

**NORTH CAROLINA  
ON SLOW COUNTY**

**CONSULTING CONTRACT**

**THIS CONTRACT** is made, and entered into this the 20<sup>th</sup> day of August 2018, by and between the **COUNTY of ON SLOW**, a political subdivision of the State of North Carolina, (hereinafter referred to as "**COUNTY**"), and **TETRA TECH, INC.**, (hereinafter referred to as "**CONSULTANT**").

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

**WHEREAS, TETRA TECH, INC.**, acting as an independent Consultant, is a Consultant with extensive experience in providing disaster management and recovery services and shall provide said services in a professional manner in accordance with the terms and conditions of this Agreement and the standard of care practiced by professionals performing similar services; and

**WHEREAS**, the services provided include, but are not limited to, Disaster Debris Monitoring Services, Emergency Management Planning and Training, Damage Assessment, and Reconstruction Services; and

**WHEREAS**, the County wishes to enter into a contractual agreement with Consultant to provide professional consulting services in accordance with Onslow County Request for Proposal number 007-18 issued July 9, 2018.

**NOW, THEREFORE**, in consideration of the promises herein and for other good and valuable consideration, the parties agree as follows:

**1. SCOPE OF SERVICES.** **CONSULTANT** hereby agrees to provide the services and/or materials under this Contract pursuant to the provisions identified in Attachment 1 "Scope of Services" (hereinafter collectively referred to as "Services") and Attachment 2 "Federal Contracting Requirements." Attachments 1 and 2 are hereby incorporated herein and made a part of this Contract.

Authorizations for Services shall be referred to as "Task Orders." Each Task Order form shall set forth a specific Scope of Services, amount of compensation and completion date.

**2. TERM OF CONTRACT.** The Term of this Contract for services is from **August 21, 2018 to August 20, 2023**, unless sooner terminated as provided herein.

This Contract is subject to the availability of funds to purchase the specified services and may be terminated at any time during the term upon thirty (30) days' notice if such funds become unavailable.

**3. ACTIVATION OF CONTRACT.** Should activation of a contract become necessary, the **COUNTY** and **CONSULTANT** will negotiate a "Fixed Price" amount for the services required within this Agreement. This Contract is deemed activated upon the agreement of fixed price and execution of a Task Order.

**4. PAYMENT.** Unless otherwise specified, **CONTRACTOR** shall submit an itemized invoice to **COUNTY** by the end of the month during which Services are performed. A Purchase Order number may be assigned to encumber the funds associated with this Contract and must appear on all invoices and correspondence mailed to Purchaser. Payment will be processed promptly upon receipt and approval of the invoice by **COUNTY**.

**5. TIME FOR COMPLETION.** Time is of the essence and the Consultant shall begin work immediately following issuance of a written Task Order. All services shall be completed in accordance with the project schedule associated with each Task Order.

**6. INVOICES.** CONSULTANT shall submit monthly invoice for services rendered. Invoices shall include a statement of progress and appropriate detail to satisfy County and current FEMA requirements. Invoices must reference the Purchase Order number.

*All invoices shall be delivered to:*

Attn: Norman Bryson  
Onslow County Emergency Services Director  
1180 Commons Drive North  
Jacksonville, North Carolina 28540

**7. RETAINAGE.** The COUNTY may retain five percent (5%) of the value of each Task Order until such time as the project deliverables, as defined in the Task Order, are completed to reasonable professional standards and all sub-consultants and material suppliers verify receipt of all payment for which they are entitled under the terms of the Consultant's contract with the sub-consultant.

**8. INDEPENDENT CONSULTANT.** COUNTY and CONSULTANT agree that CONSULTANT is an independent Consultant and shall not represent itself as an agent or employee of COUNTY for any purpose in the performance of CONSULTANT's duties under this Contract. Accordingly, CONSULTANT shall be responsible for payment of all federal, state and local taxes as well as business license fees arising out of CONSULTANT's activities in accordance with this Contract. For purposes of this Contract taxes shall include, but not be limited to, Federal and State Income, Social Security and Unemployment Insurance taxes.

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

**9. STANDARD OF CARE.** CONSULTANT will perform services under this Agreement with the degree of skill and diligence normally practiced by professional CONSULTANTS performing the same or similar services and CONSULTANT shall, at no additional cost to the COUNTY, re-perform services which fail to satisfy the foregoing standard of care.

The CONSULTANT will represent that all services be performed by competent personnel. The CONSULTANT hereby represents that it has and will continue to maintain all licenses and approvals required to conduct its business and perform all Services under this Agreement, and that it will at all times conduct its business activities in accordance with this contract. Except as may be otherwise provided for in this Agreement, CONSULTANT shall be responsible for obtaining, at its own expense, all permits and approvals necessary to perform the Services under this Agreement for each project.

The CONSULTANT acknowledges that a portion of its fees may be reimbursed to COUNTY by state or federal governments and CONSULTANT and COUNTY agree to work together to modify or alter billing procedures as may be necessary to satisfy state or federal payment regulations or requirements.

**TERMINATION OF CONTRACT.** Termination of this Contract shall be in accordance with the Termination Clause contained in Attachment 2.

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

In addition, CONSULTANT 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.

The Consultant shall secure and maintain during the duration of the *activated* contract, at his/her sole expense, the following types and limits of insurance described below:

- A. Workers' Compensation - The Consultant shall provide coverage for its employees with statutory workers' compensation limits, and no less than \$1,000,000.00 for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the County and its agents, employees and officials.
- B. Commercial General Liability - The Consultant shall provide coverage for all operations including, but not limited to Contractual, Products and Completed Operations, and Personal Injury. The limits shall be not less than \$1,000,000.00, per occurrence, with a \$2,000,000.00 aggregate.
- C. Business Automobile Liability - The Consultant shall provide coverage for all owned, non-owned and hired vehicles with limits of not less than \$1,000,000.00, per occurrence, Combined Single Limits (CSL) or its equivalent.
- D. Professional Liability (Errors & Omissions) - The Consultant shall provide coverage for all claims arising out of the services performed with limits not less than \$1,000,000.00 per claim. The aggregate limit shall either apply separately to this contract or shall be at least twice the required per claim limit.

Insurance policies, except Workers' Compensation, shall be endorsed (1) to show Onslow County as an additional insured, as their interests may appear, and (2) to amend cancellation notice to 45 days, pursuant to North Carolina Law.

CONSULTANT, upon execution of this Contract, shall furnish to the COUNTY a Certificate of Insurance reflecting the minimum limits stated above. The Certificate shall provide for thirty-(30) days advance written notice in the event of a decrease, termination or cancellation of coverage. Providing and maintaining adequate insurance coverage is a material obligation of the CONSULTANT. 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 CONSULTANT 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 CONSULTANT shall not be interpreted as limiting the CONSULTANT's liability and obligations under the Contract.

Copies or originals of certificates, endorsements, or other items pertaining to insurance shall be sent to: Onslow County Purchasing Director, 234 NW Corridor Blvd., Jacksonville, NC 28540.

**12. NONDISCRIMINATION IN EMPLOYMENT.** CONSULTANT shall not discriminate against any employee or applicant for employment because of age, sex, race, creed, national origin, or disability. CONSULTANT shall take affirmative action to ensure that applicants are employed and that employees are treated fairly and legally during employment with regard to their age, sex, race, creed, national origin, or disability. In the event CONSULTANT is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Contract may be canceled, terminated or suspended in whole or in part by COUNTY, and CONSULTANT may be declared ineligible for further COUNTY contracts.

**13. OWNERSHIP OF WORK.** All Work and any documents prepared by the CONSULTANT for or on account of this Contract shall be the owned by the COUNTY, and the COUNTY shall have all common law, statutory and other reserved rights, including copyright.

Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the project is not to be construed as publication in derogation of the COUNTY's reserved rights.

**14. SUCCESSORS AND ASSIGNS.** CONSULTANT shall not assign its interest in this Contract without the written consent of the COUNTY.

**15. COMPLIANCE WITH LAWS.** CONSULTANT represents that it is in compliance with all Federal, State, and local laws, regulations or orders including, Executive Order 11246, as amended or supplemented, which is hereby incorporated by reference. The implementation of this Contract will be carried out in strict compliance with all Federal, State, or local laws regarding discrimination in employment.

**16. GOVERNING LAW.** Unless otherwise specified, this contract shall be governed by the laws of the State of North Carolina. All litigation arising out of this contract shall be commenced in the appropriate division of the General Court of Justice in Onslow County, North Carolina.

**17. DISPUTE RESOLUTION.** CONSULTANT and COUNTY shall attempt to resolve conflicts or disputes under this Agreement in a fair and reasonable manner. If an informal resolution cannot be achieved to attempt to mediate the conflict between the Consultant and the COUNTY, all litigation shall be commenced in the appropriate division of the General Court of Justice in Onslow County, North Carolina.

**18. E-VERIFY.** As a condition of payment for services rendered under this agreement, CONSULTANT shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Further, if CONSULTANT provides the services to the County utilizing a sub-consultant, CONSULTANT shall require the sub-consultant to comply with the requirements of Article 2 of Chapter 64 of the General Statutes as well. CONSULTANT shall verify, by affidavit, compliance of the terms of this section upon request by the County.

**19. IRAN DIVESTMENT ACT.** CONSULTANT certifies that they are not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 143-6A-4. Individuals or companies on the Final Divestment List are ineligible to contract or subcontract with Local Government Units. (G.S. 143C-6A-6(a).) It is the responsibility of each CONSULTANT to monitor compliance with this restriction. Contracts valued at less than \$1,000.00 are exempt from this restriction.

**20. DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL.** The CONSULTANT certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. 147-86.81. It is the responsibility of each CONSULTANT to monitor compliance with this restriction. Contracts valued at less than \$1,000.00 are exempt from this restriction.

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

**22. NOTICES.** All notices which may be required by this contract or any rule of law shall be effective when received by certified mail as follows:

**COUNTY OF ONSLOW**  
**Norman Bryson, Emergency Services Director**  
**1180 Commons Drive North**  
**Jacksonville, NC 28541**

**Copy to: Onslow County Purchasing**  
**Attn: Laura E. Jones**  
**234 NW Corridor Blvd.**  
**Jacksonville, NC 28540**

**CONSULTANT: Tetra Tech, Inc.**  
**Attn: Jonathan Burgiel**  
**2301 Lucien Way, Suite 120**  
**Maitland, FL 32751**

**23. ACCESS AND AUDIT RIGHTS.** CONSULTANT shall maintain adequate financial and program records to justify all charges, expenses, and costs incurred in estimating and performing the work under this Agreement for at least five (5) years following final payment to the COUNTY as Federal Emergency Management Agency sub-grantee as required by FEMA's 322 Public Assistance Guide, as amended, or any similar regulation, policy, or document adopted by FEMA subsequent to the execution of this Agreement. The COUNTY shall have access to all records, documents and information collected and/or maintained by others in the course of the administration of the Agreement. This information shall be made accessible at the CONSULTANT'S place of business to the COUNTY, including the Comptroller's Office and/or its designees, for purposes of inspection, reproduction and audit without restriction.

**24. ANNUAL APPROPRIATIONS AND FUNDING.** This Agreement may be subject to the annual appropriation of funds by the Onslow County Commissioners. Notwithstanding any provision herein to the contrary, in the event that funds are not appropriated for this Agreement, then County shall be entitled to immediately terminate this Agreement, without penalty or liability, except the payment of all contract fees due under this Agreement up to and through the last day of service. Payment for services under contract by this solicitation will be paid with federal funding. Funding is contingent upon compliance with all terms and conditions of funding award. The selected firm shall comply with all applicable federal laws, regulations, executive orders, FEMA requirements and the terms and conditions of the funding award.

**25. SAFETY.** CONSULTANT and its employees will observe the posted safety requirements of the COUNTY and those required by law. CONSULTANT is responsible for the safety of its employees at all times while on the COUNTY's premises.

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

**27. EQUIPMENT.** CONSULTANT shall supply, at its sole expense, all equipment, tools, materials, and/or supplies required to provide contracted services unless otherwise agreed in writing.

**28. ENTIRE CONTRACT.** This Contract, including Attachment 1 and Attachment 2, shall constitute the entire understanding between COUNTY and CONSULTANT and shall supersede all prior understandings and agreements relating to the subject matter hereof and may be amended only by written mutual agreement of the parties.

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

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

**31. CORPORATE AUTHORITY.** By execution hereof, the person signing for CONSULTANT below certifies that he/she has read this Contract and that he/she is duly authorized to execute this Contract on behalf of the CONSULTANT.

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

**Reviewed by Department Head**

Therese Buge  
Date Reviewed: 8-7-18

**CONSULTANT: Tetra Tech, Inc.**

By: Jonathan Buge  
Printed Name: |Jonathan Buge|  
Title: |Business Unit President, Disaster Recovery|

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

Activation Contract  
Onslow County Finance Officer

**ONslow COUNTY**

By: Jack Bright  
Jack Bright, Chairman  
Board of Commissioners

**“ATTACHMENTS 1 and 2 to follow**

## **ATTACHMENT 1**

### **Scope of Services**

**Onslow County Request for Proposal #007-18 "Disaster Management, Recovery, and Consulting Services" and Tetra Tech Inc. submittal response are made a part of this contract as if fully set forth.**

## **ATTACHMENT 2**

### **Federal Contracting Requirements**

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

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

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

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

Drug-free workplace requirements in accordance with Drug Free Workplace Act of 1988 (Pub 100-690, Title V, Subtitle D). All consultants 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 Consultant shall comply with all uniform administrative requirements, cost principles, and audit requirement for federal awards.

#### **Conflict of Interest**

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

#### **Mandatory Disclosures**

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



### **Energy Conservation**

The Consultant and Sub-consultants 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 Consultant 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 Consultant agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

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

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

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

The Consultant agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

All Consultants and their successors, transferees, assignees, and sub-consultants 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 County and the Consultant acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the County, the Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Consultant 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-consultant who will be subject to its provisions.

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

The Consultant acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Consultant's actions pertaining to this contract. Upon execution of the underlying contract, the Consultant 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 Consultant 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 Consultant to the extent the Federal Government deems appropriate.

The Consultant 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 Consultant, to the extent the Federal Government deems appropriate.

The Consultant 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-consultant 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. Consultants failure to do so shall constitute a material breach of the contract.

### **Termination**

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

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

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

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

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

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

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

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

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

***Cancellation of Orders and Subcontracts.*** In the event this Agreement is terminated by the County for any reason prior to the end of the term, the Consultant 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 Consultant shall submit a statement to the County showing in detail the services performed under this Agreement to the date of termination.

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

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

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

**No Suspension.** In the event that the County disputes in good faith an allegation of default by the Consultant, notwithstanding anything to the contrary in this Agreement, the Consultant 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 Consultant, unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise.

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

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

## **Remedies**

**Liquidated Damages:** The County and the Consultant acknowledge and agree that the County may incur costs if the Consultant fails to meet the delivery times set forth in the Request for Proposal for the Products and Services. The parties further acknowledge and agree that: (a) the County may be damaged by such failures, including loss of goodwill and administrative costs; but that (b) the costs that the County might reasonably be anticipated to accrue as a result of such failures are difficult to ascertain due to their indefiniteness and uncertainty. Accordingly, the Consultant agrees to pay liquidated damages at the rates set forth in the Request for Proposal (if applicable). The parties agree that the liquidated damages set forth in the Request for Proposal shall be the County's exclusive remedy for loss of goodwill and administrative costs, attributable to a failure by the Consultant 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 Consultant fails to meet any completion date or resolution time set forth in this Agreement (including the Exhibits), and it fails to cure such default within one (1) business day after receiving written notice from the County of such failure, the County may take any of the following actions with or without terminating this Agreement, and in addition to and without limiting any other remedies it may have:

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

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

***Right to Withhold Payment.*** If the Consultant materially breaches any provision of this Agreement, the County shall have a right to withhold all payments due to the Consultant 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 Consultant agrees that due to the potential impact on public health, monetary damages may not be an adequate remedy for the Consultant'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 Consultant hereby agrees that the County may seek an order granting specific performance of such obligations of the Consultant in a court of competent jurisdiction within the State of North Carolina. The Consultant further consents to the County seeking injunctive relief (including a temporary restraining order) to assure performance in the event the Consultant 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 C.F.R. 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (3 C.F.R. part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), "Debarment and Suspension." SAM exclusions contain the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Consultant shall certify compliance.

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

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

This certification in this clause is a material representation of fact relied upon by the County. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available by the County, the federal government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, Subpart C and 2 C.F.R. Part 3000, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

## **Equal Employment Opportunity**

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

1. The Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Consultant 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 Consultant 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 Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
3. The Consultant 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 Consultant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Consultant 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 Consultant 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 Consultant'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 Consultant 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 Consultant 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 subConsultant or vendor. The Consultant 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 Consultant becomes involved in, or is threatened with, litigation with a subConsultant or vendor as a result of such direction by the administering agency the Consultant 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 Consultant 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 Consultant 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 Consultant and its sub-consultants 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 Consultant 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 Consultant, 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 Consultant 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 Consultant does not make payments to a trustee or other third person, the Consultant may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program: *Provided* that the Secretary of Labor has found, upon the written request of the Consultant, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Consultant to set aside in a separate account assets for the meeting of obligations under the plan or program.

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

The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Consultant under this contract or any other Federal contract with the same prime Consultant, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Consultant, 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 Consultant or any sub-consultant 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 Consultant, 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 Consultant 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 Consultant 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. Consultants 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 Consultant 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 Consultant 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](http://www.dol.gov/whd/forms/wh347instr.htm) or its successor site. The prime Consultant is responsible for the submission of copies of payrolls by all sub-consultants. Consultants and sub-consultants 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 Consultant will submit them to the applicant, sponsor, or Owner, as the case may be, for transmission to the Sponsor, the Consultant, 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 Consultant to require a sub-consultant to provide addresses and social security numbers to the prime Consultant 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 Consultant or subConsultant 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 Consultant or sub-consultant to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The Consultant or sub-consultant 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 Consultant or sub-consultant fails to submit the required records or to make them available, the Federal agency may, after written notice to the Consultant, 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 Consultant as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Consultant 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 Consultant's or sub-consultant'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 Consultant 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 Consultant 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 Consultant shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

#### ***6. Subcontracts.***

The Consultant or sub-consultant 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 sub-consultants to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for the compliance by any sub-consultant or lower tier sub-consultant 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 Consultant and a sub-consultant 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 Consultant (or any of its sub-consultants) 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 Consultant certifies that neither it (nor he or she) nor any person or firm who has an interest in the Consultant'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**

*Consultant.* The Consultant must comply with the requirements of the Copeland "Anti-Kickback" Act (18 U.S.C. § 874 and 40 U.S.C. § 3145) and the requirements of 29 C.F.R. Part 3 *as may be applicable*, which are incorporated by reference into this contract.

Consultant and sub-consultants 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 Consultant and each Sub-consultant 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 Consultant or sub-consultant 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 sub-consultants to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for the compliance by any sub-consultant or lower tier sub-consultant 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 Consultant and sub-consultant as provided in 29 C.F.R. § 5.12."

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

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

1. Overtime requirements. No Consultant or subConsultant 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 Consultant and any sub-consultant responsible therefor shall be liable for the unpaid wages. In addition, such Consultant and sub-consultant 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 Consultant or sub-consultant under any such contract or any other Federal contract with the same prime Consultant, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Consultant, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or sub-consultant for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. Sub-consultants. The Consultant or sub-consultant shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the sub-Consultants to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any sub-consultant or lower tier sub-consultant 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 Consultant may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Consultant authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

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

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

Any rights of copyright purchased by the Purchaser or Consultant 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 Consultant 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 Consultant'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 Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant identifies that data in writing at the time of delivery of the contract work.

Unless determined otherwise, the Consultant 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 Consultant'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 Consultant 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 C.F.R. Part 401.

The Consultant 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 Consultant 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 Consultant'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 Consultant 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 C.F.R. Part 401.

The Consultant 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**

Consultant and sub-consultant 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 Consultant and sub-consultants 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 Consultant 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 Consultant 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:**

Consultant 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 Consultant 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.