contractor shall be liable for cost to City of New Bern associated with termination for default, rejection of items, and breach of warranty, in addition to reimbursement of payment of the purchase price and re-procurement costs.
- B. Contractor will not be liable for damages if the failure to perform arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, Acts of God or the public enemy, Acts of the Government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

#### I-23. Termination:

- A. Mutual Termination. This contract may be terminated at any time upon the mutual agreement of both parties.
- B. Termination for Convenience. City of New Bern by written notice may terminate this contract in whole or in part when it is in the best interest of the City of New Bern. To the extent that this contract is for services and is so terminated, City of New Bern shall be liable for payment as set forth in the payment provisions of the contract for services rendered prior to the effective date of termination
- C. Termination for Default. City of New Bern by written notice may terminate this contract in whole or in part for failure of the Contractor to perform any of the provisions hereof. In such event, the Contractor shall be liable for damages including the excess costs of re-procuring similar supplies and services provided that if
  - 1. the Contractor was not in default; or
  - 2. the Contractor's failure to perform is without his/her or his/her Subcontractor or vendor's control or negligence; then the termination shall be deemed a "Termination for Convenience."

- D. The rights and remedies of City of New Bern provided in this clause are in addition to any other rights and remedies provided by law or under other clauses of this contract.
- I-24. Request for Monetary or Other Relief: No request for monetary or other relief by Contractor shall be considered unless submitted in writing to the Finance Director within 90 days after termination or termination of performance under the contract, whichever comes first. This clause shall not extend any period for filing, which is further limited by another clause of the contract.
- I-25. Notification of Debarment or Suspension Status: The Contractor or Vendor shall provide immediate notice to the Finance Director in the event of being suspended, debarred, or declared ineligible by any state of NC or federal department or agency, or upon receipt of a notice of proposed debarment from another agency, during the performance of this contract.
- I-26. Equal Employment Opportunity: The contractor will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or disability.
- I-27. **Drug-Free Work Place**: The contractor or vendor agrees to make a good faith effort to establish and maintain a drug-free work place in connection with the performance of this contract. Consistent with the size and organization of its work force, contractor or vendor may wish to consider taking the following or other appropriate actions in establishing a drug-free work place: Publicizing a drug-free work place policy; initiating an employee drug awareness program or encouraging participation in existing community programs; informing employees of the general availability of drug counseling programs; etc.
- I-28. Accident Prevention. Fire Protection. and Sanitation: If this contract is performed in whole or in part on premises owned or under the control of the City of New Bern Government, the contractor or vendor shall conform to all safety regulations and requirements concerning such premises in effect any time during contract performance to prevent accidents. Any violations of safety regulations, unless immediately corrected as directed by the Finance Director, shall be grounds for termination of the contract under the "Termination for Default" Clause.
- I-29. Standards: All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate state inspector which customarily requires the label or re-examination listing or identification marking of the appropriate safety standard organization; such as the American Society of Mechanical Engineers for pressure vessels;

The Underwriters Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; or the American Gas Association for gas operated assemblies, where such approvals of listings have been established for the type of device offered and furnished. Further, all items furnished shall meet all requirements of the Occupational Safety and Health Act (OSHA), and state and federal requirements relating to clean air and water pollution.

All Codes, standards, and specifications such as the National Electrical Code, North Carolina State Building Code, ASTM specifications, etc. referred to in the project specification shall be the issue in effect on the date of the invitation for bid, request for quote, and/or award.

- I-30. Force Majeure: Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.
- I-31. <u>Federal Funds</u>: If the source of funds for this Agreement is federal funds, the following federal provisions apply pursuant to 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II (as may be applicable):
  - A. Equal Employment Opportunity (41 C.F.R. Part 60);
  - B. Davis-Bacon Act (40 U.S.C. 3141-3148);
  - C. Copeland "Anti-Kickback" Act (40 U.S.C. 3145);
  - D. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708);
  - E. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387);
  - F. Debarment and Suspension (Executive Orders 12549 and 12689);
  - G. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352);
  - H. Procurement of Recovered Materials (2 C.F.R. § 200.322); and
  - I. Record Retention Requirements (2 CFR § 200.324)

# Exhibit A Federal Contracting Requirements

These Federal Contracting Requirements are incorporated into the Service Contract between the City 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 "Vendor" or "Provider" shall be deemed to mean the Contractor. By signing the Service Contract with the City, Contractor certifies that it has read and agrees to comply with all of the terms and conditions set forth below and that are incorporated into the Service Contract with the City and 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 document 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.CFR 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 sub-contractors, if any, hereby represent and covenant that they are 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 requirements in accordance with Drug Free Workplace Act of 1988 (Pub 100-690, Title V, Subtitle D). All contractors 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 City of New Bern or pass through entity in accordance with federal policy.

### **Mandatory Disclosure**

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 agrees 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 City and understands and agrees that the City 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 these 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 USC § 1251-1387).

The Contractor agrees to report any violation to the City immediately upon discovery. The Contractor understands and agrees that the City will, in turn, report each violation as required to assure notification to the City, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency (EPA) Regional Office. Contractor must include this requirement in all subcontracts that exceed \$150,000.

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

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the City, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representative's 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 representative's 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

The City 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 City, 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 sub-contractor who will be subject to its provisions.

### Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this 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 sub-contractors who will be subject to the provisions.

### Changes

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**

Termination Without Cause. The City 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 City. By giving written notice to the Contractor, the City 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 or provide the proof of insurance as required by this Agreement.

Cancellation of Orders and Subcontracts. In the event this Agreement is terminated by the City 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 City 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 City, 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 City all computer programs, files, documentation, data, media, related material and any other recording devices, information, or compact discs that are owned by the City; (b) deliver to the City all Work Product;

(c) allow the City or a new vendor access to the systems, software, infrastructure, or processes of the Contractor that are necessary to migrate the Services to a new vendor; and (d) refund to the City all pre-paid sums for Products or Services that have been cancelled and will not be delivered.

No Suspension. In the event that the City 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 City Manager or their designee is authorized to terminate this Agreement on behalf of the City.

Audit. During the term of the Agreement and for a period of one year after termination or expiration of this Agreement for any reason, the City shall have the right to audit, either itself or through a third party, all books and record (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 City's payment obligations. The City 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 City in excess of \$5,000 but for the audit, then the Contractor shall be required to reimburse the City for the cost.

### **Remedies**

Liquidated Damages: The City and the Contractor acknowledge and agree that the City 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 City may be damaged by such failures, including loss of goodwill and administrative costs; but that (b) the costs that the City 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 City'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 City of such failure, the City 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 City in obtaining or performing the Services from any money then due or to become due the Contractor and, should the City's reasonable cost of obtaining or performing the services exceed the amount due the Contractor, collect the difference from the Contractor.

**Right to Withhold Payment.** If the Contractor materially breaches any provision of this Agreement, the City 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 City 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 City 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**

A contract award (see CFR 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 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR 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 CFR Part 180 and 2 CFR Part. 3000. As such, the Contractor is required to verify that none of the Contractor, its principals (defined at 2 CFR § 180.995), or its affiliates (defined at 2 CFR § 180.905) are excluded (defined at 2 CFR § 180.940) or disqualified (defined at 2 CFR § 180.935).

The Contractor is required to comply with 2 CFR Part 180, Subpart C and 2 CFR 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 proper certifies that:

This certification in this clause is a material representation of fact relied upon by the City. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available by the City, 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 CFR Part 180, Subpart C and 2 CFR 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**

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 vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

### **Davis-Bacon Requirements**

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 CFR 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 CFR 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 sub-contractors 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 officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
- (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 benefit 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 assets, in a separate account, for the meeting of obligations under the plan or program.

### 2. Withholding.

The City 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 sub-contractor 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 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records 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 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at 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 sub-contractors. 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 sub-contractor 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 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 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 CFR 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 sub-contractor 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, 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 CFR 5.12.

### 4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, 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 to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or sub-Contractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the 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 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the

event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

# 5. Compliance with Copeland Act Requirements.

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

#### 6. Subcontracts.

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 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 CFR Part 5.5.

#### 7. Contract Termination: Deharment

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 CFR 5.12.

# 8. Compliance with Davis-Bacon and Related Act Requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

### 9. Disputes Concerning Labor Standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

### 10. Certification of Eligibility.

(i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be

awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC 1001.

# Copeland "Anti-Kickback" Act

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 CFR 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 by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

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 provided in 29 CFR § 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 CFR 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 forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- 2. <u>Violation</u>; <u>liability for unpaid wages</u>; <u>liquidated damages</u>. 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 forty 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. <u>Subcontractors</u>. 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 subcontracts to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any sub-contractors 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

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 CFR § 18.34 and 49 CFR § 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 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 and Cooperative Agreements," 37 CFR 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 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 and Cooperative Agreements," 37 CFR Part 401.

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**

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 CFR 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 CFR Part 247 whenever:

- 1. The contract requires procurement of \$10,000 or more of a designated item 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- designate items, is available at EPA's Comprehensive Procurement Guidelines web site, 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 seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without pre-approval by the specific federal agency.

### **Insurance and Indemnity**

**INSURANCE AND INDEMNITY.** To the fullest extent permitted by laws and regulations, CONTRACTOR shall indemnify and hold harmless the CITY 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. Contractor shall also maintain Employers' Liability insurance limits of not less than \$500,000 per accident and \$500,000 each employee for injury by disease. Additionally, CONTRACTOR shall maintain, at its expense, the following minimum insurance coverage:

- (a) Commercial General Liability Insurance in an amount not less than\$1,000,000 per occurrence for bodily injury or property damage.
- (b) Professional Liability Insurance in an amount not less than \$1,000,000 per occurrence.
- (c) Workers Compensation Insurance in an amount \$500,000 per occurrence.
- (d) Commercial Automobile Insurance in an amount \$1,000,000 per occurrence as applicable.

CONTRACTOR, upon execution of this Contract, shall furnish to the CITY 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.

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

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient."

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned Contractor certifies, to the best of his or her knowledge, 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      |  |
|--|--|
| Name and Title of Contractor's Authorized Official |  |
| Date   |  |

### COUNTY OF CRAVEN

reference.

| THIS AGREEMENT (hereinafter the "Agreement") is made and entered into this day of, 20, by and between the City of New Bern, a North Carolina municipal corporation, hereinafter referred to as the "CITY", and, hereinafter referred to as the "CONSULTANT".   |  |  |  |  |
|--|--|--|--|--|
| WITNESSETH   |  |  |  |  |
| WHEREAS, the CITY desires to retain and engage the CONSULTANT to perform certain professional services hereinafter described, and further that the parties hereto desire to reduce the terms of this Agreement to writing:   |  |  |  |  |
| NOW THEREFORE, for and in consideration of the mutual promises to each other, as hereinafter set forth, the parties hereto do mutually agree as follows:   |  |  |  |  |
| 1. <u>Term of Agreement</u> . The term of this Agreement shall commence as of the date set forth above and continue through to the completion of the project unless sooner terminated as provided herein.  |  |  |  |  |
| 2. <u>Consultant's Services</u> . The CONSULTANT hereby agrees to perform, in a manner satisfactory to the CITY, professional and timely services as set forth in Exhibit "A" attached hereto and incorporated herein by this reference. The parties hereto acknowledge that the terms outlined in Exhibit "A" shall be valid and enforceable to the extent they are not inconsistent with the provisions as set forth herein, and to the extent that they are inconsistent, the provisions as set forth in this Agreement shall control. The parties hereto further agree that the terms, conditions and requirements as set forth in any Request for Qualification ("RFQ") put forth by CITY and responded to by CONSULTANT shall be |  |  |  |  |

3. Compensation to Consultant. The CITY hereby agrees to pay to CONSULTANT the amount not to exceed \_\_\_\_\_\_\_\_ dollars (\$\_\_\_\_\_\_\_) for services as provided herein. In the event that CONSULTANT should fail to provide the services as set forth above, CITY shall be entitled to a refund of its payment(s) to CONSULTANT. Payment will be made within 30 days after receipt of an approved invoice.

binding upon the parties to the extent that they do not conflict with the provisions as set forth herein,

said RFQ, if applicable, being attached hereto as Exhibit "B" and incorporated herein by this

- 4. <u>Termination</u>. CITY shall have the right to terminate this Agreement at any time and without cause upon thirty (30) days written notice to the other party.
- 5. Records. The CITY has the right to audit all records pertaining to this Agreement both during its performance and after its completion. Further, upon termination of this Agreement, the

CONSULTANT shall deliver to the CITY all records, notes, memorandum, data, documents or any other materials produced by CONSULTANT in connection with services rendered pursuant to this Agreement. If compensation for expenses shall be provided to CONSULTANT, the CONSULTANT shall maintain all expense charge documents for a period of three (3) years following the completion of this agreement and said documents shall only be forwarded to the CITY upon request.

- 6. Ownership of Documents. The CONSULTANT agrees that all materials and documents developed pursuant to this Agreement shall be the exclusive property of the CITY, and the CONSULTANT shall retain no property or copyright interest therein. Further, upon termination of this Agreement, the CONSULTANT shall deliver to the CITY all records, notes, memorandum, data, documents or any other materials received or obtained from the CITY in connection with services rendered pursuant to this Agreement.
- 7. Independent Consultant. This Agreement does not create an employee/employer relationship between the parties. It is the intention of the parties that the CONSULTANT will be an independent consultant and not the CITY's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the federal Internal Revenue Code, the provisions of the North Carolina revenue and taxation laws, the North Carolina Wage and Hour Act, the North Carolina Workers' Compensation Act, and the provisions of the North Carolina Employment Security Law. The CONSULTANT will retain sole and absolute discretion in the judgment of the manner and means of carrying out the CONSULTANT's activities and responsibilities hereunder. The CONSULTANT agrees that he/she/it is a separate and independent enterprise from the CITY; and that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the services described herein. This Agreement shall not be construed as creating any joint employment relationship between the CONSULTANT and the CITY, and the CITY will not be liable for any obligation incurred by the CONSULTANT, including but not limited to unpaid minimum wages and/or overtime premiums.
- 8. <u>Indemnity</u>. The CONSULTANT shall release, indemnify, keep and save harmless the CITY, its agents, officials and employees, from any and all responsibility or liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether agents, officials or employees of the CITY or third persons, and to all property proximately caused by, incident to, resulting from, arising out of, or occurring in connection with, directly or indirectly, the performance or nonperformance by CONSULTANT (or by any person acting for CONSULTANT or for whom CONSULTANT is or is alleged to be in any way responsible), whether such claim may be based in whole or in part upon contract, tort (including alleged active or passive negligence or participation in the wrong), or upon any alleged breach of any duty or obligation on the part of CONSULTANT, its agents, officials and employees or otherwise. The provisions of this Section shall include any claims for equitable relief or for damages (compensatory or punitive) against the CITY, its agents, officials, and employees including alleged injury to the business of any claimant and shall include any and all losses, damages, injuries, settlements, judgments, decrees, awards, fines, penalties, claims, costs and expenses. Expenses as used herein shall include without limitation the costs incurred

by the CITY, its agents, officials and employees, in connection with investigating any claim or defending any action, and shall also include reasonable attorneys' fees by reason of the assertion of any such claim against the CITY, its agents, officials or employees. The provisions of this Section shall also include any claims for losses, injuries or damages, and wages or overtime compensation due the CONSULTANT's employees in rendering services pursuant to this Agreement, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act or any other federal or state law. The intention of the parties is to apply and construe broadly in favor of the CITY the foregoing provisions subject to the limitations, if any, set forth in N.C.G.S. 22B-1.

9. Representatives of the Parties. Matt Montayne, Director of Public Works, is designated as the CITY's contract administrator for this Agreement. The contract administrator shall work with requesting department for monitoring the CONSULTANT's performance, coordinating the CONSULTANT's activities, approving all administrative requests by the CONSULTANT and approving all payments to the CONSULTANT pursuant to this Agreement. Further, any notice required to the CITY under this Agreement shall be sufficient if mailed to the CITY by certified mail as indicated below:

Matt Montayne, Public Works Director City of New Bern P.O. Box 1129 New Bern, NC 28563

|                              | shall be the CONSULT.      | ANT's representative for this Agreeme   | nt. Any |
|------------------------------|----------------------------|---|---------|
| notice required to the CONSU | JLTANT under this Agreemer | nt shall be sufficient if mailed to the | •       |
| CONSULTANT by certified r    | mail as indicated below:   |   |         |
|                              |                            |   |         |
|                              |                            |   | -       |
|                              |                            | <u> </u>                                |         |
|                              |                            |   |         |

Other Laws and Regulations. CONSULTANT will comply with any and all applicable 10. federal, state and local standards, regulations, laws, statutes and ordinances including those regarding toxic, hazardous and solid wastes and any pollutants; public and private nuisances; health or safety; and zoning, subdivision or other land use controls. CONSULTANT will take all reasonably necessary. proper or required safety, preventative and remedial measures in accordance with any and all relations and directives from the North Carolina Department of Human Resources, the United States Environmental Protection Agency, the North Carolina Department of Environmental Management. Health Departments, and any other federal, state or local agency having jurisdiction, to insure the prompt prevention or cessation (now or in the future) of violations of either the applicable provisions of such standards, regulations, laws, statutes, and ordinances or any permits or conditions issued thereunder. CONSULTANT specifically acknowledges and agrees that CONSULTANT, and any subconsultants it uses, has complied with and shall continue to comply with the provisions of the federal E-Verify program in compliance with Article 2 of Chapter 64 of the North Carolina General Statutes. CONSULTANT shall maintain adequate safeguards with respect to sensitive customer information in conformance with and pursuant to 16 C.F.R. §681.1 and in accordance with N.C. Gen. Stat. §132-1.10

# 11. <u>Insurance Requirements</u>.

# A. <u>Commercial General Liability</u>

- 1. CONSULTANT shall maintain Commercial General Liability (CGL) and if necessary, Commercial Umbrella Liability insurance with a total limit of not less than \$1,000,000.00 each occurrence for bodily injury and property damage. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location or the general aggregate shall be twice the required limit.
- 2. CGL insurance shall be written on Insurance Services Office (ISO) "occurrence" form CG 00 01 covering Commercial General Liability or its equivalent and shall cover the liability arising from premises, operations, independent CONSULTANTs, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
- 3. The City of New Bern, its officers, officials, agents, and employees are to be covered as additional insureds under the CGL by endorsement CG 20 10 or CG 20 33 AND CG 20 37 or an endorsement providing equivalent coverage as respects to liability arising out of activities performed by or on behalf of the CONSULTANT; products and completed operations of the CONSULTANT; premises owned, leased or used by the CONSULTANT; and under the commercial umbrella, if any. The coverage shall contain no special limitations on the scope of protection afforded to the City of New Bern, its officers, officials, agents, and employees.
- 4. There shall be no endorsement or modification of the CGL or Umbrella Liability limiting the scope of coverage for liability arising from explosion, collapse, underground property damage, or damage to the named insured's work, when those exposures exist.
- 5. The CONSULTANT's Commercial General Liability insurance shall be primary as respects the City of New Bern, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by the City of New Bern, its officers, officials, and employees shall be excess of and not contribute with the CONSULTANT's insurance.
- 6. The insurer shall agree to waive all rights of subrogation against the City of New Bern, its officers, officials, agents and employees for losses arising from work performed by the CONSULTANT for the City of New Bern.

# B. Workers' Compensation and Employer's Liability

- 1. CONSULTANT shall maintain Workers' Compensation as required by the general statutes of the State of North Carolina and Employer's Liability Insurance.
- 2. The Employer's Liability, and if necessary, Commercial Umbrella Liability insurance shall not be less than \$500,000.00 each accident for bodily injury by accident, \$500,000.00 each employee for bodily injury by disease, and \$500,000.00 policy limit.
- 3. The insurer shall agree to waive all rights of subrogation against the City of New Bern, its officers, officials, agents and employees for losses arising from work performed by the CONSULTANT for the City of New Bern.

- 4. The U.S. Longshore and Harborworkers Compensation Act endorsement shall be attached to the policy when the services will be on or in close proximity to navigable waterways.
- 5. The Maritime Coverage endorsement (WC 00 02 01) shall be attached to the policy when the contracted services involve the use of watercraft.

NOTE: Additional requirements needed if you have a borrowed servant, offshore platforms or federal act situations. (Federal Acts such as the Defense Base Act, Migrant and Seasonal Agricultural Worker Protection Act, and the Federal Coal Mine Health and Safety Act, etc.)

# C. Business Auto Liability

- 1. CONSULTANT shall maintain Business Auto Liability and, if necessary, Commercial . Umbrella Liability insurance with a limit of not less than \$1,000,000.00 each accident.
- 2. Such insurance shall cover liability arising out of any auto, including owned, hired, and non-owned autos.
- 3. Business Auto coverage shall be written on ISO form CA 00 01, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in ISO form CA 00 01.
- 4. Pollution liability coverage equivalent to that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48) shall be provided, and the Motor Carrier Act endorsement (MCS 90) shall be attached when those exposures exist.
- 5. CONSULTANT waives all rights against the City of New Bern, its officers, officials, agents and employees for recovery of damages to the extent these damage are covered by the business auto liability or commercial umbrella liability insurance obtained by CONSULTANT pursuant to Section 11.C.1 of this agreement.
- 6. The CONSULTANT's Business Auto Liability insurance shall be primary as the City of New Bern, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by the City of New Bern, its officers, officials, and employees shall be excess of and not contribute with the CONSULTANT's insurance.

# D. Professional Liability Insurance

- 1. CONSULTANT shall maintain in force for the duration of this contract professional liability or errors and omissions liability insurance appropriate to the CONSULTANT's profession. Coverage as required in this paragraph shall apply to liability for a professional error, act, or omission arising out of the scope of the CONSULTANT's services as defined in this contract. Coverage shall be written subject to limits of not less than \$ 1,000,000.00 per claim.
- 2. If coverage required in paragraph 1. above is written on a claims-made basis, the CONSULTANT warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 (two) years beginning from the time that work under the contract is complete.

# E. Deductibles and Self-Insured Retentions

1. The CONSULTANT shall be solely responsible for the payment of all deductibles to which such policies are subject, whether or not the City of New Bern is an insured under the policy.

# F. <u>Miscellaneous Insurance Provisions</u>

The policies are to contain, or be endorsed to contain, the following provisions:

- 1. Each insurance policy required by this contract shall be endorsed to state that coverage shall not canceled by either party except after 30 days prior written notice has been given to the City of New Bern, PO Box 1129, New Bern, NC 28563.
- 2. If CONSULTANT's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

# G. Acceptability of Insurers

Insurance is to be placed with insurers licensed to do business in the State of North Carolina with an A.M. Best's rating of no less than A VII unless specific approval has been granted by the City of New Bern.

# H. Evidence of Insurance

- 1. The CONSULTANT shall furnish the City of New Bern with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements prior to commencing the work, and thereafter upon renewal or replacement of each certified coverage until all operations under this contract are deemed complete.
- 2. Evidence of additional insured status shall be noted on the certificate of insurance as per requirements in Section 11.
- 3. With respect to insurance maintained after final payment in compliance with requirements, an additional certificate(s) evidencing such coverage shall be provided to the City of New Bern with final application for payment and thereafter upon renewal or replacement of such insurance until the expiration of the period for which such insurance must be maintained.

### I. Sub Consultants

CONSULTANT shall include all sub consultants as insureds under its policies or shall furnish separate certificates for each sub consultant. All coverage for sub consultants shall be subject to all of the requirements stated herein. Commercial General Liability coverage shall include independent CONSULTANT's coverage, and the CONSULTANT shall be responsible for assuring that all sub consultants are properly insured.

# J. <u>Conditions</u>

- 1. The insurance required for this contract must be on forms acceptable to the City of New Bern.
- 2. The CONSULTANT shall provide that the insurance contributing to satisfaction of insurance requirements in Section 11. Minimum Scope and Insurance Requirements shall not be canceled, terminated or modified by the CONSULTANT without prior written approval of the City of New Bern.
- 3. The CONSULTANT shall promptly notify the Safety Officer at (252) 639-7574 of any accidents arising in the course of operations under the contract causing bodily injury or property damage.
- 4. The City of New Bern reserves the right to obtain complete, certified copies of all required insurance policies, at any time.
- 5. Failure of the City of New Bern to demand a certificate of insurance or other evidence of full compliance with these insurance requirements or failure of the City of New Bern to identify a deficiency from evidence that is provided shall not be construed as a waiver of CONSULTANT's obligation to maintain such insurance.
- 6. By requiring insurance herein, the City of New Bern does not represent that coverage and limits will necessarily be adequate to protect the CONSULTANT and such coverage and limits shall not be deemed as a limitation of CONSULTANT's liability under the indemnities granted to the City of New Bern in this contract.
- 7. The City of New Bern shall have the right, but not the obligation of prohibiting CONSULTANT or any sub consultant from entering the project site or withhold payment until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the City of New Bern.
- 12. <u>No Presumption</u>. None of the Parties shall be considered the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof. This Agreement was drafted with substantial input by all Parties and their counsel, and no reliance was placed on any representations other than those contained herein.
- 13. Entire Agreement and Amendment. This Agreement, including any Exhibits attached, which are incorporated herein and made a part hereof, constitutes the entire contract between the parties, and no warranties, inducements, considerations, promises or other inferences shall be implied or impressed upon this Agreement that are not set forth herein. This Agreement shall not be altered or amended except in writing signed by all Parties.
- 14. <u>No Assignment</u>. No party shall sell or assign any interest in or obligation under this Agreement without the prior express written consent of all the parties.
- 15. <u>Conflict of Interest</u>. No paid employee of the CITY shall have a personal or financial interest, direct or indirect, as a contracting party or otherwise, in the performance of this Agreement.
  - 16. Non-Waiver of Rights. It is agreed that the CITY's failure to insist upon the strict

performance of any provision of this Agreement, or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this Agreement.

- 17. <u>Binding Effect</u>. Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.
- 18. <u>Reference</u>. Use of the masculine includes feminine and neuter, singular includes plural; and captions and headings are inserted for convenience of reference and do not define, describe, extend or limit the scope of intent of this Agreement.
- 19. <u>Interpretation/Governing Law.</u> All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina without regard to any conflicts of law principles and subject to the exclusive jurisdiction of federal or state courts within the State of North Carolina. In the event of a conflict between the various terms and conditions contained herein or between these terms and other applicable provisions, then the more particular shall prevail over the general and the more stringent or higher standard shall prevail over the less stringent or lower standard. The place of this Agreement, its situs and forum, shall be New Bern, Craven County, North Carolina, and in said County and State shall all matters, whether sounding in contract or tort relating to the validity, construction, interpretation or enforcement of this Agreement be determined.
- 20. <u>Saving Clause</u>. If any section, subsection, paragraph, sentence, clause, phrase or portion of this Agreement is for any reason held invalid, unlawful, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.
  - 21. <u>Time</u>. Time is of the essence in this Agreement and each and all of its provisions.
- 22. <u>Immunity Not Waived</u>. This Agreement is governmental in nature, for the benefit of the public. CONSULTANT acknowledges that City reserves all immunities, defenses, rights or actions arising out of City's sovereign status under applicable law. No waiver of any such immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of City's entry into this Agreement.
- 23. Non-Appropriation. In the event no City funds or insufficient City funds are appropriated or otherwise available by any means whatsoever in any fiscal year for any payment due under this Agreement, then the City will immediately notify CONSULTANT of such occurrence and this Agreement shall create no further obligation of the City as to such fiscal year and shall be null and void, except as to the portions of payments for which funds shall have been appropriated and budgeted. In such event, this Agreement shall terminate on the last day of the fiscal year for which appropriations were received without penalty or expense to the City of any kind whatsoever.

- 24. <u>Authority to Act/IDA Certification.</u> Each of the persons executing this Agreement on behalf of CONSULTANT does hereby covenant, warrant and represent that the Organization is a duly organized and validly existing \_\_\_\_\_\_, that the \_\_\_\_\_\_ has full right and authority to enter into this Agreement, and that each and all persons signing on behalf of the CONSULTANT were authorized to do so. The undersigned certifies that CONTRACTOR is not listed on the Final Divestment List created by the N.C. State Treasurer pursuant to Chapter 147 (the Iran Divestment Act) of the North Carolina General Statutes.
- 25. <u>Non-Discrimination</u>. CONSULTANT will take affirmative action not to discriminate against any employee or applicant for employment or otherwise illegally deny any person participation in or the benefits of the program which is the subject of this agreement because of race, creed, color, sex, age, disability or national origin. To the extent applicable, CONSULTANT will comply with all provisions of Executive Order No. 11246 the Civil Rights Act of 1964, (P.L. 88-352) and 1968 (P.L. 90-284), and all applicable federal, state and local laws, ordinances, rules, regulations, orders, instructions, designations and other directives promulgated to prohibit discrimination. Violation of this provision, after notice, shall be a material breach of this agreement and may result, at CITY's option, in a termination or suspension of this agreement in whole or in part.
- 26. <u>E-Verify.</u> As a condition of payment for services rendered under this agreement, CONSULTANT shall comply with the requirements of Article 2 Chapter 64 of the General Statutes. Further, if Seller provides the services to the City utilizing a subcontractor, Seller shall require the subcontractor to comply with requirements of Article 2 Chapter 64 of the General Statutes as well.
- 27. <u>Iran Divestment Act Certificate.</u> CONSULTANT certifies that, as of the date of this agreement, it is not on the Final Divestment List as created by the State Treasurer pursuant to N.C.G.S. 147-86.58. In compliance with the requirements of the Iran Divestment Act and N.C.G.S. 147-86.59, CONSULTANT shall not utilize in the performance of the contract any subcontractor that is identified on the Final Divestment List.
- 28. <u>Counterparts.</u> This Agreement may be executed in several counterparts, including separate counterparts. Each shall be an original, but all of them together constitute the same instrument.
  - 29. Minority Business Enterprise (MBE)

The CITY desires that minority business enterprises have the maximum opportunity to participate in the performance of this contract and will:

1. Promote affirmatively (where feasible) in accordance with North Carolina General Statute 143-129, together with all other applicable laws, statutes and constitutional provisions) the procurement of goods, services in connection with construction projects for minority owned business enterprises.

- 2. Insure that competitive and equitable bidding opportunities are followed to afford minority business enterprises participation. Strive to obtain contract and subcontract awards to minority business enterprises.
- 3. Identify and communicate to the minority business enterprises community procedures and contract requirements necessary for procurement of goods and services for construction projects and subcontracts.
- 4. Provide technical assistance as needed.
- 5. Promulgate and enforce contractual requirements that the general CONSULTANT or all construction projects shall exercise all necessary and reasonable steps to insure that minority business enterprises participate in the work required in such construction contracts.

The CONSULTANT shall insure that minority business enterprises have the maximum opportunity to compete for and perform portions of the work included in this contract and shall not discriminate on the basis of race, color, national origin or sex. The CONSULTANT shall include this special provision, Minority Business Enterprise (MBE), in all subcontracts for this contract. Failure on the part of the CONSULTANT to carry out the requirements set forth in this special provision may constitute a breach of contract and after proper notification may result in termination of the contract or other appropriate remedy.

A minority business enterprise is defined as a business, with at least fifty (51%) percent owned and controlled by minority group members. The minority ownership must exercise actual day-to-day management. Minority group members may consist of Black Americans (an individual of the Black race of African origin), Hispanic Americans (an individual of a Spanish speaking culture and origin at parentage), Asian Americans (an individual of a culture, origin or parentage traceable to the areas of the Far East, Southeast Asia, the Indian subcontinent and the Pacific Islands), Indian Americans (an individual who is an enrolled member of a Federally recognized Indian tribe, or recognized by the tribe as being an Indian, as evidenced by a certification of a tribal leader), American Aleuts or any recognized minority group approved by the CITY.

A Woman Business Enterprise is a business with at least fifty (51%) percent owned and controlled by women who exercise actual day-to-day management.

The CONSULTANT shall exercise all necessary and reasonable steps to insure that Minority Business Enterprises and Woman Business Enterprises participate in the work required in this contract. The CONSULTANT agrees by executing this contract that he will exercise all necessary and reasonable steps to insure that this special provision contained herein on Minority Business Enterprise is complied with.

IN WITNESS WHEREOF, the CITY and the CONSULTANT have each executed this Agreement in duplicate originals, one of which shall be retained by each of the parties.

|  | CITY OF NEW BERN  |
|--|---|
|  | By:<br>Mark Stephens, City Manager  |
|  |   |
|  | ERTIFICATION STATEMENT emanner required by The Local Government Budget  |
| This day of, 20  | )   |
| Lori Mullica   | n, Finance Officer  |
| Project Number:  | f applicable)   |
| STATE OF NORTH CAROLINA COUNTY OF CRAVEN   | ·   |
| I,, a No<br>Stephens personally appeared before me this day a<br>City of New Bern, a North Carolina Municipal Co | otary Public in said State and County, certify that Mark<br>and acknowledged that he is the City Manager of the<br>orporation, and that by authority duly given and as the<br>nent was signed in its named by him as its Manager. |
| WITNESS my hand and notarial seal, this  | the day of, 2019.   |
| [SEAL]   | Notary Public   |
| My Commission Expires:   |   |

# CONSULTANT

| By:  |  |
|--|--|
|  | President/Vice President                           |
| :  |  |
| STATE OF   |  |
| COUNTY OF  |  |
| I,, a Nota   | ry Public, certify that                            |
| , persona  | ally came before me this day and acknowledged that |
| he (she) is President of                                 | , a corporation, and that by authority             |
| duly given and as the act of the corporation, he(she) ex | xecuted the foregoing instrument on behalf of the  |
| corporation.   |  |
| Witness my hand and official seal, this the              | _ day of, 2019.                                    |
|  | Notary Public                                      |
| My Commission Expires:                                   | [SEAL]   |
|  | [ <u>-</u> -1                                      |



114 Edinburgh South Drive Suite 200 Cary, North Carolina 27511 919,827,0864 www.daa.com

March 5, 2020

Mr. Matthew L. Montanye Director of Public Works City of New Bern 1004 S. Glenburnie Road New Bern, North Carolina 28563

**RE:** Proposal for Engineering Services

City of New Bern – Hurricane Florence FEMA Category D Repair and Mitigation Design Services

Draper Aden Associates Proposal No. P19080319-030302

Dear Mr. Montanye.:

On behalf of Draper Aden Associates, thank you for allowing us the opportunity to present our proposal to the City of New Bern (City) for providing professional engineering services for the second phase of the overall Hurricane Florence recovery project to restore the City's drainage network to the predisaster condition. The overall scope of services presented within this proposal are in general accordance with the provided Engineering Services for Ditch Drainage Project Request for Qualifications (RFQ) documents issued as part of the solicitation dated October 25, 2019.

#### I. PROJECT DESCRIPTION

The project area has been divided into ten different drainage basins organized by outfall. Each of the ten drainage basins includes between half a mile and fifteen miles of drainage ways. The overall project is comprised of the following four phases:

Phase I: Further detailed inspections of all FEMA Category D damages to determine the extent of damage or quantify repairs to the City of New Bern's drainage network. FEMA Category D repairs are related to water control facilities and can include, but are not limited to, slope stabilization, repair of bank erosion, failing head walls, failing retaining walls, or other issues.

Phase II: Further detailed inspections of all FEMA Category A debris activities necessary to restore the City of New Bern's drainage network to the pre-disaster condition. These detailed inspections will determine the extent of debris and quantify the necessary removal activities. FEMA Category A debris removal activities include the removal of fallen trees, vegetation, sediment, and other abnormalities that may be discovered in the drainage system.

Mr. Matthew L. Montanye March 5, 2020 Page 2 of 5

Phase III: Development of plans, scope, technical specifications, and all required permitting documentation necessary for all identified FEMA Category D repairs and mitigation activities. This phase also includes all necessary bid administration, construction administration, environmental permitting activities, and construction monitoring activities for all identified FEMA Category D repairs and mitigation activities.

Phase IV: Development of plans, scope, technical specifications, and all required permitting documentation necessary to generate bid documents for all identified FEMA Category A debris removal activities. This phase also includes all necessary bid administration, construction administration, environmental permitting activities, and construction monitoring activities for all identified FEMA Category A debris removal activities.

The following Scope of Services, schedule, and fees are for the completion of Phase III of the project ONLY.

### II. SCOPE OF SERVICES

The Scope of Services for Phase III of the overall project will include design services for the development of plans, scope, technical specifications, and all required permitting documentation for identified FEMA Category D repairs and mitigation activities. For each individual repair or mitigation activity, the Draper Aden Associates team will identify all applicable environmental permitting requirements necessary to complete each project. The Draper Aden Associates team will complete all required permit applications on behalf of the City and submit to the applicable permitting agencies.

The Phase III Scope of Services will include the preparation of bid packages for individual repair or mitigation activities, or by logical groupings as directed by the City. Bid packages will include design plans, technical specifications, method of compliance with required monitoring activities, and any additional activities that the contractor may be required to perform in the completion of the specified work. Bid packages will also include details for all required environmental compliance and site access activities necessary to perform the repair or mitigation activities.

The Phase III Scope of Services will also include all necessary bid administration, construction administration, and construction monitoring activities to ensure that all work adheres to the requirements necessary to receive FEMA funding. Draper Aden Associates will monitor all contractor activities to the extent necessary to assure compliance with all bid specifications and permitting requirements. At the conclusion of each project, Draper Aden Associates will certify that the contractor has performed all work per the bid specifications and adhered to all permitting requirements. Draper Aden Associates will complete the project closeout activities necessary following the completion of each project.

#### III. SCHEDULE

Because the overall scope of work for the generation of each bid package and associated bid administration, construction administration, and construction monitoring activities will vary, individual proposals will be developed for the Phase III Scope of Services for each individual repair or mitigation

Mr. Matthew L. Montanye March 5, 2020 Page 3 of 5

activity, or by logical groupings as directed by the City. Each individual proposal will include a mutually agreeable schedule for both milestones and deliverables.

## IV. FEES

After reviewing the level of detail of the scope of work for each individual proposal, the City may request Draper Aden Associates to submit a lump sum cost to perform all services outlined in the individual proposal. Otherwise, each individual proposal will include a NTE fee and be billed according to the attached 2020 Hourly Bill Rate Table and 2020 Reimbursable Rate Schedule. Fees will be billed monthly for actual project work incurred during the billing period. All services will be provided in accordance with the attached Engineering Services for Ditch Drainage Project RFQ documents.

### V. DELIVERABLES

Deliverables with be further defined after the scope of work has been reviewed and completed by FEMA. The City will direct Draper Aden Associates to submit individual proposals for specific projects related to Hurricane Florence FEMA Category D repair and mitigation activities. Following review and agreement of the cost and completion timeframe detailed in each individual proposal, the City will issue Draper Aden Associates Notice to Proceed (NTP).

# VI. ASSUMPTIONS / LIMITATIONS

This proposal is based on the following assumptions:

- Reimbursable expenses such as lodging, meals and incidentals, mileage, printing and postage, and supplies are included in the provided NTE price.
- Lodging will be billed at the federal per diem rate of \$96/night + tax
- Meals and incidentals will be billed at the per diem rate of \$55/day
- Mileage will be billed at the federal rate of \$0.575/mile
- MiFi Devices will be billed on a prorated basis for the portion of the total monthly bill that each device is in use on the project.
- The City will provide the Draper Aden Associates team with an office space with wireless internet access to use for coordinating field work.
- Permit review may require revisions to the bid documentation and scope description for sediment and vegetative debris removal activities. Draper Aden Associates highly recommends that the projects not be bid prior to all applicable permits being approved.

On behalf of Draper Aden Associates, thank you for giving us the opportunity to provide our proposal for engineering services. If this proposal meets with your approval, please sign the Authorization to Proceed below and return it to us. Please keep a copy of the proposal for your records. Please note that it is the policy of Draper Aden Associates that no deliverables or other products of service will be submitted without a formal agreement between parties or written authorization acknowledging the scope of work and fees associated with the proposed work. We appreciate your efforts toward this end.

Mr. Matthew L. Montanye March 5, 2020 Page 4 of 5

We look forward to working with you on this project. Please do not hesitate to contact us if you have any questions or require any additional information.

Sincerely,

**Draper Aden Associates** 

Matthew C. Burnette, PG Senior Project Manager

W. Charles Kreye II, PE

Vice President / Managing Principal / Division Manager

Attachments: 2020 Hourly Bill Rate Schedule

2020 Reimbursable Rate Schedule

City of New Bern – Professional Services Agreement Engineering Services for Ditch Drainage Project RFQ

cc: Sterling Emens and Cory Spaulding, Disaster Recovery Services, LLC

Mr. Matthew L. Montanye March 5, 2020 Page 5 of 5

## **AUTHORIZATION TO PROCEED**

# Proposal for Engineering Services City of New Bern – Hurricane Florence FEMA Category D Repair and Mitigation Design Services Draper Aden Associates Proposal No. P19080319-030302

I/We agree and accept Draper Aden Associates' proposal to provide the above described services. We understand the Scope of Services as provided herein and agree to the fees estimated for these services. We further acknowledge that Draper Aden Associates will provide a proposal for any change in the Scope of Services described herein and that a signed agreement to provide those additional services will be executed prior to any work being performed.

| Printed Name | Title   |  |
|--------------|---------|--|
|              |         |  |
|              | <u></u> |  |
| Signature    | Date    |  |



# 2020 Hourly Bill Rate Table

| Staff Category                    | Hourly Rate |
|-----------------------------------|-------------|
| Administrative Assistant          | \$81        |
| Aerial/Scanning - Project Manager | \$145       |
| Aerial/Scanning - Technician      | \$134       |
| Construction - Manager            | \$129       |
| Construction - Project Specialist | \$124       |
| Construction - Specialist         | \$113       |
| Contract Specialist               | \$127       |
| Debris Monitoring Specialist      | \$60        |
| Designer - Staff                  | \$90        |
| Engineer - V                      | \$197       |
| Engineer - IV                     | \$175       |
| Engineer - III                    | \$152       |
| Engineer - II                     | \$118       |
| Engineer - I                      | \$99        |
| Engineer - Senior Design          | \$143       |
| Engineer - Design                 | \$129       |
| Engineer - Senior Project         | \$165       |
| Engineer - Project                | \$149       |
| Environmental Scientist - Project | \$115       |
| Environmental Scientist           | \$91        |
| Field Operations Specialist       | \$100       |
| Geologist - Senior                | \$178       |
| Geologist - Project               | \$119       |
| Geologist - Staff                 | \$98        |
| GIS Administrator - Senior        | \$124       |
| Grant Management Specialist       | \$143       |
| Landscape Architect - Senior      | \$165       |
| Landscape Architect               | \$118       |
| Permitting Scientist - Senior     | \$109       |
| Permitting Scientist - Project    | \$75        |
| Post Disaster Program Manager     | \$138       |
| Project Manager                   | \$185       |
| SUE - Project Manager             | \$129       |
| SUE - Designation Crew (2 person) | \$176       |
| Survey - Team leader              | \$186       |
| Surveyor - Senior Project         | \$129       |
| Surveyor - Project                | \$103       |
| Survey Crew (2 person)            | \$150       |
| Technical Adviser - Senior        | \$213       |
| Technical Advisor                 | \$190       |
| Technician - Project              | \$84        |
| Technician - Staff                | \$61        |
| Water Resources Engineer - Senior | \$200       |
| Water Resources Engineer - II     | \$150       |
| Water Resources Engineer - I      | \$127       |



# 2020 Reimburseable Rate Table

| ltem                              | Billing             |
|-----------------------------------|---------------------|
|                                   |                     |
| 8" x 11" Color Copies             | \$0.95 / Page       |
| 8" x 11" Black and White Copies   | \$0.15 / Page       |
| Mileage                           | \$0.575 / Mile      |
| Per Diem - Meals and Incidentals  | \$55 / Day          |
| Per Diem - Lodging                | \$96 / Night + tax  |
| Express Mail & Courier Services   | Cost                |
| Four MiFi Devices                 | \$45 / Unit / Month |
| Other Additional Project Supplies | Cost                |
|                                   |                     |
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- 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.

LOCATE

| Signature of Contractor's Authorized Official      |   |
|--|---|
| Name and Title of Contractor's Authorized Official | W. Charles Kreye II, P.E. / Vice Presiden |
| Date   | 27 FEB 2020                               |

# **AGENDA ITEM COVER SHEET**



Agenda Item Title: Consider Adopting an Ordinance to Amend the FY2019-20 Operating Budget

| Date of Meeting: 3/10/2020  Department: Finance  Call for Public Hearing: □Yes⊠No |   | Ward # if applicable:  Person Submitting Item:  Mary Hogan                     |                 |
|---|---|--|-----------------|
|   |   |  |                 |
|   |   | Explanation of Item:   | The attached or |
|   | -Phase I Grant Fund Budget to recognize the grant award and establish the budget. |  |                 |
| Actions Needed by Board:  | Adopt Ordinance   |  |                 |
| Backup Attached:  | Memo; Budget  | Ordinance Amendment  |                 |
|   |   |  |                 |
| Is item time sensitive?   | □Yes ⊠No  |  |                 |
| Will there be advocates   | opponents at tl   | he meeting?  \Begin{aligned} \text{Yes \Begin{aligned} \text{No} \end{aligned} |                 |
|   |   |  |                 |
| Cost of Agenda Item:  |   |  |                 |
| If this requires an expensand certified by the Fin                                | nditure, has it b<br>ance Director?   | een budgeted and are funds available<br>□Yes ⊠ No                              |                 |

**Additional Notes:** 

## Aldermen

Sabrina Bengel Jameesha Harris Robert V. Aster Johnnie Ray Kinsey Barbara J. Best Jeffrey T. Odham



300 Pollock Street, P.O. Box 1129 New Bern, NC 28563-1129 (252) 636-4000 Dana E. Outlaw
Mayor
Mark A. Stephens
City Manager
Brenda E. Blanco
City Clerk
Mary M. Hogan
Director of Finance

TO:

City Manager, Honorable Mayor and Members of the Board of Aldermen

FROM:

Mary Hogan, Director of Finance

DATE:

March 10, 2020

RE:

Amendment to the Martin-Marietta Park - Phase I Grant Fund Budget

# **Background**

The City of New Bern Parks and Recreation Department has been awarded a Grant from the N.C. Parks and Recreation Trust Fund Project Account improvements to the Martin-Marietta Park- Phase I project. The amount of the award is of \$475,000. This budget ordinance acknowledges receipt of the grant and establishes the necessary budget. The grant proceeds are for improvements to the park.

# **Requested Action**

It is recommended that the Board adopt the attached budget amendment at its meeting to be held on March 10, 2020.

# AN ORDINANCE TO AMEND THE CAPITAL PROJECT ORDINANCE Martin Marietta Park Project Fund

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

That Section 3 of the Ordinance adopted on November 14, 2017 is hereby Section 1. further amended for additional estimated revenues:

Increase: Grant Revenues

<u>\$475,000</u>

Section 2. That Section 4 of the Ordinance adopted on November 14, 2017 is hereby further amended for additional appropriations:

Increase: Recreation Parks & Facilities

\$475,000

Section 3. This amendment shall become effective upon adoption.

ADOPTED THIS 10<sup>TH</sup> DAY OF MARCH 2020.

DANA E. OUTLAW, MAYOR

BRENDA E. BLANCO, CITY CLERK

# **AGENDA ITEM COVER SHEET**



**Agenda Item Title:**Consider Adopting an Ordinance to Amend the FY2019-20 Operating Budget

| Date of Meeting: 3/10/2020                             |  | Ward # if applicable:                         |  |
|--|--|---|--|
| Department: Finance                                    |  | Person Submitting Item: Mary Hogan            |  |
| Call for Public Hearing:                               | □Yes⊠No  | Date of Public Hearing:                       |  |
|  |  |   |  |
| Explanation of Item:                                   | The attached ordinance establishes the Resiliency & Hazard Mitigation Plan Fund, recognizes various grant awards and establishes the budget. |   |  |
| Actions Needed by Board:                               | Adopt Ordinance  |   |  |
| Backup Attached:                                       | Memo; Budget Ordinance; Resiliency Grant List  |   |  |
| Is item time sensitive?                                | IVes □No   |   |  |
|  |  | e meeting? □Yes ☒ No                          |  |
|  |  |   |  |
| Cost of Agenda Item:                                   |  |   |  |
| If this requires an expenant and certified by the Fina |  | een budgeted and are funds available  Yes  No |  |
|  |  |   |  |

**Additional Notes:** 

### Aldermen

Sabrina Bengel Jameesha Harris Robert V. Aster Johnnie Ray Kinsey Barbara J. Best Jeffrey T. Odham



300 Pollock Street, P.O. Box 1129 New Bern, NC 28563-1129 (252) 636-4000 Dana E. Outlaw
Mayor
Mark A. Stephens
City Manager
Brenda E. Blanco
City Clerk
Mary M. Hogan
Director of Finance

TO:

City Manager, Honorable Mayor and Members of the Board of Aldermen

FROM:

Mary Hogan, Director of Finance

DATE:

March 10, 2020

RE:

Establish the Resiliency and Hazard Mitigation Plan Project Fund

## **Background**

This budget ordinance establishes the Resiliency and Hazard Mitigation Plan Project Fund and establishes the necessary budget of \$140,000. The City has received various grants awards totally \$88,000 to date, the proceeds of which will be used towards the development of a citywide Resiliency and Hazard Mitigation Plan. The remaining \$52,000 will be a transfer from the General Fund which is included in the FY20 operating budget.

# **Requested Action**

It is recommended that the Board adopt the attached budget amendment at its meeting to be held on March 10, 2020.

# ORDINANCE TO ESTABLISH A GRANT PROJECT Resiliency and Hazard Mitigation Plan Grant Project Fund

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN THAT PURSUANT TO N.C.G.S. 159-3.2, THE FOLLOWING GRANT PROJECT ORDINANCE IS HEREBY ADOPTED:

- Section 1. There is hereby established a Grant Project Fund to be known as the "Resiliency and Hazard Mitigation Plan Grant Project Fund."
- Section 2. The project authorized is the development of a Resiliency and Hazard Mitigation Plan for the City of New Bern.
- Section 3. It is estimated that the following revenues will be available to the Resiliency and Hazard Mitigation Plan Grant Project Fund:

| Grant Revenues | \$ 88,000  |
|----------------|------------|
| Transfers In   | 52,000     |
|                | \$ 140,000 |

Section 4. The following amounts are hereby appropriated to the Resiliency and Hazard Mitigation Plan Grant Project Fund:

Development Services - SRF

\$ 140,000

- Section 5. The Finance Officer is hereby directed to maintain within the Grant Project Fund sufficient detailed accounting records to provide the accounting to the grantor agency required by the grant agreement and Federal and State regulations.
- Section 6. Funds may be advanced from the General Fund for the purpose of making payments as due. Reimbursement requests should be made to the grantor agency in an orderly and timely manner.
- Section. 7 Copies of the ordinance shall be provided to the Budget Officer and the Finance Officer for use in the performance of their duties.

ADOPTED, THIS THE 10th DAY OF MARCH, 2020.

|             |          |         | _ |
|-------------|----------|---------|---|
| DANAF       | OUTLAW,  | MAYOR   |   |
| D/ 114/1 L. | COILAVV, | IVIATOR |   |

### Aldermen

Sabrina Bengel Jameesha Harris Robert V. Aster Johnnie Ray Kinsey Barbara J. Best Jeffrey T. Odham



300 Pollock Street, P.O. Box 1129 New Bern, NC 28563-1129 (252) 636-4000 Dana E. Outlaw
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City Manager
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City Clerk
Mary M. Hogan
Director of Finance

# Memorandum

TO:

Mayor and Board of Aldermen

FROM:

Brenda Blanco, City Clerk

DATE:

February 28, 2020

SUBJECT:

Appointments to Appearance Commission

James Dugan's term on the Appearance Commission has expired, and he is interested in reappointment. The Board is asked to consider reappointing him or make a new appointment.

Joseph Cannon's term on the Appearance Commission has also expired, and he is not interested in reappointment. Foster Hughes, Director of Parks and Recreation, has the name of someone who has expressed interest in serving on this board. Terms on the Appearance Commission are three years.

/beb



# Eastern Carolina Council

233 Middle Street; Ste 300 PO Box 1717

New Bern, NC 28560

Phone: 252.638.3185 Fax: 252.638.3187 www.eccog.org

**Date:** February 19, 2020

**To:** Council of Governments Region P

From: Katie S. Bordeaux

**Re:** Eastern Carolina Council of Governments By-Law Change

For several months the Eastern Carolina Council of Governments Budget and Audit Committee (ECCOG B&A) has discussed ways to increase membership and to allow municipalities with a population of 20,000 and/or greater to have a membership seat on the Executive Committee. The ECCOG B&A also reviewed the fee structure.

At the February 13, 2020 Eastern Carolina Council of Governments General Membership Board Meeting, the Board unanimously approved a by-law change. The following highlighted part is the by-law change:

### Article V. Board of Directors

Section 1. The Board of Directors ("Board") shall be the governing body of the Council. All powers of the Council shall be exercised under the authority of, and the business and affairs shall be managed under the direction of, the Board. The entire Board shall be called the "General Membership Board." From the members of General Membership Board, an "Executive Committee" shall be established.

## Section 2. Executive Committee

- a. The Executive Committee shall be established as follows:
  - One county commissioner shall be appointed by each member county.
  - One city/town appointment shall be appointed by each member city/town with a population over 20,000.
  - One city/town appointment selected from those appointed to the General Membership Board by member municipalities shall be appointed by a caucus of the member municipalities in each county of Region P. Caucuses may take place by in-person meeting, telephone, email, or any convenient means.
  - The maximum number of Executive Committee members shall be twenty-three.<sup>2</sup>

<sup>1</sup> The purpose of the Board approving this was to increase Board seats for the region's larger municipalities. The ECCOG is set up to be a regional forum and to be inclusive of all municipalities.

<sup>&</sup>lt;sup>2</sup>With the increase in a board member representing a population of 20,000, the board size changes from eighteen with a maximum of twenty-three.

- Officers of the Board shall be elected from those serving on the Executive Committee.
- b. The Executive Committee may exercise the full authority of the Board except that only the General Membership Board may (a) approve the initial annual budget (as opposed to budget amendments, which the Executive Committee may approve); (b) approve amendments to the Charter and Bylaws; and (c) elect officers (subject to the provisions of Article VI). Notwithstanding the foregoing, the Executive Committee may act for the General Membership Board when it fails to satisfy quorum requirements as provided in Article XI, Section 1.

The Budget and Audit Committee recommended that the fee structure be as follows:

# For municipalities:

- o Cap the rate at \$8,000
- o Keep minimum at \$218
- o Any population over 20,000 has a seat on the Executive Board (Havelock, New Bern, Kinston, Jacksonville, and Goldsboro)

### For Counties

Minimum: \$500 + Aging & RPO dues required

Maximum: \$10,000 + Aging & RPO dues required