

MULTI-JURISDICTIONAL REQUEST FOR PROPOSAL



**Bid Title: RFP No. 0706-21
Disaster Debris Clearing Services**

**Date of Issue: July 6, 2020
Proposals Due: July 27, 2020
Time: 4:00 pm**

**Issued for:
Pamlico County Government
302 Main Street
Bayboro, NC 28515
Phone: (252) 745-3133**

**Issued By:
Pamlico County Clerk to the Board
302 Main Street
Bayboro, NC 28515
Phone: (252) 745-3133**

If you have received this Request for Proposal from a source other than the Pamlico County Government, it is the responsibility of the bidder to ensure that all addenda have been received. Bidders should email the County Clerk to ensure that your company is added to the distribution list.

Email: courtney.norfleet@pamlicocounty.org

However, it is still the responsibility of the bidder to ensure that all addenda are received prior to submitting a bid/proposal.

July 6, 2020

RE: **Multi-jurisdictional Request for Proposals
Disaster Debris Clearing Services**

To Whom It May Concern:

The County of Pamlico is requesting proposals from qualified contractors to provide disaster debris clearance services in the event of a natural disaster within the area.

Pamlico County is located in the coastal plain region of North Carolina. The population of Pamlico County is approximately 13,000. The County consists of 400 square miles of area with approximately 6,000 housing units.

There are nine (9) incorporated municipalities within Pamlico County. They include: Alliance, Arapahoe, Bayboro, Grantsboro, Mesic, Minnesott Beach, Oriental, Stonewall, and Vandemere. Any or all of the incorporated municipalities may participate in the terms and conditions of the resulting contract. A memorandum of agreement may be executed following a disaster requesting Pamlico County complete the debris removal and disposal services within their (municipal) borders. The consultant will be prepared to perform services identified under the resultant contract in these municipalities following activation and specific guidance from the County following receipt of an executed Memorandum of Understanding. However, the same restrictions regarding Federal and State Highways, and Federal Aid Secondary Routes and private property restrictions will apply in the municipalities.

The award of a contract under this solicitation will be paid with federal funding. Funding is contingent upon compliance with all terms and conditions of funding award. All prospective contractors shall comply with all applicable federal laws, regulations, executive orders, FEMA requirements and the terms and conditions of the funding award. In addition, contractors providing submittals shall be responsible for complying with state law and local ordinances.

Attached you will find a "Request for Proposals" (RFP) which identifies the services to be undertaken.

In order to be considered, all proposals must be submitted in writing no later than **4:00 PM (EST) on July 27, 2020**. Contractors mailing proposal packages should allow delivery time to ensure timely receipt of their proposal. The responsibility for getting the proposal to the Pamlico County Manager's Office on or before the specified time and date is solely and strictly the responsibility of the proposing contractor. The County will in no way be responsible for delays caused by any occurrence. Proposals may be hand carried or mailed to:

**Pamlico County Manager's Office
Attention: Courtney L. Norfleet, Clerk to the Board
302 Main Street, Bayboro, NC 28515**

Hours of Operation: 8:00 a.m. - 5:00 p.m. (EST)

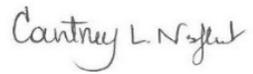
Monday through Friday

Phone: (252) 745-3133

Email: courtney.norfleet@pamlicocounty.org

The County of Pamlico reserves the right to waive any informalities and to reject any and all proposals.

Thank you,

A handwritten signature in cursive script that reads "Courtney L. Norfleet".

Courtney L. Norfleet, NCCCC
Pamlico County Clerk to the Board of Commissioners

Pamlico County, North Carolina
Request for Proposals
Disaster Debris Clearance Services

1.0 Introduction

The County of Pamlico (COUNTY) intends to enter into an agreement with a qualified firm, herein after referred to as Consultant to provide consulting services in preparation for natural disasters or other debris generating events. These services include, at no additional cost to the COUNTY, participation in annual workshops or planning meetings with COUNTY Representatives to establish or review applicable policies and procedures associated with disaster debris management and monitoring and provide the COUNTY with a half day training session on the most current FEMA 325 Public Assistance Debris Management Guide, FEMA 327, Public Assistance Debris Monitoring Guide, recent FEMA Fact Sheets , policy guides and FHWA Emergency Relief Program changes.

Pamlico County is located in the coastal plain region of North Carolina. The population of Pamlico County is approximately 13,000. The County consists of 400 square miles of area with approximately 6,000 housing units.

There are nine (9) incorporated municipalities within Pamlico County. They include: Alliance, Arapahoe, Bayboro, Grantsboro, Mesic, Minnesott Beach, Oriental, Stonewall, and Vandemere. Any or all of the incorporated municipalities may participate in the terms and conditions of the resulting contract. A memorandum of agreement may be executed following a disaster requesting Pamlico County complete the debris monitoring services within their (municipal) borders. The consultant will be prepared to perform services identified under the resultant contract in these municipalities following activation and specific guidance from the County following receipt of an executed Memorandum of Understanding. However, the same restrictions regarding Federal and State Highways, and Federal Aid Secondary Routes and private property restrictions will apply in the municipalities.

The resulting contract term will be for three (3) years with the option to extend the contract for two (2) additional one (1) year periods upon mutual agreement of both parties. Price adjustments for the resulting contract schedule rates will be considered prior to each of the two (2) renewal option years. The price adjustment shall not exceed the average of the Consumer Price Index for All Urban Areas during the twelve months prior to renewal or five (5%) percent, whichever is less. Consultant shall submit the requested price adjustments to the County’s designated contract administrator thirty days prior to the contract renewal date. All work set forth in the Scope of Work must be approved by personnel authorized by the County Manager to act as the “County Debris Manager” or the County Debris Manager’s authorized representative.

2.0 Desired Timetable

A.	RFP Issued	July 6, 2020
B.	Written Questions due	July 13, 2020 by 12:00 noon
C.	Responses to questions	July 21, 2020
D.	Submittals due	July 27, 2020 by 4:00 PM
E.	Evaluation period	July 28 – August 3, 2020
F.	Anticipated Contract Award	August 2020

3.0 Inquiries

All questions pertaining to this RFP must be submitted **in writing** no later than 12:00 PM on **July 13, 2020**.

Written questions should be emailed to: courtney.norfleet@pamlicocounty.org

Only written questions will be considered formal. **Any information given by telephone will be considered informal.** Any questions that the County feels are pertinent to all proposers will be issued in the form of an Addendum.

4.0 Submission of Proposals

- A. **Deadline:** Mail one (1) original hardcopy and submit one (1) electronic copy (pdf format) by email to courtney.norfleet@pamlicocounty.org Proposals shall be sealed and marked “**RFP# 0706-21, Disaster Debris Clearing Services.**” Sealed proposals must be received by **4:00 PM EST, on July 27, 2020** at the Office of the Pamlico County Clerk to the Board, 302 Main Street, Bayboro, NC 28515. The original hardcopy submittal and the electronic version must be received by the time and date stated above.
- B. **Addenda:** Each Proposer is responsible for determining that all addenda issued by Pamlico County has been received before submitting a proposal.
- C. **Identification:** The outside of the envelope should be marked “*RFP# 0706-21, Disaster Debris Clearing Services.*”
- D. **Time is of the essence:** Any proposal received after the announced time and date for submittal, whether by mail or otherwise, will be rejected. It is the sole responsibility of the contractor for ensuring that their proposal is received by the Clerk to the Board before the deadline indicated above. The County will in no way be responsible for delays caused by any occurrence.
- E. **Preparation of Response:** The contractor’s proposal should be prepared simply and economically and should provide all the information which it considers pertinent to its proposal and qualifications for the work to be performed. Proposals shall be submitted on the forms included with the bid documents. Any interlineations, alterations or erasures must be initialized by the signer of the proposal.
- F. **Propriety Information:** Trade secrets or proprietary information submitted by a proposer, in connection with a procurement transaction shall not be subject to the public disclosure under the Freedom of Information Act. However, the proposer or offeror 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 shall be identified in boldface at the top as "CONFIDENTIAL" in a font size of 14 or larger. Any section of the proposal that is to remain confidential shall also be so marked in boldface on the title page of that section along with each individual page within that section. Cost information and any other public information may not be deemed confidential; therefore, it is requested that only the necessary confidential pages be marked.
- G. **Binding:** Submittals must include the proposer’s bid certification form (contained within) signed by an authorized representative of the company to legally bind the offer. All proposals submitted without such signature may be deemed non-responsive.
- H. **Miscellaneous:** Nothing herein is intended to exclude any responsibilities or in any way restrain or restrict competition. All contractors are encouraged to submit proposals. The County of Pamlico reserves the right to waive any informalities and to reject any and/or all proposals. In addition, the County reserves the right to cancel a solicitation at any time prior to the award of a contract.

- I. **Bonds:** In accordance with to 2 CFR 200.325, bonding requirements are as follows:

Bid Bond: A bid guarantee equivalent to five percent (5%) of the bid price is required from each Bidder. The “bid guarantee” can be in the form of an *original bid bond* or a *certified check* payable to Pamlico County. Bid bonds shall be submitted with the proposal in the amount of five (5%) percent of the total proposed bid amount based on Schedule 1. Failure to submit a bid bond in the amount of 5% will deem the bid invalid.

Failure of the successful proposer to execute a contract and furnish evidence of appropriate insurance coverage, as provided herein, within 15 days after written notice of award has been given, shall be just cause for the annulment of the award and the forfeiture of the bid bond to the County, which forfeiture shall be considered, not as a penalty, but as liquidation of damages sustained.

5.0 General

- A. **Time for Consideration:** The County shall have a period of ninety (90) calendar days from due date of the proposals in which to award the contract. The Proposer shall be bound by their proposal during that time. A company may withdraw a proposal by written request prior to the date and time of the proposal opening or after the 90-day time for consideration if a contract has not been awarded.
- B. **Evaluation of Submittals:** Evaluation factors have been identified Section 6. “*Proposal Requirements.*” Proposals will only be evaluated on the factors included within this RFP. A committee will evaluate all responses received by scoring them on the weighted system provided.

The evaluation committee will be comprised of county personnel to include the Director of Emergency Services, Finance Officer, and Public Services Director. Additional committee members may include the County’s independent Consultant for monitoring and oversight.

- C. **Contract Award:** The County intends to enter into two (2) contracts: one with a “Primary” contractor and the other with a “Secondary” contractor. The “Primary” contractor will be on a first contact basis for all disasters and emergencies that may require debris removal, reduction, disposal or other cleanup activities. The “Secondary” contractor will serve as a backup to the Primary for any disaster or emergency that may be of a scale larger than one contractor would be capable and equipped to handle.

Award shall be made to the contractors whose qualifications are determined to be the most advantageous to the County, taking into consideration the contractor’s qualifications, experience, mobilization and operational plans, and the rate schedule. Estimated quantities (determined by the County) will be used in the evaluation of the unit rate price schedule.

Consideration shall also be given to the company’s integrity, compliance with public policy, record of past performance, references, and financial and technical resources.

- D. **Contract Term:** The contracts shall be for a base period of three (3) year with an option to renew for up to two additional one-year periods, upon written mutual consent of all parties. This contract shall only be used on an “as needed” basis as determined solely by Pamlico County.
- E. **Contracting with small and minority businesses, women’s business enterprises, and labor surplus area companies:** The County of Pamlico encourages all businesses, including minority, women-owned businesses to respond to all Request for Proposals. In addition, if subcontracts are let, the awarded contractor must ensure that the necessary affirmative steps are taken:
 - a. Place qualified small, minority, and woman-owned businesses on solicitations lists;
 - b. Assure that such businesses are solicited when they are potential sources;
 - c. Divide total requirement, when economically feasible, into smaller tasks or quantities to permit maximum participation by such businesses;
 - d. Establish delivery schedules, where requirements permit, which encourage such businesses to

respond;

- e. Use service and assistance from such organization as SBA, minority business development agency of the Dept. of Commerce;

Contractors shall include these special provisions in all subcontracts for this contract. Failure on the part of the Contractor to carry out the requirements set forth in the special provision may constitute a breach of contract and after proper notification may result in termination of the contract or other appropriate remedy.

- F. **Activation of Contract.** Should the contracts be activated, fees will be estimated based off the initial assessment of damages occurred.

- G. **Funding Source:** 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 Contractor(s) shall comply with all applicable federal laws, regulations, executive orders, FEMA requirements and the terms and conditions of the funding award.

- H. **Compliance by Awarded Contractor:** The awarded contractors shall comply with all applicable federal laws, regulations, executive orders, FEMA requirements, specifically 2 CFR, Part 200, and the terms and conditions of the funding award. In addition, contractors providing submittals shall be responsible for complying with state law and local ordinances.
- I. **Certification of Proposer Regarding Debarment.** By submitting a proposal under this solicitation, the Contractor certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

6.0 **Proposal Requirements**

In order to evaluate responses efficiently and equitably, responses must be submitted as identified below. Failure to submit this information may render your proposal non-responsive. Each respondent shall provide the following company information:

Section 1: Introduction: Company Information

- Company name and business address, including telephone, email address, website address.
- The type of company (individual, partnership, corporation, etc.) and list the names of all partners, principals, etc.
- Year established. Include former company name(s) and year(s) established, if applicable.
- The name, title, address, and telephone number of the company's authorized negotiator. The person identified must be empowered to make binding commitments for the company.

Section 2: Bonding

- Original Bid Bond or Certified Check

Section 3: Technical experience (*Weighted)

- This section shall include contractor's debris volume estimates with backup documentation as to how the contractor determined its estimates.

Section 4: Qualifications: Training and professional experience (*Weighted)

- List any professional training and experience, especially in relation to the type and magnitude of work required for the particular scope of services.
- Provide a copy of contractor's safety program. This may be provided under separate cover or provide a link to access this information. If a link is not provided, this manual will **NOT** count towards the limit of pages for your proposal since it is being requested under separate cover.

Section 5: Existing Contracts

- Provide a list of all *existing* debris clearance contracts

Section 6: References (*Weighted)

- References from existing contracts and/or past clients (must include references from the successful completion of three (3) debris clearance projects in excess of 100,000 cu yds.

Section 7: Financial Resources (*Weighted)

- A copy of the most recently audited financial statement or Dun and Bradstreet statement if sole proprietor. **This page should be marked as “Confidential”**

Section 8: Resources (*Weighted)

- Detailed listing of Contractor’s equipment and resources
- A debris management and response plan (mobilization and operations plan)

Section 9: Drawings

- Not applicable for this solicitation

Section 10: Forms

- Schedule 1 – Hourly Equipment and Labor Price Schedule (on provided forms)
- Non-Collusion Affidavit (on provided form) **MUST BE NOTARIZED**
- Proposer’s Bid Certification Form (on provided form) **MUST BE NOTARIZED**
- Certification Regarding Debarment and Suspension (on provided form)
- Certification Regarding Lobbying (on provided form)

Section 11: Exceptions (*Weighted)

- **Exceptions to the *Sample Service Agreement*.** Attached is a sample service agreement that describes the County’s contractual terms and conditions. Each successful contractor will be required to enter into a service agreement. Any exceptions to the terms and conditions of the Service Agreement **must be documented** and submitted in this Section.
- **Exceptions to the Scope of Services.** Any and all exceptions/deviations to the required Scope of Services shall be documented on a separate page and submitted in this Section.
- **Litigation.** Information concerning any pending, ongoing, or prior litigation within the last 10 years.

Section 12: Other Requirements (*Weighted)

- A statement of the contractor’s familiarity and experience with FEMA’s Public Assistance Program including all Alternative Procedures Pilot Program’s for Debris Removal and applicable laws, rules, and regulations.
- Shall outline the contractor’s willingness and ability to utilize local contractors and their general requirements for doing so. This includes the contractor’s use of women and minority owned businesses to provide services.

CRITERIA FOR EVALUATION AND AWARD

The successful Proposer will be selected based upon the best overall proposal offered to the County taking into consideration price, qualifications, technical experience, and other factors such as, but not limited to, past experience working with FEMA's Public Assistance Program, financial standing, references, and any Exceptions to the Scope of Work and Contract terms. The County will use the following criteria and weight to determine the best response.

CRITERIA	WEIGHT
Price	50%
Qualifications/Resources	30%
Technical	10%
Other	10%

7.0 County's Consultant

The County may contract with an independent firm to provide professional consulting services in disaster management and recovery. The Consultant will assist the County in disaster debris monitoring in the event a contract is activated. In addition, the Consultant will oversee the project and ensure that the contractors are using the appropriate forms required by federal agencies.

8.0 Payment

The County Debris Manager will monitor, verify, and document with agreed upon documentation the completion of all work, as defined in the scope. The Contractor will be provided with copies of this documentation. These documents will be used by the Contractor as back-up for invoice submittals. No approvals will be made for work not ticketed or not authorized by the County.

Invoices must be submitted to the County with a hard copy of the invoice and an electronic copy of the invoice detail. County records are the basis of all payment approvals.

A 10% retainage will be held until the end of the project. In order to recover the retainage, the Contractor must successfully complete all work zones. Retainage will be held until final reconciliation is complete. Portions of the retainage may be held by the County to repair damages caused by the Contractor to public or private property.

No separate payment will be made for mobilization and demobilization operations. These costs are to be included in the respective unit prices bid for debris removal and will not be adjusted based on the total amount of debris actually removed in the contract.

Contractors must submit invoices regularly by the end of each month for services performed. Invoices cannot be turned in for more than a 30-day period. Contractor must submit final invoice within thirty (30) days of completion of scope of work. Completion of scope of work will be acknowledged, in writing, by the County Debris Manager.

11. SCOPE OF WORK

General: Work shall consist of clearing any and all *eligible* debris as defined by Federal Emergency Management Agency (“FEMA”) Publication 325, all applicable State and Federal Disaster Specific Guidance (“DSG”) and policies, and as directed by the County Debris Manager. Work

While intended for debris clearance after any disaster, the primary focus for this work is debris generated by tropical weather (storms/hurricanes). To provide a non-committal estimate of potential contract scope, the U.S. Army Corps of Engineers “Hurricane Debris Estimating Model” found in Appendix B to FEMA 325, Public Assistance Debris Management Guide (<http://www.fema.gov/pdf/government/grant/pa/demagde.pdf>), was used to predict debris amounts for a Category 3-4 hurricane.

All costs associated with the documentation and recovery process shall be included in Contractor’s pricing in the *Schedule* attached. Proposers shall have proven experience with overall management and FEMA requirements including alternative procedures that may be available under pilot programs as well as all rules and regulations to qualify for this scope of work.

Any and all permits that are necessary for the project will be the contractor’s responsibility to obtain in a timely manner.

Contractor should adhere to applicable FEMA and other federal policies in place at the time of contract activation. **Contracts funded with federal grant or loan funds must be procured in a manner that conforms with all applicable Federal laws, policies, and standards, including those under the Uniform Guidance (2 CFR Part 200).**

Description of Designated Area: The designated area for debris removal is bounded by the County limits of the County and includes all public right-of-way's (ROWs), easements, County parks, alleys, and County debris staging areas within the unincorporated areas of the County. Roadways in the municipalities within the County may assign debris removal responsibilities to the County. Debris removal performed on these municipal roadways will be performed as identified by the County Debris Manager.

North Carolina Department of Transportation (NCDOT) will have primary responsibility for vegetative, construction and demolition debris (C&D) and sand clearance efforts of Federal and State Highways, Federal Aid Secondary Routes and non-Federal Aid Secondary Routes. Through Memorandum of Agreement with NCDOT, Pamlico County can request release of these routes and assume responsibility for debris clearance and apply for reimbursement. Therefore, upon directive from County Manager, the Contractor must be prepared to clear debris from these routes within the limits of the Pamlico County. A list of these routes, if any, will be made available to the contractor following formal agreement of responsibility with NCDOT.

Through conversation with the municipalities of Alliance, Arapahoe, Bayboro, Grantsboro, Mesic, Minnesott Beach, Oriental, Stonewall, and Vandemere, a memorandum of agreement may be executed following a disaster requesting Pamlico County complete debris clearance activities within their borders. Contractor will be prepared to clear vegetative, C&D debris, and other eligible debris in these municipalities following activation and specific guidance from the County following receipt of an executed Memorandum of Understanding. However, the same restrictions regarding NCDOT Routes and private property restrictions will apply in the municipalities.

All debris identified by the County Debris Manager shall be cleared. The Contractor shall not move from one designated work area to another designated work area without prior approval from the County or its representative. The Contractor shall not enter onto private property during the performance of this contract unless specifically authorized by the County Debris Manager, in writing. No FEMA ineligible debris shall be cleared from the designated area.

Contractor will provide an on-site Project Manager to the County and the County Debris Manager. The Project Manager shall provide a telephone number to the County with which he or she can be reached for the duration of the project. The Project Manager will be expected at daily meetings with the County Debris Manager and/or County Debris Manager representatives.

Documentation and Measurement:

Contractor is responsible for ensuring that all subcontractors maintain valid driver's licenses and equipment legally fit for travel on the road.

The Contractor shall designate one project manager. The representative shall provide a telephone number to the County with which he or she can be reached throughout the duration of the project.

Equipment: All trucks and other equipment must be in compliance with all applicable federal, state, tribal, and local rules and regulations. Any truck used to haul debris must be capable of rapidly dumping its load without the assistance of other equipment, be equipped with a tailgate that will effectively contain the debris during transport and permit the truck to be filled to capacity.

Equipment used under this contract shall be rubber-tired and sized properly to fit loading conditions. Excessive size equipment (100 CY and up) and non-rubber-tired equipment must be approved for use on the road by the County Debris Manager.

Use of Local Resources: The Contractor shall give first priority to utilizing resources located within the disaster or emergency area.

Working Hours: Monday through Saturday, the contract hours shall be 7:00 AM through 7:00 PM. The contract hours shall be 1:00 PM through 7:00 PM on Sunday. No work outside these hours shall be allowed unless approved in advance by the County.

Safety: Contractor shall be solely responsible for providing and maintaining a safe work environment at all work sites. Contractor shall take all reasonable steps to ensure safety for both workers and visitors to the site(s) to include traffic control. Contractor will also be solely responsible to ensure that all OSHA requirements are met and a safety officer is assigned to the project during the duration of this contract. All work shall be accomplished in a safe manner in accordance with EM 385-1-1 (U.S. Army Corps of Engineers, Safety and Health Requirements).

Traffic Control: The Contractor shall be responsible for control of pedestrian and vehicular traffic in the work area. The Contractor shall mitigate impact on local traffic conditions to all extents possible. The Contractor is responsible for establishing and maintaining appropriate traffic control in accordance with the latest Manual of Uniform Traffic Control Devices. The Contractor shall provide sufficient signing, flagging and barricading to ensure the safety of vehicular and pedestrian traffic at all debris removal, reduction and/or disposal site(s). All barricades, warning signs, lights, temporary signals, other protective devices, flagmen and signaling devices used under the performance of this work shall conform to the minimum requirements as set out in the Manual on Uniform Traffic Control Devices for Streets and Highways, Part VI, prepared by the National Joint Committee on Uniform Traffic Control Devices.

Contractor shall provide qualified flagmen where necessary to direct the traffic and shall take all necessary precautions for the protection of the work, and the safety of the public.

Work Safety: The Contractor shall provide and enforce a safe work environment as prescribed in the Occupational Safety and Health Act of 1970, as amended. The Contractor will provide such safety equipment, training and supervision as may be required by Pamlico County. The Contractor shall ensure that its subcontracts contain a similar safety provision.

The Contractor shall supervise and direct the work, using skilled labor and proper equipment for all tasks. Safety of the Contractor's personnel and equipment is the responsibility of the Contractor to include maintaining all OSHA safety records and inspections as may be required for this type of service. Additionally, the Contractor shall pay for all materials, personnel, taxes, and fees necessary to perform under the terms of this contract.

As applicable, the Contractor shall be responsible for installing site security measures and maintaining security for the operation at the site.

The Contractor shall be responsible for fire protection and shall manage the site to minimize the risk of fire.

Damage to Public or Private Property: Contractor is responsible for all damage, injury, or loss to any private or public property caused by the Contractor's debris clearance activities/operations.

Existing Utilities: Some trees and debris which are to be cleared under this contract may be blocked or entangled with overhead power, telephone, and television cables. In this case, it shall be Contractor's responsibility to coordinate directly with the utility owners to arrange for the clearance of the debris without damage to the overhead utility lines. Contractor shall pay all such costs to the utility company for any adjustments for damages caused by Contractor's debris clearance activities/operations. Work crews must coordinate with local utility companies to have power lines de-energized for safety reasons.

Contractor shall make the necessary repairs or pay all costs incurred to repair damaged utilities, as determined by the affected utility company. Repairs to all County-owned water and sewer facilities shall be made by the Contractor.

The following is a list of utility owners believed to have facilities in the project area:

Pamlico County Water Department	(252) 745-5453
Bay River Metropolitan Sewerage District	(252) 745-4812
Duke Energy Progress	(800) 452-2777
Tideland Electric Membership	(800) 637-1079

This list is included for the Contractor's reference and is not intended to be a comprehensive list of all utility owners.

Environmental Protection: All chemicals of whatever nature used during project construction or furnished for project operation must show EPA or USDA approval certification. Their use and disposal of all residues shall be in strict compliance with instructions.

The Contractor shall, at its own expense, ensure that noise and dust pollution is minimized to comply with all local and state ordinances and the approval of the County Debris Manager. Contractor shall comply in a timely manner with all directions of the County Debris Manager regarding the use of a water truck or other approved dust abatement measures.

The Contractor shall comply with all laws, rules, regulations and ordinances regarding environmental protection.

A. Debris Clearance

County will identify critical routes and facilities that are essential to emergency operations and resumption of critical services and prioritize routes and facilities to be clear. Contractor will clear the identified critical route(s)/facilities by moving debris to the shoulders of the road. There is no attempt to physically remove or dispose of the debris, only to clear key access routes. Special crews equipped with chain saws may be required to cut up downed trees.

Schedule 1– Hourly Equipment and Labor Price Schedule - Page 1 of 1

***** For services rendered during the first seventy (70) hours. *****

The first seventy (70) hours of service under this contract shall be for emergency road clearance only. The hourly equipment rate provided below **shall include the cost of labor for the operator.**

Equipment Type	Hourly Equipment Rate
Bobcat Loader or similar	
Bucket Truck w/Operator	
Crash Truck w/Impact Attenuator	
Dozer, Tracked, D5 or similar	
Dozer, Tracked, D6 or similar	
Dozer, Tracked, D7 or similar	
Dozer, Tracked, D8 or similar	
Dump Truck, 18 CY-20 CY	
Dump Truck, 21 CY-30 CY	
Generator and Lighting	
Grader w/12' Blade	
Hydraulic Excavator, 1.5 CY	
Hydraulic Excavator, 2.5 CY	
Knuckleboom Loader	
Lowboy Trailer w/Tractor	
Mobile Crane (Adequate for hanging limbs/leaning trees)	
Pickup Truck, .5 Ton	
Truck, Flatbed	
Water Truck	
Wheel Loader, 2.5 CY, 950 or similar	
Wheel Loader, 3.5 – 4.0 CY, 966 or similar	
Wheel Loader, 4.5 CY, 980 or similar	
Wheel Loader-Backhoe, 1.0 – 1.5 CY	
Laborer, with hand tools (i.e. shovels, axes, rakes, traffic control flags, etc...	
Chainsaw, not less that 16' bar, w/operator	
Other – Please list	

CURRENT PAMLICO COUNTY SOLID WASTE FEES

252-745-4149

www.pamlicocounty.org

Tipping fees will NOT be waived.

LANDFILL (*state disposal tax fee @ \$2.00 per ton will be additional to the tonnage fees below*)

*Municipal Solid Waste & Household trash	\$ 50.50 per ton (Includes furniture)
*Construction & Demolition	\$ 50.50 per ton
Wood Pallets	\$ 27.50 per ton
Vehicle Weigh-ins	\$ 25.00 each
Yard Waste/Vegetative Debris	\$ 30.00 per ton

RECYCLING

NO CHARGE

ELECTRONIC RECYCLING

NO CHARGE

Television & Computer Monitors

Tires

NO CHARGE

Tires off rims

NON-COLLUSION AFFIDAVIT

Proposal Request No. 0706-21

State of North Carolina
County of Pamlico

_____ (name of individual), being first duly sworn, deposes and says that:

1. He/She is the _____ (title) of _____ (company name), the proposer that has submitted the attached proposal;
2. He/She is fully informed respecting the preparation and contents of the attached proposal and of all pertinent circumstances respecting such proposal;
3. Such proposal is genuine and is not a collusive or sham proposal;
4. Neither the said proposer 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 proposer firm or Person to submit a collusive or sham proposal in connection with the contract for which the attached proposal has been submitted or to refrain from proposing 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 proposer, firm or person to fix the price or prices in the attached proposal or of any other proposers, or to fix any overhead, profit or cost element of the proposal price of the proposal of any other proposer or to secure through collusion, conspiracy, connivance or unlawful agreement any advantage against the County of Pamlico or any person interested in the proposed contract; and
5. The price or prices quoted in the attached proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the proposer or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

Signature

Title

Date: _____

Seal
if
Corporation

This form must be notarized

SUBSCRIBED AND SWORN TO BEFORE ME,

This _____ day of _____, 2020

Notary Public _____

My Commission Expires: _____

CERTIFICATION REGARDING LOBBYING

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

This certification requirement applies to all FEMA grant and cooperative agreement programs. Contractors that apply or bid for an award of \$100,000 or more shall file the required certification required by 49 CFR Part 20, “New Restrictions on Lobbying.” Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose the name of any registrant under the Lobby Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the County.

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

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31,

U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

Signature of Contractor’s Authorized Official

Printed Name and Title of Contractor’s Authorized Official

Date: _____

PROPOSER'S BID CERTIFICATION FORM

To Whom It May Concern:

I have carefully examined the Request for Proposal and any other documents accompanying or make a part of this Request for Proposal.

I hereby propose to perform the following Services as specified in this Request for Proposal No. 0706-21 at the rates described on **SCHEDULE 1 – HOURLY EQUIPMENT AND LABOR PRICE SCHEDULE**. certify that all information contained in this proposal is truthful to the best of my knowledge and belief. I further certify that I am duly authorized to submit this proposal on behalf of the company as its act and deed and that the company is ready, willing and able to perform if awarded the contract.

I further certify, under oath, that this proposal is made without prior understanding, agreement, connection, discussion, or collusion with any other person, firm or corporation submitting a proposal for the same product or service; no officer employee or agent of the County of Pamlico or any other proposer is interested in said proposal; and that the undersigned executed this Proposer’s Certification with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The Contractor will comply with all applicable federal laws regulations, executive orders, FEMA policies, procedures, and directives.

It is distinctly understood that the County reserves the right to reject any or all proposals.

Company Name

Federal Tax ID: _____

Authorized Signature

Phone: _____

Printed or Typed Name and Title

Fax: _____

Email: _____

Mailing Address

NOTARIZE

Subscribed and sworn to before me this _____

City/State/Zip Code

day of _____, 2020

Notary Public _____

My Commission expires: _____

(SEAL, if Corporation)

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

The Use of any Contractor that has been declared debarred by the office of Federal Contract Compliance Programs (OFCCP) is prohibited. Further the use of subcontractor(s) that has been declared debarred by OFCCP is prohibited. A complete list of federally disbarred contractors can be found at www.sam.gov. It is the sole responsibility of the Contractor to ensure that subcontractor(s) are in good standing with the OFCCP and not on the disbarment list.

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

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

Should the applicant not be able to provide this certification, an explanation as to why should be placed after the assurances page in the application package.

The applicant agrees by submitting the proposal that it will include, without modification, the clause titled "Certification Regarding Debarment, Suspension, in eligibility, and Voluntary Exclusion-Lower Tier Covered Transactions" in all lower tier covered transactions (i.e., transactions with sub-grantees and/or contractors) and in all solicitations for lower tier covered transactions.

 Signature (Seal if Corporation)

 Title

Date: _____

NOTARIZE

SUBSCRIBED AND SWORN TO BEFORE ME,
This _____ day of _____, 2020

NOTARY PUBLIC _____

My Commission Expires: _____

SERVICE AGREEMENT

The awarded Contractor will be required to enter into a contract issued by the County. Any exceptions to the terms of this Agreement or additional terms must be included as requested “6.0 Proposal Requirements” Section 11.

THIS CONTRACT is made, and entered into this the ____ day of _____, 2020 by and between the **COUNTY OF PAMLICO**, a political subdivision of the State of North Carolina, (hereinafter referred to as “COUNTY”), and _____ a corporation duly authorized to do business in the State of North Carolina, (hereinafter referred to as “CONTRACTOR”).

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

- 1. SCOPE OF SERVICES.** CONTRACTOR hereby agrees to provide the services and/or materials under this Contract pursuant to the provisions and specifications identified in Request for Proposal #0706-21 issued July 2020 and Attachment 1 “Scope of Services” (hereinafter collectively referred to as “Services”) and Attachment 2 “Federal Contracting Requirements.” Request for Proposal 0706-21, Attachments 1, and Attachment 2 are hereby incorporated herein and made a part of this Contract. **Work will commence only upon a County issued Notice to Proceed** in the event of a natural disaster. Time is of the essence with respect to all provisions of this Contract that specify a time for performance.
- 2. TERM OF CONTRACT.** The Term of this Contract for Services is from _____ to _____ unless sooner terminated as provided herein.
- 3. ACTIVATION OF CONTRACT.** Should activation of a contract become necessary, the COUNTY and CONTRACTOR will negotiate a “Not to Exceed” amount for the services required within this Agreement. This Contract is deemed activated upon the agreement of a Not to Exceed Price and execution of this Contract.
- 4. PAYMENT TO CONTRACTOR.** The Contractor shall receive from COUNTY the amounts set forth in Schedule 1 “**HOURLY EQUIPMENT AND LABOR PRICE SCHEDULE.**” for services rendered under this contract during the initial 70-hour period for the Scope of Services. Where incremental billings for partially completed Work is permitted, the total incremental billings shall not exceed the percentage of estimated completion as of the billing date. The Unit Price provided in Schedule 1 shall include the cost of equipment and labor.

CONTRACTOR shall receive from COUNTY an amount not to exceed _____ (\$_____) as full compensation for the provision of Services. 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 Clerk to the Board. 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 CONTRACTOR shall begin work immediately following issuance of a written Notice to Proceed. All services shall be completed in accordance with the project schedule associated with the Notice to Proceed.

6. **INVOICES.** CONTRACTOR 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: Bill Fentress
Pamlico County Finance Officer
302 Main Street
Bayboro, NC 28515

7. **RETAINAGE.** A 10% retainage will be held until the end of the project. In order to recover the retainage, the Contractor must successfully complete, and receive a letter of completion from the County, for all work zones. Retainage will be held until final reconciliation is complete. Portions of the retainage may be held by the County to repair damages caused by the Contractor to public or private property.
8. **INDEPENDENT CONTRACTOR.** COUNTY and CONTRACTOR agree that CONTRACTOR is an independent contractor and shall not represent itself as an agent or employee of COUNTY for any purpose in the performance of CONTRACTOR's duties under this Contract. Accordingly, CONTRACTOR shall be responsible for payment of all federal, state and local taxes as well as business license fees arising out of CONTRACTOR's activities in accordance with this Contract. For purposes of this Contract taxes shall include, but not be limited to, Federal and State Income, Social Security and Unemployment Insurance taxes.

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

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

In addition, CONTRACTOR shall comply with the North Carolina Workers' Compensation Act and shall provide for the payment of workers' compensation to its employees in the manner and to the extent required by such Act. Contractor shall also maintain Employers' Liability insurance limits of not less than \$1,000,000 per accident and

\$1,000,000 each employee for injury by disease. Additionally, CONTRACTOR shall maintain, at its expense, the following minimum insurance coverage:

\$1,000,000 per occurrence /\$2,000,000 aggregate --- Bodily Injury Liability, and
\$1,000,000 – per occurrence/\$1,000,000 annual aggregate - Commercial General Liability
\$100,000 --- Property Damage Liability, or
\$1,000,000 per occurrence /\$2,000,000 aggregate---Combined Single Limit Bodily Injury and
Property Damage

The CONTRACTOR shall maintain during the life of this contract automobile/vehicle liability insurance. Such coverage shall be written on a comprehensive form covering owned, non-owned and leased vehicles. Unless otherwise specified, this coverage shall be written providing liability limits at least in the amount of \$1,000,000.

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

- 10. LICENSURE, CERTIFICATION, AND REGISTRATION OF PERSONNEL.** All personnel provided or made available by CONTRACTOR to render services hereunder shall be licensed, certified or registered, as appropriate, in their respective areas of expertise as required by applicable North Carolina law.
- 11. CONFIDENTIALITY.** All data and information, both written and verbal, furnished to CONTRACTOR by COUNTY shall be regarded as confidential, shall remain the sole property of COUNTY and shall be held in confidence and safekeeping by CONTRACTOR for the sole use of the parties and CONTRACTOR under the terms of this Agreement. CONTRACTOR agrees that its officers, employees and agents will not disclose to any person, firm or entity other than COUNTY or COUNTY'S designated legal counsel, accountants or practice management consultants any information about COUNTY, its practice or billing.
- 12. HEALTH AND SAFETY.** CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs required by OSHA and all other regulatory agencies while providing Services under this Contract. Contractor shall assign a safety officer to the project for the duration of the contract.
- 13. NON-DISCRIMINATION IN EMPLOYMENT.** CONTRACTOR shall not discriminate against any employee or applicant for employment because of age, sex, race, creed, national origin, or disability. CONTRACTOR shall take affirmative action to ensure that qualified applicants are employed and that employees are treated fairly and legally during employment with regard to their age, sex, race, creed, national origin, or disability. In the event CONTRACTOR is determined by the final order of an appropriate agency or court to be in violation of any non- discrimination provision of federal, state or local law or this provision, this Contract may be canceled, terminated or suspended in whole or in part by COUNTY, and CONTRACTOR may be declared ineligible for further COUNTY contracts.
- 14. GOVERNING LAW.** This Contract shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this Contract shall be brought in the General Court of Justice in the County of Pamlico and the State of North Carolina.
- 15. TERMINATION OF CONTRACT.** Termination of this Contract shall be in accordance with the Termination Clause contained in Attachment 2.
- 16. SUCCESSORS AND ASSIGNS.** CONTRACTOR shall not assign its interest in this Contract without the written consent of COUNTY. CONTRACTOR has no authority to enter into contracts on behalf of COUNTY.
- 17. COMPLIANCE WITH LAWS.** CONTRACTOR represents that it is in compliance with all Federal, State, and local laws, regulations or orders, as amended or supplemented. The implementation of this Contract shall be carried out in strict compliance with all Federal, State, or local laws.

- 18. **DISPUTE RESOLUTION.** CONTRACTOR 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 CONTRACTOR and the COUNTY, all litigation shall be commenced in the appropriate division of the General Court of Justice in Pamlico County, North Carolina.
- 19. **E-VERIFY.** As a condition of payment for services rendered under this agreement, CONTRACTOR shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Further, if CONTRACTOR provides the services to the County utilizing a subcontractor, CONTRACTOR shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes as well. CONTRACTOR shall verify, by affidavit, compliance of the terms of this section upon request by the County.
- 20. **IRAN DIVESTMENT ACT.** CONTRACTOR certifies that they are not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 143-6A-4. Individuals or companies on the Final Divestment List are ineligible to contract or subcontract with Local Government Units. (G.S. 143C-6A-6(a).) It is the responsibility of each vendor or contractor to monitor compliance with this restriction. Contracts valued at less than \$1,000.00 are exempt from this restriction.
- 21. **DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL.** The CONTRACTOR certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. 147-86.81. It is the responsibility of each CONTRACTOR to monitor compliance with this restriction. Contracts valued at less than \$1,000.00 are exempt from this restriction.
- 22. **GOOD STANDING WITH COUNTY.** CONTRACTOR certifies that it is not delinquent on any taxes, fees, or other debt owed by CONTRACTOR to COUNTY. CONTRACTOR covenants and agrees to remain current on any taxes, fees, or other debt owed by CONTRACTOR to COUNTY during the Term of this Contract.
- 23. **NOTICES.** All notices which may be required by this contract or any rule of law shall be effective when received by certified mail sent to the following addresses:

COUNTY OF PAMLICO
Pamlico County
302 Main Street / PO Box 776
Bayboro, NC 28515

CONTRACTOR
Attn: _____
Address: _____
City/State/Zip _____

- 24. **ACCESS AND AUDIT RIGHTS.** CONTRACTOR 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 CONTRACTOR’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.
- 25. **RECORDS RETENTION AND REVIEW.** The CONTRACTOR shall retain all records pertaining to the services and the contract for these services and make them available to the COUNTY for a period of seven (7) years following receipt of final payment for the services referenced herein. Final payment may be payment of any retention for the services.

- 26. ANNUAL APPROPRIATIONS AND FUNDING.** This Agreement may be subject to the annual appropriation of funds by the Pamlico 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 CONTRACTOR shall comply with all applicable federal laws, regulations, executive orders, FEMA requirements and the terms and conditions of the funding award.
- 27. SAFETY.** CONTRACTOR and its employees will observe the posted safety requirements of the COUNTY and those required by law. CONTRACTOR is responsible for the safety of its employees at all times while on the COUNTY's premises.
- 28. COUNTY NOT RESPONSIBLE FOR EXPENSES.** COUNTY shall not be liable to CONTRACTOR for any expenses paid or incurred by CONTRACTOR, unless otherwise agreed in writing.
- 29. EQUIPMENT.** CONTRACTOR shall supply, at its sole expense, all equipment, tools, materials, and/or supplies required to provide Services hereunder, unless otherwise agreed in writing.
- 30. COUNTY'S RIGHT TO CARRY OUT WORK.** If the CONTRACTOR defaults or neglects to carry out the work in accordance with the contract documents and fails within a seven-day period after receipt of written notice from the COUNTY to commence and continue correction of such default or neglect with diligence and promptness, the COUNTY may, after such seven-day period, without prejudice to other remedies, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due to the Contractor the cost of correcting such deficiencies, including compensation for the COUNTY's additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due to the CONTRACTOR are not sufficient to cover such amounts, the CONTRACTOR shall pay the difference to the COUNTY.
- 31. ENTIRE CONTRACT.** This Contract shall constitute the entire understanding between COUNTY and CONTRACTOR and shall supersede all prior understandings and agreements relating to the subject matter hereof and may be amended only by written mutual agreement of the parties.
- 32. HEADINGS.** The subject headings of the sections are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Contract shall be deemed to have been drafted by both parties and no interpretation shall be made to the contrary.
- 33. EXISTENCE.** CONTRACTOR warrants that it is a corporation duly organized, validly existing, and in good standing under the laws of the State of North Carolina and is duly qualified to do business in the State of North Carolina and has full power and authority to enter into and fulfill all the terms and conditions of this contract.
- 34. CORPORATE AUTHORITY.** By execution hereof, the person signing for CONTRACTOR below certifies that he/she has read this Contract and that he/she is duly authorized to execute this Contract on behalf of the CONTRACTOR.
- 35. WRITTEN NOTICE TO PROCEED.** The COUNTY shall issue an official written Notice to Proceed for the services referenced in this contract. Under no circumstances shall the COUNTY be liable for any services rendered unless the written Notice to Proceed has been sent and received by the CONTRACTOR. CONTRACTOR must acknowledge receipt of the written Notice to Proceed.

36. AMENDMENTS. This contract shall not be modified or otherwise amended except in writing signed by authorized personnel on behalf of both parties. All Amendments shall be in writing. Oral changes are expressly prohibited and will not be recognized.

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

Reviewed by Department Head

Date Reviewed: _____

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

Pamlico County Finance Officer

CONTRACTOR

By: _____
Printed Name: _____
Title: _____

PAMLICO COUNTY

By: _____
Printed Name: _____
Title: _____

ATTACHMENT 1” to follow

ATTACHMENT 1
Scope of Services

Pamlico County Request for Proposal No. 0706-21, Amendment #____dated_____, 2020 is 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 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.

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

To the extent possible, the federal requirements contained in the most recent version of the Uniform Administrative Requirements for federal awards (Uniform Rules) codified at 2.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 County of Pamlico or pass through entity in accordance with federal policy.

Mandatory Disclosures

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

Energy Conservation

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

The Contractor agrees to include 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 County immediately upon discovery. The Contractor understands and agrees that the County will, in turn, report each violation as required to assure notification to the County, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency (EPA) Regional Office. 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 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 Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

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

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

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

No Obligation by Federal Government

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

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance. It is further agreed that the clause shall not be modified, except to identify the 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 County may immediately terminate this Agreement at any time without cause by giving written notice to the Contractor.

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

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

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

The other party ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy or has an involuntary bankruptcy

petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Agreement shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of other party's assets or properties.

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

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

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

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

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

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

Obligations Upon Expiration or Termination. Upon expiration or termination of this Agreement, the Contractor shall promptly (a) return to the County all computer programs, files, documentation, data, media, related material and any other recording devices, information, or compact discs that are owned by the County; (b) deliver to the County all Work Product; (c) allow the County or a new 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 County all pre-paid sums for Products or Services that have been cancelled and will not be delivered.

No Suspension. In the event that the County disputes in good faith an allegation of default by the Contractor, notwithstanding anything to the contrary in this Agreement, the Contractor agrees that it will not terminate this Agreement or suspend or limit the delivery of Products or Services or any warranties or repossess, disable or render unusable any Software supplied by the Contractor, unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise.

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

Audit. During the term of the Agreement and for a period of one (1) year after termination or expiration of this Agreement for any reason, the County shall have the right to audit, either itself or through a third party, all books and records

(including but not limited to the technical records) and facilities of the Contractor necessary to evaluate Contractor's compliance with the terms and conditions of the Agreement or the County's payment obligations. The County shall pay its own expenses, relating to such audits, but shall not have to pay any expenses or additional costs of the Contractor. However, if non-compliance is found that would have cost the County in excess of \$5,000 but for the audit, then the Contractor shall be required to reimburse the County for the cost of the audit.

Remedies

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

Right to Cover: If the Contractor fails to meet any completion date or resolution time set forth in this Agreement (including the Exhibits), and it fails to cure such default within one (1) business day after receiving written notice from the County of such failure, the County may take any of the following actions with or without terminating this Agreement, and in addition to and without limiting any other remedies it may have:

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

Deduct any and all reasonable expenses incurred by the County in obtaining or performing the Services from any money then due or to become due the Contractor and, should the County'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 County shall have a right to withhold all payments due to the Contractor with respect to the services that are the subject of such breach until such breach has been fully cured.

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

Setoff: Each party shall be entitled to setoff and deduct from any amounts owed to the other party pursuant to this Agreement all damages and expenses incurred as a result of the other party's breach of this Agreement, following any applicable cure periods, and provided such party has given notice of its intention to apply a setoff prior to making the payment deduction, together with documentary evidence demonstrating that such party has actually incurred the damages and/or expenses being setoff.

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

Debarment and Suspension

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 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 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 benefits under a plan or program: *Provided* that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside assets, in a separate account, for the meeting of obligations under the plan or program.

2. *Withholding.*

The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any 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 sub-contractors 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.

(ii) 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. Subcontractors. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the 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.