Elm Street Drainage
Project # SE-17-040

BID DATE: November 24, 2020

BID OPENING: 10:00 am
Nash County Board of Commissioners Room
3rd Floor
120 West Washington Street
Nashville, NC 27856

DELIVER BID TO: Stocks Engineering
801 E Washington St
Nashville, NC 27856
By: 10:00 AM November 24, 2020 or Bid Location
Between 9:45 & 10:00 AM
November 24, 2020

STOCKS ENGINEERING

801 E. Washington Street
Nashville, NC 27856

Phone: 252.459.8196
Fax: 252.459.8197

WWW. STOCKSENGINEERING.COM

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PROJECT PERSONNEL

PROJECT:	Elm Street Drainage (# SE-17-040)
DATE:	November 24th, 2020
BID DATE/TIME:	November 24, 2020, 10:00 a.m. Nash County Board of Commissioners Room 120 West Washington St. Nashville, NC 27856
OWNER:	Nash County Zee Lamb, County Manager 120 W Washington St. Nashville, NC 27856
ENGINEERS:	Stocks Engineering, P. A. P. O. Box 1108 801 E Washington St. Nashville, NC 27856 (252) 459-8196 phone (252) 459-8197 fax J. Kevin Varnell, Project Manager kvarnell@stocksengineering.com

ADVERTISEMENT FOR BIDS
ELM STREET DRAINAGE
PROJECT# SE-17-040
NASH COUNTY, NC

Sealed bids for the Elm Street Drainage Project, Nashville, North Carolina will be received until 9:45 A.M. on Tuesday, November 24, 2020 at the office of Stocks Engineering, 801 East Washington Street, Nashville, NC. **Sealed proposals may also be hand delivered between 9:45 and 10:00 A.M. to the public bid opening on Tuesday, November 24, 2020 at the Nash County Board of Commissioners Room,** 120 West Washington Street, Nashville, NC 27856 at which time and place bids will be publicly opened and read aloud. Bids must be received and logged in by 10:00 a.m. by Stocks Engineering, PA, in order to be considered.

There will be a pre-bid conference held on Monday, November 2nd, 2020 at 10:00 AM by Zoom video conference call. Meeting ID: 837 4723 8880 Password: ElmStreet

The project consists of the removal and replacement of the drainage system throughout 1,000 LF of Elm Street in Nashville, NC. The project will include approximately 1,350 LF of storm drain with 27 boxes and associated asphalt and sidewalk replacement.

The Information for Bidders, Form of Bids, Form of Contract, Plans, Specifications, Form of Bid Bond, Performance Bond, and Payment Bond may be examined at the following:

Stocks Engineering, PA, 801 East Washington Street, Nashville, NC 27856

Copies of the Contract Documents may be obtained at the office of Stocks Engineering, PA in Nashville, North Carolina upon a non-refundable payment of $100.00 for each set.

The Owner reserves the right to waive informalities or to reject any or all bids. The Owner (Town of Nashville) is an Equal Opportunity Employer and encourages bidding by small, minority and female contractors and does not discriminate on the basis of handicapped status.

Each Bidder must deposit with his bid, security in the amount, form, and subject to the conditions provided in the Information for Bidders.

No Bidder may withdraw his bid within 72 hours after the actual date of the opening thereof.

Funding for this project has been provided by U.S. Department of Housing and Urban Development, ReBuild NC, Golden Leaf Foundation, Department of Public Safety, Nash County, and the NC Office of Recovery and Resiliency.

Zee Lamb
Nash County Manager
120 W Washington St.
Nashville, NC 27856

NOTICE TO BIDDERS

1. RECEIPT OF BIDS

Sealed bids for the Elm Street Drainage Project, Nashville, North Carolina will be received until 9:45 A.M. on Tuesday, November 24, 2020 at the office of Stocks Engineering, 801 East Washington Street, Nashville, NC. **Sealed proposals may also be hand delivered between 9:45 and 10:00 A.M. to the public bid opening on Tuesday, November 24, 2020 at the Nash County Board of Commissioners Room,** 120 West Washington Street, Nashville, NC 27856 at which time and place bids will be publicly opened and read aloud. Bids must be received and logged in by 10:00 a.m. by Stocks Engineering, PA, in order to be considered.

Contractors can obtain complete plans and specifications for this project by contacting Stocks Engineering, P.A. at 252-459-8196 during normal business hours.

2. WORK DESCRIPTION

The project consists of the removal and replacement of the drainage system throughout 1,000 LF of Elm Street in Nashville, NC. The project will include approximately 1,350 LF of storm drain with 27 boxes and associated asphalt and sidewalk replacement.

3. MINORITY PARTICIPATION

There will be an **MBE** goal of **10%** on this project.

4. PROPOSAL

Each proposal will be made on the forms in the contract documents; and must be accompanied by a bid security in the form of a certified check, satisfactory evidence of a cash escrow, or a bidder's bond, in the amount equal to five percent (5%) of the amount of the Contractor's total base bid. Said bid security shall be considered liquidated damages and forfeited in accordance with the Contract Documents to the Owner in the event the proposal is accepted and the successful bidder fails to execute the Contract and furnish bonds and insurance certificate within 10 days after award of the contract specified in the proposal and supporting Contract Documents. Bid bonds must be executed by a duly licensed corporate surety authorized to do business in the State of North Carolina. All bid security shall be made payable without condition to the Owner.

The Contractor must <u>not</u> detach the proposal form from the Contract Documents but must submit and return the entire Contract Document. An extra set of proposal forms will be furnished for the Contractor's use if requested.

It is required that the Contractor place his license number on the outside of the proposal. No proposal will be opened unless this is shown. Any proposal that is submitted by a Contractor with an invalid license will be cause for rejection.

Any substitutions for specified items or manufacturers shall be submitted to the Engineer for approval a minimum of 10 days prior to the bid opening. Approved substitutions will be provided to all bidders.

The Owner reserves the right to reject any and all bids, and to waive any irregularities or informalities in any or all bids.

Bids received after the specified time of closing will be returned unopened.

5. WITHDRAWAL OF BIDS

See item 6. OPENING OF BIDS of the Instructions to Bidders.

6. COMMENCEMENT OF WORK

The work under the proposed Contract shall be commenced on a date agreed upon as set forth in the Notice to Proceed. Time of Completion shall also be as set forth in the Notice to Proceed.

7. PAYMENTS

Payments to the Contractor shall be made in accordance with Article 31 of the General Conditions.

8. DRAWINGS AND SPECIFICATIONS

Copies of drawings, specifications, and the Contract Documents will be on file for inspection at the following location:

Stocks Engineering, P.A., Nashville Office
801 East Washington Street,
Nashville, NC 27856

Copies of drawings, specifications, and the Contract Documents may be obtained upon a non-refundable payment of $100 per set from:

Stocks Engineering, P.A., Nashville Office
801 East Washington Street,
Nashville, NC 27856
252-459-8196

Cash will not be accepted. No refunds will be given.

All requests for plans and specifications must be accompanied by deposit or payment in the amount stipulated for each set. No phone orders will be honored. Make the check out to: Stocks Engineering, P.A.

9. BASIS OF AWARD

Acceptance of Proposal will be based upon the criteria outlined in item 7 of the Instructions to Bidders, entitled "Bid Evaluation".

INSTRUCTIONS TO BIDDERS

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

1. PROPOSALS

Proposals must be made in strict accordance with the Form of Proposal provided therefore, and all blank spaces for bids, alternates, and unit prices applicable to bidder's work shall be properly filled in. When requested alternates are not bid, the proposal may be considered incomplete. The bidder agrees that bid on Form of Proposal detached from specifications will be considered and will have the same force and effect as if attached thereto. Photocopied or faxed proposals will not be considered. Numbers shall be stated both in writing and in figures for the base bids and alternates.

Any modifications to the Form of Proposal (including alternates and/or unit prices) will disqualify the bid and may cause the bid to be rejected.

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

a. If the documents are executed by a sole owner, that fact shall be evidenced by the word "Owner" appearing after the name of the person executing them.

b. If the documents are executed by a partnership, that fact shall be evidenced by the word "Co-Partner" appearing after the name of the partner executing them.

c. If the documents are executed on the part of a corporation, they shall be executed by either the president or the vice president and attested by the secretary or assistant secretary in either case, and the title of the office of such persons shall appear after their signatures. The seal of the corporation shall be impressed on each signature page of the documents

d. If the proposal is made by a joint venture, it shall be executed by each member of the joint venture in the above form for sole owner, partnership or corporation whichever form is applicable.

e. All signatures shall be properly witnessed.

f. If the contractor's license of a bidder is held by a person other than an owner, partner or officer of a firm, then the licensee shall also sign and be a party to the proposal. The title "Licensee" shall appear under his/her signature.

Proposal shall be addressed as indicated in the Advertisement for Bids and shall be delivered, enclosed in an opaque sealed envelope, marked "Proposal" and bearing the title of the work, name of the bidder, and the contractor's license number of the bidder. If applicable, bidders shall clearly mark on the outside of the bid envelope which Division(s) they are bidding.

Bidder shall identify on the bid, the minority businesses that will be utilized on the project with corresponding total dollar value of the bid and affidavit listing good faith

efforts or an affidavit indicating work under contract will be self-performed, as required by G.S. 143-128.2(c) and G.S. 143-128.2(f). Failure to comply with these requirements is grounds for rejection of the bid.

For projects bid in the single-prime alternative, the names and license numbers of major subcontractors shall be listed on the proposal form.

It shall be the specific responsibility of the bidder to deliver his bid to the proper official at the selected place and prior to the announced time for the opening of bids. Later delivery of a bid for any reason, including delivery by the United States Postal Service, shall disqualify the bid.

Modifications of previously deposited bids will be acceptable only if delivered in writing or by telegram or fax to the place of the bid opening prior to the time for opening bids. Telegraphic and fax modifications must be confirmed in writing within 72 hours of the opening of bids.

Unit prices quoted in the proposal shall include overhead and profit and shall be the full compensation for the contractor's cost involved in the work. See General Conditions, Article 19c-1.

2. EXAMINATION OF CONDITIONS

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

Reference is made to contract documents for the identification of those surveys and investigation reports of subsurface or latent physical conditions at the site or otherwise affecting performance of the work, which have been relied upon by the designer in preparing the documents. The owner will make copies of all such surveys and reports available to the bidder upon request.

Each bidder may, at his own expense, make such additional surveys and investigations, as he may deem necessary to determine his bid price for the

performance of the work. Any on-site investigation shall be done at the convenience of the owner. Any reasonable request for access to the site will be honored by the owner.

3. BULLETINS AND ADDENDA

Any addenda to specifications issued during the time of bidding are to be considered covered in the proposal and in closing a contract they will become a part thereof. ***It shall be the bidder's responsibility to ascertain prior to bid time the addenda issued and to see that his bid includes any changes thereby required.***

Should the bidder find discrepancies in, or omission from, the drawings or documents or should he be in doubt as to their meaning, he shall at once notify the designer who will send written instructions in the form of addenda to all bidders. Notification should be no later than two (2) days prior to the date set for receipt of bids. Neither the owner nor the designer will be responsible for any oral instructions.

All addenda shall be acknowledged by the bidder(s) on the Form of Proposal.

4. BID SECURITY

Each proposal shall be accompanied by a cash deposit or a certified check drawn on some bank or trust company insured by the Federal Deposit Insurance Corporation, or a bid bond in an amount equal to not less than five percent (5%) of the proposal, said deposit to be retained by the owner as liquidated damages in event of failure of the successful bidder to execute the contract within ten (10) days after the award or to give satisfactory surety as required by law (G.S. 143-129).

Bid bond shall be conditioned that the surety will, upon demand, forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract. The owner may retain bid securities of any bidder(s) who may have a reasonable chance of award of contract for the full duration of the time stated in the Notice to Bidders. Other bid securities may be released sooner, at the discretion of the owner. All bid securities (cash or certified checks) shall be returned to the bidders promptly after award of contracts, and no later than seven (7) days after expiration of the holding period stated in the Notice to Bidders. Standard Form of Bid Bond is included in these specifications (Section 304).

5. RECEIPT OF BIDS

Bids shall be received in strict accordance with requirements of the General Statutes of North Carolina. Bid security shall be required as prescribed by statute. Prior to opening of any bids on the project, the bidder will be permitted to change or withdraw his bid. Guidelines for opening of public construction bids are available from the State Construction Office.

6. OPENING OF BIDS

Upon opening, all bids shall be read aloud. Once any bid is opened, there shall not be any withdrawal of bids by any bidder and no bids may be returned by the designer to any bidder. After the bid opening, a bidder may request that his bid be withdrawn

from consideration without forfeiture of his bid security in accordance with the provisions of the North Carolina General Statute 143-129.1. After the opening of bids, no bid may be withdrawn, except under the provisions of General Statute 143-129.1, for a period of sixty days unless otherwise specified. Should the successful bidder default and fail to execute a contract, the contract may be awarded to the next lowest and responsible bidder. The owner reserves the unqualified right to reject any and all bids. Reason for rejection may include, but shall not be limited to, the following:

a. If the Form of Proposal furnished to the bidder is not used or is altered.

b. If the bidder fails to insert a price for all bid items, alternate and unit prices requested.

c. If the bidder adds any provisions reserving the right to accept or reject any award.

d. If there are unauthorized additions or conditional bids, or irregularities or any kind which tend to make the proposal incomplete, indefinite or ambiguous as to its meaning.

e. If the bidder fails to complete the proposal form where information is requested so the bid may be properly evaluated by the owner.

f. If a unit price(s) contained in the bid schedule are unacceptable to the owner.

g. If the bidder fails to comply with other instructions stated herein.

h. Prior work history with the Town. Including but not limited to cost of change orders, ability to complete work within the schedule and budget, willingness to accommodate owners needs, overall finished product, means and methods, etc.

7. BID EVALUATION

The award of the contract will be made to the responsible bidder as soon as practical. The owner may award on the basis of any combinations of the base bid or alternates the owner chooses. The owner also reserves the right to add or delete quantities from line items or entire line items within the contract to fit within the budgeted funds for the project.

Before awarding a contract, the owner may require the apparent bidder to qualify himself to be a responsible bidder by furnishing any or all of the following date:

a. The latest financial statement showing assets and liabilities of the company or other information satisfactory to the owner. The company must be found to be in good financial standing according to standard business practices.

b. A listing of completed projects of similar scope and size including references. Similar scope and size shall be defined as projects with dollar amounts equal to or exceeding the contract amount and the installation of sewer outfall equal to or exceeding 16" in size and 5,000 LF of length.

c. Permanent name and address of place of business.

d. The number of regular employees of the organization and their years of experience in sewer related work.

e. The name and home office address of the surety proposed and the name and address of the responsible local claim agent.

f. The names of members of the firms who hold appropriate trade licenses, together with license numbers.

g. Any litigations / claims / settlements within the last 5 years.

h. Projects where liquidated damages have been paid with a reason and amounts.

Failure or refusal to furnish any of the above information, if requested, shall constitute a basis for disqualification of any bidder.

In determining the responsible, responsive bidder, the owner shall take into consideration the bidder's compliance with the requirements of G.S. 143-128.2(c), the responses to Items 7.a-7.h, the past performance of the bidder on construction contracts for the Town with particular concern given to completion times, quality of work, cooperation with other contractors, and cooperation with the designer and owner. Failure of the bidder to furnish affidavit and/or documentation as required by G.S. 143-128.2(c) may constitute a basis for disqualification of the bid.

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

8. PERFORMANCE BOND

The successful bidder, upon award of contract, shall furnish a performance bond in an amount equal to 100 percent of the contract price. See Article 35, General Conditions.

9. PAYMENT BOND

The successful bidder, upon award of contract, shall furnish a payment bond in an amount equal to 100 percent of the contract price. See Article 35, General Conditions.

10. PAYMENTS

Payments to the successful bidders (contractors) will be made on the basis of monthly estimates. See Article 31, General Conditions.

11. PRE-BID CONFERENCE

There will be a pre-bid conference held on Monday, November 2nd, 2020 at 10:00 AM by Zoom video conference call. Meeting ID: 837 4723 8880 Password: ElmStreet

12. SUBSTITUTIONS

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

Submittals for proposed substitutions shall include the following information:

a. Name, address, and telephone number or manufacturer and supplier as appropriate.

b. Trade name, model or catalog designation.

c. Product data including performance and test date, reference standards, and technical descriptions of material, product, or equipment. Include color samples and samples of available finishes as appropriate.

d. Detailed comparison with specified products including performance capabilities, warranties, and test results.

e. Other pertinent data including data requested by the Designer to confirm product equality.

If a proposed material, product, or equipment substitution is deemed equal by the Designer to those specified, all bidders or record will be notified by Addendum.

13. INSURANCE SUBMITTAL

Prior to the execution of contracts, the contractor shall furnish to the Engineer four (4) copies of insurance certificates as outlined in Article 34, Minimum Insurance Requirements, of the General Conditions.

14. E-VERIFY

Contractor shall comply with all requirements of E-Verify. Contractor shall provide E-Verify Affidavit of Agreement with bid proposal and provide documentation verifying such if required.

GENERAL CONDITIONS OF THE CONTRACT

ARTICLE	TITLE	PAGE
1	Definitions	GC-3
2	Intent and Execution of Documents	GC-5
3	Clarifications and Detail Drawings	GC-6
4	Copies of Drawings and Specifications	GC-6
5	Shop Drawings, Submittals, Samples, Data	GC-6
6	Working Drawings and Specifications at the Job Site	GC-7
7	Ownership of Drawings and Specifications	GC-7
8	Materials, Equipment, Employees	GC-8
9	Royalties, Licenses and Patent	GC-9
10	Permits, Inspections, Fees, Regulations	GC-9
11	Protection of Work, Property and the Public	GC-9
12	Sedimentation Pollution Control Act of 1973	GC-11
13	Inspection of the Work	GC-11
14	Construction Supervision and Schedule	GC-12
15	Separate Contracts and Contractor Relationships	GC-16
16	Subcontracts and Subcontractors	GC-17
17	Contractor and Subcontractor Relationships	GC-18
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24	Partial Utilization: Beneficial Occupancy	GC-25
25	Final Inspection, Acceptance, and Project Closeout	GC-26
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28	Owner's Right To Do Work	GC-28
29	Annulment of Contract	GC-28
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32 Certificates of Payment and Final Payment GC-30
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47 Employment of the Handicapped GC-37
48 Asbestos-Containing Materials (ACM) GC-37
49 Minority Business Participation GC-38

ARTICLE 1 – DEFINITIONS

a. The **contract documents** consist of the Notice to Bidders; Instructions to Bidders; General Conditions of the Contract; special conditions if applicable; Supplementary General conditions; the drawing and specifications, including all bulletins, addenda or other modifications of the drawings and specifications incorporated into the documents prior to their execution; the proposal; the contract; the performance bond; the payment bond; insurance certificates. All of these items together form the contract.

b. The **owner** is Nash County and shall be referred to as the owner in these documents.

c. The **designer(s)** are those referred to within this contract, or their authorized representatives. The designer(s), as referred to herein, shall mean architect and/or engineer. They will be referred to hereinafter as if each were of the singular number, masculine gender.

d. The **contractor**, as referred to hereinafter, shall be deemed to be either of the several contracting parties called the "Party of the First Part" in either of the several contracts in connection with the total project. Where, in special instances hereinafter, a particular contractor is intended, an adjective precedes the word "contractor," as "general," "heating," etc. For the purposes of a single prime contract, the term Contractor shall be deemed to be the single contracting entity identified as the "Party of the First Part" in the single Construction Contract. Any references or adjectives that name or infer multiple prime contractors shall be interpreted to mean the single prime Contractor.

e. A **subcontractor**, as the term is used herein, shall be understood to be one who has entered into a direct contract with a contractor, and includes one who furnishes materials worked to a special design in accordance with plans and specifications covered by the contract, but does not include one who sells or furnishes materials not requiring work so described or detailed.

f. **Written notice** shall be defined as notice in writing delivered in person to the contractor, or to a partner of the firm in the case of a partnership, or to a member of the contracting organization, or to an officer of the organization in the case of a corporation, or sent to the last known business address of the contracting organization by registered mail.

g. **Work**, as used herein as a noun, is intended to include materials, labor, and workmanship of the appropriate contractors.

h. The **project** is the total construction work to be performed under the contract documents by the several contractors.

i. **Project Expediter**, as used herein, is an entity stated in the contract documents, designated to effectively facilitate scheduling and coordination of work activities. See Article 14(f) for responsibilities of a Project Expediter.

For the purposes of a single prime contract, the single prime contractor shall be designated as the Project Expediter.

j. **Change order**, as used herein, shall mean a written order to the contractor subsequent to the signing of the contract authorizing a change in the contract. The change order shall be signed by the contractor, designer and the owner in that order (Article 19).

k. **Field Order**, as used herein, shall mean a written approval for the contractor to proceed with the work requested by owner prior to issuance of a formal Change Order. The field order shall be signed by the contractor, designer and owner.

l. **Time of completion**, as stated in the contract documents, is to be interpreted as consecutive calendar days measured from the date established in the written Notice to Proceed, or such other date as may be established herein (Article 23).

m. **Liquidated damages**, as stated in the contract documents, is an amount reasonably estimated in advance to cover the losses incurred by the owner by reason of failure of the contractor(s) to complete the work within the time specified.

n. **Surety**, as used herein, shall mean the bonding company or corporate body which is bound with and for the contractor, and which engaged to be responsible for the contractor and his acceptable performance of the work.

o. **Routine written communications between the Designer and the Contractor** are any communication other than a "request for information" provided in letter, memo, or transmittal format, sent by mail, courier, electronic mail, or facsimile. Such communications cannot be identified as "request for information".

p. **Clarification or Request for information (RFI)** is a request from the Contractor seeking an interpretation or clarification by the Designer relative to the contract documents. The RFI, which shall be labeled (RFI), shall clearly and concisely set forth the issue or item requiring clarification or interpretation and why the response is needed. The RFI must set forth the Contractor's interpretation or understanding of the contract documents requirements in question, along with reasons for such an understanding.

q. **Approval** means written or imprinted acknowledgement that materials, equipment or methods of construction are acceptable for use in the work.

r. **Inspection** shall mean examination or observation of work completed or in progress to determine its compliance with contract documents.

s. **"Equal to" or "approved equal"** shall mean materials, products, equipment, assemblies, or installation methods considered equal by the bidder in all characteristics (physical, functional, and aesthetic) to those specified in the contract documents.

t. **"Substitution" or "substitute"** shall mean materials, products, equipment, assemblies, or installation methods deviating in at least one characteristic (physical, functional, or aesthetic) from those specified, but which in the opinion of the bidder would improve competition and/or enhance the finished installation.

ARTICLE 2 – INTENT AND EXECUTION OF THE DOCUMENTS

a. The drawings and specifications are complementary, one to the other. That which is shown on the drawings or called for in the specifications shall be as binding as if it were both called for and shown. The intent of the drawings and specifications is to establish the scope of all labor, materials, transportation, equipment, and any and all other things necessary to provide a complete job. In case of discrepancy or disagreement in the contract documents, the order of precedence shall be: Form of Contract, specifications, large-scale drawings, small-scale drawings.

b. The wording of the specifications shall be interpreted in accordance with common usage of the language except that words having a commonly used technical or trade meaning shall be so interpreted in preference to other meanings.

c. The contractor shall execute each copy of the proposal, contract, performance bond and payment bond as follows:

1. If the documents are executed by a sole owner, that fact shall be evidenced by the word "Owner" appearing after the name of the person executing them.

2. If the documents are executed by a partnership, that fact shall be evidenced by the word "Co-Partner" appearing after the name of the partner executing them.

3. If the documents are executed on the part of a corporation, they shall be executed by either the president or the vice president and attested by the secretary or assistant secretary in either case, and the title of the office of such persons shall appear after their signatures. The seal of the corporation shall be impressed on each signature page of the documents.

4. If the documents are made by a joint venture, they shall be executed by each member of the joint venture in the above form for sole owner, partnership or corporation, whichever form is applicable to each particular member.

5. All signatures shall be properly witnessed.

6. If the contractor's license is held by a person other than an owner, partner or officer of a firm, then the licensee shall also sign and be a party to the contract. The title "Licensee" shall appear under his/her signature.

7. The bonds shall be executed by an attorney-in-fact. There shall be attached to each copy of the bond a certified copy of power of attorney properly executed and dated.

8. Each copy of the bonds shall be countersigned by an authorized individual agent of the bonding company licensed to do business in North Carolina. The title "Licensed Resident Agent" shall appear after the signature.

9. The seal of the bonding company shall be impressed on each signature page of the bonds.

10. The contractor's signature on the performance bond and the payment bond shall correspond with that on the contract.

ARTICLE 3 – CLARIFICATIONS AND DETAIL DRAWINGS

a. In such cases where the nature of the work requires clarification by the designer, such clarification shall be furnished by the designer with reasonable promptness by means of written instructions or detail drawings, or both. Clarifications and drawings shall be consistent with the intent of contract documents, and shall become a part thereof.

b. The contractor(s) and the designer shall prepare, if deemed necessary, a schedule fixing dates upon which foreseeable clarifications will be required. The schedule will be subject to addition or change in accordance with progress of the work. The designer shall furnish drawings or clarifications in accordance with that schedule. The contractor shall not proceed with the work without such detail drawings and/or written clarifications.

ARTICLE 4 – COPIES OF DRAWINGS AND SPECIFICATIONS

The designer shall furnish free of charge to the contractors copies of plans and specifications as follows:

a. General contractor – Up to five (3) sets of drawings and specifications.

b. Each other contractor - Up to five (1) sets of drawings and specifications.

c. Additional sets shall be furnished at cost, including mailing, to the contractor upon request by the contractor.

d. For the purposes of a single-prime contract, the contractor shall receive up to 5 sets of drawings and specifications.

ARTICLE 5 – SHOP DRAWINGS, SUBMITTALS, SAMPLES, DATA

a. Within 30 consecutive calendar days after the notice to proceed, each prime contractor shall submit a schedule for anticipated submission of all shop drawings, product data, samples, and similar submittals to the Project Expediter and the Designer. This schedule shall indicate the items, relevant

specification sections, other related submittal, data, and the date when these items will be furnished to the designer.

b. The Contractor shall review, approve and submit to the Designer all Shop or Setting Drawings, Product Data, Samples, Color Charts, and similar submittal data required or reasonably implied by the Contract Documents. Required Submittals shall bear the Contractor's stamp of approval, any exceptions to the Contract Documents shall be noted on the submittals, and copies of all submittals shall be of sufficient quantity for the Designer to retain up to three (3) copies of each submittal for his own use plus additional copies as may be required by the Contractor. Submittals shall be presented to the Designer with reasonable promptness and time so as to cause no delay in the activities of the Owner or of separate Contractors.

c. The Designer shall review required submittals promptly, noting desired corrections if any, and retaining three (3) copies for his use. The remaining copies of each submittal shall be returned to the Contractor not later than twenty (20) days from the date of receipt by the Designer, for the Contractor's use or for corrections and resubmittal as noted by the Designer. When resubmittals are required, the submittal procedure shall be the same as for the original submittals.

d. Approval of shop drawings by the Designer shall not be construed as relieving the Contractor from responsibility for compliance with the design or terms of the contract documents nor from responsibility or errors of any sort in the shop drawings, unless such lack of compliance or errors first have been called in writing to the attention of the Designer by the Contractor.

ARTICLE 6 – WORKING DRAWINGS AND SPECIFICATIONS AT THE JOB SITE

a. The contractor shall maintain, in readable condition at his job office, one complete set of working drawings and specifications for his work including all shop drawings. Such drawings and specifications shall be available for use by the designer or his authorized representative

b. The contractor shall maintain at the job office, a day-to-day record of work-in-place that is at variance with the contract documents. Such variations shall be fully noted on project drawings by the contractor and submitted to the designer upon project completion and no later than 30 days after acceptance of the project.

ARTICLE 7 – OWNERSHIP OF DRAWINGS AND SPECIFICATIONS

All drawings and specifications are instruments of service and remain the property of the owner. The use of these instruments on work other than this contract without permission of the owner is prohibited. All copies of drawings and specifications other than contract copies shall be returned to the owner upon request after completion of the work.

ARTICLE 8 – MATERIALS, EQUIPMENT, EMPLOYEES

a. The contractor shall, unless otherwise specified, supply and pay for all labor, transportation, materials, tools, apparatus, lights, power, heat, sanitary facilities, water, scaffolding and incidentals necessary for the completion of his work, and shall install, maintain and remove all equipment of the construction, other utensils or things, and be responsible for the safe, proper and lawful construction, maintenance and use of same, and shall construct in the best and most workmanlike manner, a complete job and everything incidental thereto, as shown on the plans, stated in the specifications, or reasonably implied therefrom, all in accordance with the contract documents.

b. All materials shall be new and of quality specified, except where reclaimed material is authorized herein and approved for use. Workmanship shall at all times be of a grade accepted as the best practice of the particular trade involved, and as stipulated in written standards of recognized organizations or institutes of the respective trades except as exceeded or qualified by the specifications.

c. Upon notice, the contractor shall furnish evidence as to quality of materials.

d. Products are generally specified by ASTM or other reference standard and/or by manufacturer's name and model number or trade name. When specified only by reference standard, the Contractor may select any product meeting this standard, by any manufacturer. When several products or manufacturers are specified as being equally acceptable, the Contractor has the option of using any product and manufacturer combination listed. However, the contractor shall be aware that the cited examples are used only to denote the quality standard of product desired and that they do not restrict bidders to a specific brand, make, manufacturer or specific name; that they are only used to set forth and convey to bidders the general style, type, character and quality of product desired; and that equivalent products will be acceptable. Request for substitution of materials, items, or equipment shall be submitted to the designer for approval or disapproval; such approval or disapproval shall be made by the designer prior to the opening of bids.

e. Each contractor shall obtain written approval from the designer for the use of products, materials, equipment, assemblies or installation methods claimed as equal to those specified. Such approvals must be obtained as soon after contract awards as possible and before any materials are ordered. Applications for approvals shall be made by the contractor and not by subcontractors or material suppliers within thirty (30) days following award of contract. When the submittal schedule provided under Article 5a is approved, no further substitutions will be permitted except in unusual or extenuating circumstances. If no list is submitted, the contractor shall supply materials specified.

f. The designer is the judge of equality for proposed substitution of products, materials or equipment.

g. If at any time during the construction and completion of the work covered by these contract documents, the conduct of any workman of the various crafts be adjudged a nuisance to the owner or designer, or if any workman be considered detrimental to the work, the contractor shall order such parties removed immediately from grounds.

ARTICLE 9 – ROYALTIES, LICENSES AND PATENTS

It is the intention of the contract documents that the work covered herein will not constitute in any way infringement of any patent whatsoever unless the fact of such patent is clearly evidenced herein. The contractor shall protect and save harmless the owner against suit on account of alleged or actual infringement. The contractor shall pay all royalties and/or license fees required on account of patented articles or processes, whether the patent rights are evidenced hereinafter.

ARTICLE 10 – PERMITS, INSPECTIONS, FEES, REGULATIONS

a. The contractor shall give all notices and comply with all laws, ordinances, codes, rules and regulations bearing on the conduct of the work under this contract. If the contractor observes that the drawings and specifications are at variance therewith, he shall promptly notify the designer in writing. See Instructions to Bidders, Paragraph 3, Bulletins and Addenda. Any necessary changes required after contract award shall be made by change order in accordance with Article 19. If the contractor performs any work knowing it to be contrary to such laws, ordinances, codes, rules and regulations, and without such notice to the designer, he shall bear all cost arising therefrom. Additional requirements implemented after bidding will be subject to equitable negotiations.

b. All work under this contract shall conform to the North Carolina State Building Code and other State, local and national codes as are applicable. The cost of all required inspections and permits shall be the responsibility of the contractor.

c. Projects constructed by the State of North Carolina or by any agency or institution of the State are not subject to inspection by any county or municipal authorities and are not subject to county or municipal building codes. The contractor shall, however, cooperate with the county or municipal authorities by obtaining building permits. Permits shall be obtained at no cost.

d. Projects involving local funding are subject to county and municipal building codes and inspection by local authorities. The contractor shall pay the cost of these permits and inspections.

ARTICLE 11 – PROTECTION OF WORK, PROPERTY AND THE PUBLIC

a. The contractors shall be jointly responsible for the entire site and the building or construction of the same and provide all the necessary protections, as required by the owner or designer, and by laws or ordinances governing such

conditions. They shall be responsible for any damage to the owner's property, or of that of others on the job, by them, their personnel, or their subcontractors, and shall make good such damages. They shall be responsible for and pay for any damages caused to the owner. All contractors shall have access to the project at all times.

b. The contractor shall provide cover and protect all portions of the structure when the work is not in progress, provide and set all temporary roofs, covers for doorways, sash and windows, and all other materials necessary to protect all the work on the building whether set by him, or any of the subcontractors. Any work damaged through the lack of proper protection or from any other cause, shall be repaired or replaced without extra cost to the owner.

c. No fires of any kind will be allowed inside or around the operations during the course of construction without special permission from the designer.

d. The contractor shall protect all trees and shrubs designated to remain in the vicinity of the operations by building substantial boxes around same. He shall barricade all walks, roads, etc., as directed by the designer to keep the public away from the construction. All trenches, excavations or other hazards in the vicinity of the work shall be well barricaded and properly lighted at night.

e. The contractor shall provide all necessary safety measures for the protection of all persons on the job, including the requirements of the A.G.C. *Accident Prevention Manual in Construction*, as amended, and shall fully comply with all state laws or regulations and North Carolina State Building Code requirements to prevent accident or injury to persons on or about the location of the work. He shall clearly mark or post signs warning of hazards existing, and shall protect against damage or injury resulting from falling materials and he shall maintain all protective devices and signs throughout the progress of the work.

f. The contractor shall adhere to the rules, regulations and interpretations of the North Carolina Department of Labor relating to Occupational Safety and Health Standards for the Construction Industry (Title 29, Code of Federal Regulations, Part 1926, published in Volume 39, Number 122, Part II, June 24, 1974, *Federal Register*), and revisions thereto as adopted by General Statutes of North Carolina 95-126 through 155.

g. The contractor shall designate a responsible member of his organization as safety inspector, whose duties shall include accident prevention on the work project. The name of the safety inspector shall be made known to the designer at the time the work is started.

h. In the event of emergency affecting the safety of life, the protection of work, or the safety of adjoining properties, the contractor is hereby authorized to act at his own discretion, without further authorization from anyone, to prevent such threatened injury or damage. Any compensation claimed by the contractor on account of such action shall be determined as provided for under Article 19(b).

ARTICLE 12 – SEDIMENTATION POLLUTION CONTROL ACT OF 1973

a. Any land-disturbing activity performed by the contractor(s) in connection with the project shall comply with all erosion control measures set forth in the contract documents and any additional measures which may be required in order to ensure that the project is in full compliance with the Sedimentation Pollution Control Act of 1973, as implemented by Title 15, North Carolina Administrative Code, Chapter 4, Sedimentation Control, Subchapters 4A, 4B and 4C, as amended (15 N.C.A.C. 4A, 4B, and 4C).

b. Upon receipt of notice that a land-disturbing activity is in violation of said act, the contractor(s) shall be responsible for ensuring that all steps or actions necessary to bring the project in compliance with said act are promptly taken.

c. The contractor(s) shall be responsible for defending any legal actions instituted pursuant to N.C.G.S. 113 A-64 against any party or persons described in this article.

d. To the fullest extent permitted by law, the contractor(s) shall indemnify and hold harmless the owner, the designer and the agents, consultants and employees of the owner and designer, from and against all claims, damages, civil penalties, losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from the performance of work or failure of performance of work, provided that any such claim, damage, civil penalty, loss or expense is attributable to a violation of the Sedimentation Pollution Control Act. Such obligation shall not be construed to negate, abridge or otherwise reduced any other right or obligation of indemnity which would otherwise exist as to any party or persons described in this article.

ARTICLE 13 – INSPECTION OF THE WORK

a. It is a condition of this contract that the work shall be subject to inspection during normal working hours by the designer, designated official representatives of the owner, and those persons required by state law to test special work for official approval. The contractor shall therefore provide safe access to the work at all times for such inspections.

b. All instructions to the contractor will be made only through the designer or his designated project representative. Observations made by official representatives of the owner shall be conveyed to the designer for review and coordination prior to issuance to the contractor.

c. Where special inspection or testing is required by virtue of any state laws, instructions of the designer, specifications or codes, the contractor shall give adequate notice to the designer of the time set for such inspection or test, if the inspection or test will be conducted by a party other than the designer. Such special tests or inspections will be made in the presence of the designer, or his authorized representative, and it shall be the contractor's responsibility to serve ample notice of such tests.

d. All laboratory tests shall be paid by the owner unless provided otherwise in the contract documents except the general contractor shall pay for laboratory tests to establish design mix for concrete, and for additional tests to prove compliance with contract documents where materials have tested deficient except when the testing laboratory did not follow the appropriate ASTM testing procedure.

e. Should any work be covered up or concealed prior to inspection and approval by the designer, such work shall be uncovered or exposed for inspection, if so requested by the designer in writing. Inspection of the work will be made promptly upon notice from the contractor. All cost involved in uncovering, repairing, replacing, recovering and restoring to design condition, the work that has been covered or concealed will be paid by the contractor involved.

f. If any other portion of the work has been covered which the designer has not specifically requested to observe prior to being covered, the designer may request to see such work and it shall be uncovered by the contractor. If such work be found in accordance with the contract documents, the cost of uncovering and replacement shall, by appropriate change order, be charged to the owner. If such work be found not in accordance with the contract documents, the contractor shall pay such costs unless it be found that this condition was caused by the owner or a separate contractor as provided in Article 15, in which event the owner or the separate contractor shall be responsible for the payment of such costs.

ARTICLE 14 – CONSTRUCTION SUPERVISION AND SCHEDULE

a. Through the progress of the work, each contractor shall keep at the job site, a competent superintendent or supervisory staff satisfactory to the designer. The superintendent shall not be changed without the consent of the designer unless said superintendent ceases to be employed by the contractor or ceases to be competent. The superintendent shall have authority to act on behalf of the contractor, and instructions, directions or notices given to him shall be as binding as if given to the contractor. However, directions, instructions, and notices shall be confirmed in writing.

b. The contractor shall examine and study the drawings and specifications and fully understand the project design, and shall provide constant and efficient supervision to the work. Should he discover any discrepancies of any sort in the drawings or specifications, he shall report them to the designer without delay. He will not be held responsible for discrepancies in the drawings and/or specifications, but shall be held responsible to report them should they become known to him.

c. All contractors shall be required to cooperate and consult with each other during the construction of this project. Prior to installation of work, all contractors shall jointly prepare coordination drawings, showing locations of various ductworks, piping, motors, pumps, and other mechanical or electrical equipment, in relation to the structure, walls and ceilings, These drawings shall be submitted to the designer through the Project Expediter for information only. Each contractor shall lay out and execute his work to cause

the least delay to other contractors. Each contractor shall be financially responsible for any damage to other contractor's work and for undue delay caused to other contractors on the project.

d. The contractor is required to attend monthly job site progress conferences as called by the designer. The contractor shall be represented at these job progress conferences by both home office and project personnel. These representatives shall have authority to act on behalf of the contractor. These meetings shall be open to subcontractors, material suppliers and any others who can contribute toward maintaining required job progress. It shall be the principal purpose of these meetings, or conferences, to effect coordination, cooperation and assistance in every practical way toward the end of maintaining progress of the project on schedule and to complete the project within the specified contract time. Each contractor shall be prepared to assess progress of the work as required in his particular contract and to recommend remedial measures for correction of progress as may be appropriate. The designer or his authorized representative shall be the coordinator of the conferences and shall preside as chairman.

e. The contractor(s) shall employ an engineer or a land surveyor licensed in the State of North Carolina to lay out the work and to establish a bench mark nearby in a location where same will not be disturbed and where direct instruments sights may be taken.

f. The designer shall designate a Project Expediter on projects involving two or more prime contracts. The project Expediter shall have the following responsibilities:

    1. Prepare the project construction schedule and shall allow all prime contractors (multi-prime contract) and subcontractors (single-prime contract) performing general, plumbing, HVAC, and electrical work equal input into the preparation of the initial construction schedule.

    2. Maintain a project progress schedule for all contractors.

    3. Give adequate notice to all contractors to ensure efficient continuity of all phases of the work.

    4. Notify the designer of any changes in the project schedule.

    5. Recommend to the owner whether payment to a contractor shall be approved.

g. It shall be the responsibility of the Project Expediter to cooperate with and obtain from several prime contractors and subcontractors on the job, their respective work activities and integrate these activities into a project construction schedule in form of a detailed bar chart or Critical Path Method (CPM), schedule. Each prime contractor shall provide work activities within fourteen (14) days of request by the Project Expediter. A "work activity", for scheduling purposes, shall be any component or contractual requirement of the project requiring at least one (1) day, but not more than fourteen (14)

days, to complete or fulfill. The project construction schedule shall graphically show all salient features of the work required to construct the project from start to finish and within the allotted time established in the contract. The time (in days) between the contractor's early completion and contractual completion dates is part of the project total float time; and shall be used as such, unless amended by a change order. On a multi-prime project, each prime contractor shall review the proposed construction schedule and approve same in writing. The project Expediter shall submit the proposed construction schedule to the designer for comments. The complete Project construction schedule shall be or the type set forth in the Supplementary General Condition or subparagraph (1) or (2) below, as appropriate:

1. For a project with total contracts of $1,000,000 or less, a bar chart schedule will satisfy the above requirement. The schedule shall indicate the estimated starting and completion dates for each major element of the work.

2. For a project with total contracts over $1,000,000, a Critical Path Method (CPM) schedule shall be utilized to control the planning and scheduling of the Work. The CPM schedule shall be the responsibility of the Project Expediter and shall be paid for by the Project Expediter.

Bar Chart Schedule: Where a bar chart schedule is required, it shall be time-scaled in weekly increments, shall indicate the estimated starting and completion dates for each major element of the work by trade and by area, level, or zone, and shall schedule dates for all salient features, including but not limited to the placing of orders for materials, submission of shop drawings and other Submittals for approval, approval of shop drawings by designers, the manufacture and delivery of material, the testing and the installation of materials, supplies and equipment, and all Work activities to be performed by the Contractor. The Contractor shall allow sufficient time in his schedule for all required inspections. Each Work activity will be assigned a time estimate by the Contractor. One day shall be the smallest time unit used.

CPM Schedule: Where a CPM schedule is required, it shall be in time-scaled precedence format using the Project Expediter's logic and time estimates. The CPM schedule shall be drawn or plotted with activities grouped or zoned by Work area or subcontract as opposed to a random (or scattered) format. The CPM schedule shall be time-scaled on a weekly basis and shall be drawn or plotted at a level of detail and logic which will schedule all salient features of the work to be performed by the Contractor. The Contractor shall allow sufficient time in his schedule for all required inspections. Each Work activity will be assigned a time estimate by the Contractor. One day shall be the smallest time unit used.

The CPM schedule will identify and describe each activity, state the duration of each activity, the calendar dates for the early and late start and the early and late finish of each activity, and clearly highlight all activities on the critical path. "Total float" and "free float" shall be indicated for all activities. Float time shall not be considered for the exclusive use or benefit of either the

Owner or the Contractor, but must be allocated in the best interest of completing the Work within the Contract time. Extensions to the Contract time, when granted by Change Order, will be granted only when equitable time adjustment exceeds the Total Float in the activity or path of activities affected by the change. On contracts with a price over $2,500,000, the CPM schedule shall also show what part of the Contract Price is attributable to each activity on the schedule, the sum of which for all activities shall equal the total Contract Price.

Early Completion of the Project: The contractor may attempt to complete the project prior to the Contract Completion Date. However, such planned early completion shall be for the Contractor's convenience only and shall not create any additional rights of the Contractor or obligations of the Owner under this Contract, nor shall it change the Time for Completion or the Contract Completion Date. The Contractor shall not be required to pay liquidated damages to the Owner because of its failure to complete by its planned earlier date. Likewise, the Owner shall not pay the Contractor any additional compensation for early completion nor will the Owner owe the Contractor any compensation should the Owner, its officers, employees, or agents cause the Contractor not to complete earlier than the date required by the Contract Documents.

h. The proposed project construction schedule shall be presented to the designer no later than thirty (30) days after written notice to proceed. No application for payment will be processed until this schedule is accepted by the owner.

i. The approved project construction schedule shall be distributed to all contractors and displayed at the job site by the Project Expediter.

j. The several contractors shall be responsible for their work activities and shall notify the Project Expediter of any necessary changes or adjustments to their work. The Project Expediter shall maintain the project construction schedule, making monthly adjustments, updates, corrections, etc., that are necessary to finish the project within the Contract time keeping all contractors and the designer fully informed. Copy of a bar chart schedule annotated to show the current progress shall be submitted by the Contractor(s) to the designer, along with monthly request for payment. For project requiring CPM schedule, the Contractor shall submit a monthly report of the status of all activities. The bar chart schedule or monthly status report shall show the actual Work completed to date in comparison with the original Work scheduled for all activities. If any activities of the work of several contractors are behind schedule, the contractor must indicate in writing, what measures will be taken to bring each such activity back on schedule and to ensure that the Contract Completion Date is not exceeded. A plan of action and recovery schedule shall be developed and submitted to the designer by the Project Expediter, when (1) the contractor's monthly report indicates delays, that are in the opinion of the designer or the owner, of sufficient magnitude that the contractor's ability to complete the work by the scheduled completion is brought into question; (2) the updated construction schedule is thirty (30) days behind the planned or baseline schedule and no legitimate time

extensions are in progress; and (3) the contractor desires to make changes in the logic (sequencing of work) or the planned duration of future activities of the CPM schedule which, in the opinion of the designer or the owner, are of a major nature. The plan of action, when required shall be submitted to the Owner's written demand. The recovery schedule, when required, shall be submitted to the Owner within five (5) calendar days of the Contractor's receiving the Owner's written demand. Failure to provide an updated construction schedule or a recovery schedule may be grounds for rejection of payment applications or withholding of funds as set forth in Article 33.

k. The Project Expediter shall notify each contractor of such events or time frames that are critical to the progress of the job. Such notice shall be timely and reasonable. Should the progress be delayed due to the work of any of the several contractors, it shall be the duty of the Project Expediter to immediately notify the contractor(s) responsible for such delay, the designer, the owner, and prime contractors. The designer shall determine the contractor(s) who caused the delays and notify the bonding company of the responsible contractor(s) of the delays; and shall make a recommendation to the owner regarding further action.

l. Designation as Project Expediter entails an additional project control responsibility and does not alter in any way the responsibility of the contractor so designated, nor the responsibility of the other contractors involved in the project.

ARTICLE 15 – SEPARATE CONTRACTS AND CONTRACTOR RELATIONSIHPS

a. Effective from January 1, 2002, Chapter 143, Article 8, was amended, to allow public contracts to be bid in single-prime, dual (single-prime and separate-prime), construction manager at risk, and alternative contracting method as approved by the State Building Commission. The owner reserves the right to prepare separate specifications, receive separate bids, and award separate contracts for such other major items of work as may be in the best interest of the owner. For the purposes of a single prime contract, refer to Article 1 – Definitions.

b. All contractors shall cooperate with each other in the execution of their work, and shall plan their work in such manner as to avoid conflicting schedules or delay of the work. See Article 14, Construction Supervision.

c. If any part of contractor's work depends upon the work of another contractor, defects which may affect that work shall be reported to the designer in order that prompt inspection may be made and the defects corrected. Commencement of work by a contractor where such condition exists will constitute acceptance of the other contractor's work as being satisfactory in all respects to receive the work commended, except as to defects which may later develop. The designer shall be the judge as to the quality of work and shall settle all disputes on the matter between contractors.

d. Any mechanical or electrical work such as sleeves, inserts, cases, openings, penetrations, etc., which is located in the work of the general contractor shall be built in by the general contractor. The respective mechanical and electrical contractors shall set all sleeves, inserts and other devices that are to be incorporated into the structure in cooperation and under the supervision of the general contractor. The responsibility for the exact location of such items shall be that of the mechanical and/or electrical contractor.

e. The designer and the owner shall have access to the work whenever it is in preparation and progress during normal working hours. The contractor shall provide facilities for such access so the designer may perform his functions under the contract documents.

f. Should a contractor cause damage to the work or property of another contractor, he shall be directly responsible, and upon notice, shall promptly settle the claim or otherwise resolve the dispute.

ARTICLE 16 – SUBCONTRACTS AND SUBCONTRACTORS

a. Within thirty (30) days after award of the contract, the contractor shall submit to the designer and to the owner a list giving the names and addresses of subcontractors and equipment and material suppliers he proposes to use, together with the scope of their respective parts of the work. Should any subcontractor be disapproved by the designer, the designer shall submit his reasons for disapproval in writing to the owner for its consideration with a copy to the contractor. If the owner concurs with the designer's recommendation, the contractor shall submit a substitute for approval. The designer shall act promptly in the approval of subcontractors, and when approval of the list is given, no changes of subcontractors will be permitted except for cause or reason considered justifiable by the designer.

b. The designer will furnish to any subcontractor, upon, request, evidence regarding amounts of money paid to the contractor on account of the subcontractor's work.

c. The contractor is and remains fully responsible for his own acts or omissions as well as those of any subcontractor or of any employee of either. The contractor agrees that no contractual relationship exists between the subcontractor and the owner in regard to the contract, and that the subcontractor acts on this work as an agent or employee of the contractor.

d. The owner reserves the right to limit the amount of portions of work to be subcontracted as hereinafter specified.

ARTICLE 17 – CONTRACTOR AND SUBCONTRACTOR RELATIONSHIPS

The contractor agrees that the terms of these contract documents shall apply equally to each subcontractor as to the contractor, and the contractor agrees to take such action as may be necessary to bind each subcontractor to these terms.

The contractor further agrees to conform to the Code of Ethical Conduct as adopted by the Associated General Contractors of America, Inc., with respect to contractor-subcontractor relationships, and that payments to subcontractors shall be made in accordance with the provisions of G.S. 143-134.1 titled Interest on final payments due to prime contractors: payments to subcontractors.

a. On all public construction contracts which are let by a board or governing body of the state government or any political subdivision thereof, except contracts let by the Department of Transportation pursuant to G.S. 136-28.1, the balance due prime contractors shall be paid in full within 45 days after respective prime contracts of the project have been accepted by the owner, certified by the architect, engineer or designer to be completed in accordance with terms of the plans and specifications, or occupied by the owner and used for the purpose for which the project was constructed, whichever occurs first. Provided, however, that whenever the architect or consulting engineer in charge of the project determines that delay in completion of the project in accordance with terms of the plans and specifications is the fault of the contractor, the project may be occupied and used for the purposes for which it was constructed without payment of any interest on amounts withheld past the 45 day limit. No payment shall be delayed because of the failure of another prime contractor on such project to complete his contract. Should final payment to any prime contractor beyond the date such contracts have been certified to be completed by the designer or architect, accepted by the owner, or occupied by the owner and used for the purposes for which the project was constructed, be delayed by more than 45 days, said prime contractor shall be paid interest, beginning on the 46th day, at the rate of one percent (1%) per month or fraction thereof unless a lower rate is agreed upon on such unpaid balance as may be due. In addition to the above final payment provisions, periodic payments due a prime contractor during construction shall be paid in accordance with the payment provisions of the contract documents or said above for delayed final payments. Such interest shall begin on the date the payment is due and continue until the date on which payment is made. Such due date may be established by the terms of the contract. Funds for payment of such interest on state-owned projects shall be obtained from the current budget of the owning department, institution or agency. Where a conditional acceptance of a contract exists, and where the owner is retaining a reasonable sum pending correction of such conditions, interest on such reasonable sum shall not apply.

b. Within seven days of receipt by the prime contractor of each periodic or final payment, the prime contractor shall pay the subcontractor based on work completed or service provided under the subcontract. Should any periodic or final payment to the subcontractor be delayed by more than seven days after receipt of period or final payment by the prime contractor, the prime contractor shall pay the subcontractor interest, beginning on the eighth day, at the rate of one percent (1%) per month or fraction thereof on such unpaid balance as may be due.

c. The percentage of retainage on payments made by the prime contractor to the subcontractor shall not exceed the percentage of retainage on payments made by the owner to the prime contractor. Any percentage of retainage on

payments made by the prime contractor to the subcontractor that exceeds the percentage of retainage on payments made by the owner to the prime contractor shall be subject to interest to be paid by the prime contractor to the subcontractor at the rate of one percent (1%) per month or fraction thereof.

d. Nothing in this section shall prevent the prime contractor at the time of application and certification to the owner from withholding application and certification to the owner for payment to the subcontractor for unsatisfactory job progress; defective construction not remedied; disputed work; third-party claims filed or reasonable evidence that claim will be filed; failure of subcontractor to make timely payments for labor, equipment and materials; damage to prime contractor or another subcontractor; reasonable evidence that subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed the initial percentage retained by the owner.

ARTICLE 18 – DESIGNER'S STATUS

a. The designer shall provide general administration of the performance of construction contracts, including liaison and necessary inspection of the work to ensure compliance with plans and specifications. He is the agent of the owner only for the purpose of constructing this work and to the extent stipulated in the contract documents. He has authority to stop work or to order work removed, or to order corrections of faulty work where such action may be necessary to assure successful completion of the work.

b. The designer is the impartial interpreter of the contract documents, and, as such, he shall exercise his powers under the contract to enforce faithful performance by both the owner and the contractor, taking sides with neither.

c. Should the designer cease to be employed on the work for any reason whatsoever, then the owner shall employ a competent replacement who shall assume the status of the former designer.

d. The designer will make periodic inspections of the project at intervals appropriate to the stage of construction. He will inspect the progress, the quality and the quantity of the work.

e. The designer and the owner shall have access to the work whenever it is in preparation and progress during normal working hours. The contractor shall provide facilities for such access so the designer may perform his functions under the contract documents.

f. Based on the designer's inspections and evaluations of the project, the designer shall issue interpretations, directive and decisions as may be necessary to administer the project. His decisions relating to artistic effect and technical matters shall be final, provided such decisions are within the limitations of the contract.

ARTICLE 19 – CHANGES IN THE WORK

a. The owner may have changes made in the work covered by the contract. These changes will not invalidate and will not relieve or release the contractor from any guarantee given by him pertinent to the contract provisions. These changes will not affect the validity of the guarantee bond and will not relieve the surety or sureties of said bond. All extra work shall be executed under conditions of the original contract.

b. Except in an emergency endangering life or property, **NO CHANGE SHALL BE MADE BY THE CONTRACTOR EXCEPT UPON RECEIPT OF APPROVED CHANGE ORDER OR WRITTEN FIELD ORDER FROM THE DESIGNER AND COUNTERSIGNED BY THE OWNER AUTHORIZING SUCH CHANGE. NO CLAIM FOR ADJUSTMENTS OF THE CONTRACT PRICE SHALL BE VALID UNLESS THIS PROCEDURE IS FOLLOWED.**

   A FIELD ORDER, TRANSMITTED BY FAX OR HAND DELIVERED, MAY BE USED WHERE THE CHANGE INVOLVED IMPACTS THE CRITICAL PATH OF THE WORK. A FORMAL CHANGE ORDER SHALL BE ISSUED WITHIN THE TIME STATED ON THE FIELD ORDER.

   In the event of emergency endangering life or property, the contractor may be directed to proceed on a time and material basis whereupon the contractor shall proceed and keep accurately on such form as may be required, a correct amount of costs together with all proper invoices, payrolls and supporting data. Upon completion of the work the change order will be prepared as outlined under either Method "c (1)" or Method "c(2)" or both.

c. In determining the values of changes, either additive or deductive, contractors are restricted to the use of the following methods:

   1. Where the extra work involved is covered by unit prices quoted in the proposal, the value of the change shall be computed by application of unit prices based on quantities, estimated or actual as agreed of the items involved, except is such cases where a quantity exceeds the estimated quantity allowance in the contract by one hundred percent (100%) or more. In such cases, either party may elect to proceed under subparagraph c2 herein. If neither party elects to proceed under c2, then unit prices shall apply.

   2. The contracting parties shall negotiate and agree upon the equitable value of the change prior to issuance of the change order, and the change order shall stipulate the corresponding lump sum adjustment to the contract price.

d. Under Paragraph "b" and Methods "c(2)" above, the allowances for overhead and profit combined shall not exceed twenty percent (20%) of **net cost** except where the change involves a subcontractor, allowance shall not exceed fifteen percent (15%) for the subcontractor, and ten percent (10%) for the prime contractor. Under Method "c(1)", no additional allowances shall be made for overhead and profit. In the case of deductible change orders,

under Method "c(2)" and Paragraph (b) above, the contractor shall include no less than five percent (5%) profit, but no allowances for overhead.

e. The term "net cost" as used herein shall mean the difference between all proper cost additions and deductions. The "cost" as used herein shall be limited to the following:

1. The actual costs of materials and supplies incorporated or consumed as part of the project;

2. The actual costs of labor expended on the project site;

3. The actual costs of labor burden, limited to the costs of social security (FICA) and Medicare/Medicaid taxes; unemployment insurance costs; health/dental/vision insurance premiums; paid employee leave for holidays, vacation, sick leave, and/or petty leave, not to exceed a total of 30 days per year; retirement contributions; worker's compensation insurance premiums; and the costs of general liability insurance when premiums are computed based on payroll amounts; the total of which shall not exceed forty percent (40%) of the actual costs of labor;

4. The actual costs of rental for tools, excluding hand tools; equipment; machinery; and temporary facilities required for the project;

5. The actual costs of premiums for bonds, insurance, permit fees, and sales or use taxes related to the project

Overtime and extra pay for holidays and weekends may be a cost item only to the extent approved by the owner.

f. Should concealed conditions be encountered in the performance of the work below grade, or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the contract documents, the contract sum and time for completion may be equitably adjusted by change order upon claim by either party made within thirty (30) days after the condition has been identified. The cost of such change shall be arrived at by one of the foregoing methods.

ALL CHANGE ORDERS SHALL BE SUPPORTED BY A BREAKDOWN SHOWING METHOD OF ARRIVING AT NET COST AS DEFINED ABOVE.

g. In all change orders, the procedure will be for the designer to request proposals for the change order work in writing. The contractor will provide such proposal and supporting data in suitable format. The designer shall verify correctness. Within fourteen (14) days after receipt of the contractor's proposal, the designer shall prepare the change order and forward to the contractor for his signature or otherwise respond, in writing, to the contractor's proposal. Within seven (7) days after receipt of the change order executed by the contractor, the designer shall, certify the change order by his signature, and forward the change order and all supporting data to the owner for the owner's signature. The owner shall execute the change order within

seven (7) days. One copy of the change order will remain with the owner, and the remaining copies are sent to the designer for distribution to the owner(s), contractor(s), and the surety. In case of emergency or extenuating circumstances, approval of changes may be obtained verbally by telephone or field orders approved by all parties, then shall be substantiated in writing as outlined under normal procedure.

h. At the time of signing a change order, the contractor shall be required to certify as follows:

"I certify that my bonding company will be notified forthwith that my contract has been changed by the amount of this change order, and that a copy of the approved change order will be mailed upon receipt by me to my surety."

i. A change order, when issued, shall be full compensation, or credit, for the work included, omitted or substituted. It shall show on its face the adjustment in time for completion of the project as a result of the change in the work.

j. If, during the progress of the work, the owner requests a change order and the contractor's terms are unacceptable, the owner may require the contractor to perform such work on a time and material basis in accordance with paragraph "b" above. Without prejudice, nothing in this paragraph shall preclude the owner from performing or to have performed that portion of the work requested in the change order.

ARTICLE 20 – CLAIMS FOR EXTRA COST

a. Should the contractor consider that as a result of any instructions given in any form the designer, he is entitled to extra cost above that stated in the contract, he shall give written notice thereof to the designer within seven (7) days without delay, and shall not proceed with the work affected until further advised, except in emergency involving the safety of life or property, which condition is covered in Article 19(b) and Article 11(h). No claims for extra compensation will be considered unless the claim is so made. The designer shall render a written decision within seven (7) days of receipt of claim.

b. **THE CONTRACTOR SHALL NOT ACT ON INSTRUCTIONS RECEIVED BY HIM FROM PERSONS OTHER THAN THE DESIGNER, AND ANY CLAIMS FOR EXTRA COMPENSATION OR EXTENSION OF TIME ON ACCOUNT OF SUCH INSTRUCTION WILL NOT BE HONORED.** The designer will not be responsible for misunderstandings claimed by the contractor of verbal instructions which have not been confirmed in writing, and in no case shall instructions be interpreted as permitting a departure from the contract documents unless such instruction is confirmed in writing and supported by a properly authorized change order.

c. Should a claim for extra compensation by the contractor be denied by the designer or owner, and cannot be resolved by a representative of the owner, the contractor may request a mediation in connection with G.S. 143-128g in the dispute resolution rules adopted by the State Building Commission. If the contractor is unable to resolve its claims as a result of mediation, the

contractor may pursue his claim in accordance with the provisions of G.S. 143-153.3 and the following:

1. A contractor who has not completed a contract with a board for construction or repair work and who has not received the amount he claims is due under the contract may submit a verified written claim to the owner for the amount the contractor claims is due. The owner may deny, allow or compromise the claim, in whole or in part. A claim under this subsection is not a contested case under Chapter 150B of the General Statutes.

2. (a) A contractor who has completed a contract with a board for construction or repair work and who has not received the amount he claims is due under the contract may submit a verified written claim to the owner for the amount the contractor claims is due. The claim shall be submitted within sixty (60) days after the contractor receives a final statement of the board's disposition of his claim and shall state the factual basis for the claim.

   (b) The director shall investigate a submitted claim within ninety (90) days of receiving the claim, or within any longer time period upon which the director and the contractor agree. The contractor may appear before the director, either in person or through counsel, to present facts and arguments in support of his claim. The director may allow, deny or compromise the claim, in whole or in part. The director shall give the contractor a written statement of the director's decision on the contractor's claim.

   (c) A contractor who is dissatisfied with the director's decision on a claim submitted under this subsection may commence a contested case on the claim under Chapter 150B of the General Statutes. The contested case shall be commenced within sixth (60) days of receiving the director's written statement of the decision.

   (d) As to any portion of a claim that is denied by the director, the contractor may, in lieu of the procedures set forth in the preceding subsection of this section, within six (6) months of receipt of the director's final decision, institute a civil action for the sum he claims to be entitled to under the contract by filing a verified complaint and the issuance of a summons in the Superior Court of any county where the work under the contract was performed. The procedure shall be the same as in all civil actions except that all issues shall be tried by the judge, without a jury.

ARTICLE 21 – MINOR CHANGES IN THE WORK

The designer will have the authority to order minor changes in the work not involving an adjustment in the contract sum or time for completion, and not inconsistent with the intent of the contract documents. Such changes shall be

effected by written order, copied to the owner, and shall be binding on the owner and the contractor.

ARTICLE 22 – UNCORRECTED FAULTY WORK

Should the correction of faulty or damaged work be considered inadvisable or inexpedient by the owner and the designer, the owner shall be reimbursed by the contractor. A change order will be issued to reflect a reduction in the contract sum.

ARTICLE 23 – TIME OF COMPLETION, DELAYS, EXTENSION OF TIME

a. The time of completion is stated in the Form of Construction Contract. The Project Expediter, upon notice of award of contract, shall prepare a construction schedule to complete the project within the time of completion as required by Article 14.

b. The contractors shall commence work to be performed under this agreement on a date to be specified in a written Notice to Proceed from the designer and shall fully complete all work hereunder within the time of completion stated. For each day in excess of the above number of days, the contractor(s) shall pay the owner the sum stated as liquidated damages reasonably estimated in advance to cover the losses to be incurred by the owner by reason of failure of said contractor(s) to complete the work within the time specified, such time being in the essence of this contract and a material consideration thereof.

c. The designer shall be the judge as to the division of responsibility between the contractor(s), based on the construction schedule, weekly reports and job records, and shall apportion the amount of liquidated damages to be paid by each of them, according to delay caused by any or all of them.

d. If the contractor is delayed at any time in the progress of his work by any act or negligence of the owner or the designer, or by any employee of either; by any separate contractor employed by the owner; by changes ordered in the work; by labor disputes at the project site; by abnormal weather conditions not reasonably anticipated for the locality where the work is performed; by unavoidable casualties; by any causes beyond the contractor's control; or by any other causes which the designer and owner determine may justify the delay, then the contract time may be extended by change order for the time which the designer and owner may determine is reasonable.

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

work and initialed by the designer's representative. Time extensions for weather delays do not entitle the contractor to "extended overhead" recovery.

e. Request for extension of time shall be made in writing within twenty (20) days following cause of delay. In case of continuing cause for delay, the Contractor shall notify the Designer of the delay within 20 days of the beginning of the delay and only one claim is necessary.

f. The contractor shall notify his surety in writing of extension of time granted.

g. No claim shall be allowed on account of failure of the designer to furnish drawings or instructions until twenty (20) days after demand for such drawings and/or instructions. See article 5c.

h. Should the completion of the work be delayed beyond the time specified for completion for any reason other that the 'Act of God' or neglect of the Owner, the actual engineering expense incurred by the Engineer as a result of such delay shall be compensated by 'Liquidated Damages'. The Owner may deduct such engineering expense from any payments due or to become due from the Contractor.

ARTICLE 24 – PARTIAL UTILIZATION/BENEFICIAL OCCUPANCY

a. The owner may desire to occupy or utilize all or a portion of the project when the work is substantially complete.

b. Prior to the final payment, the owner may request the contractor(s) in writing, through the designer if applicable, to permit him to use a specified part of the project which he believes he may use without significant interference with construction of the other parts of the project. If the contractor(s) agree, the designer will schedule a beneficial occupancy inspection, with the approval of the owner, after which the designer may issue a certificate of substantial completion. The certificate shall include the following documentation:

   1. Date of substantial completion.

   2. A tentative list of items to be completed or corrected before final payment.

   3. Establishing responsibility between contractor and owner for maintenance, heat, utilities and insurance.

   4. Establishing the date for guarantees and warranties under terms of the contract.

   5. Consent of surety.

   6. Endorsement from insurance company permitting occupancy.

c. The owner shall have the right to exclude the contractor from any part of the project which the designer has so certified to be substantially complete, but

the owner will allow the contractor reasonable access to complete or correct work to bring it into compliance with the contract.

d. Occupancy by the owner under this article will in no way relieve the contractor from his contractual requirement to complete the project within the specified time. The contractor will not be relieved of liquidated damages because of beneficial occupancy. The designer may prorate liquidated damages based on the percentage of project occupied.

ARTICLE 25 – FINAL INSPECTION, ACCEPTANCE, AND PROJECT CLOSEOUT

a. Upon notification from the contractor(s) that the project is complete and ready for inspection, the designer shall make a preliminary final inspection to verify that the project is complete and ready for final inspection. Prior to final inspection, the contractor(s) shall complete all items requiring corrective measures noted at the preliminary inspection. The designer shall schedule a final inspection at a time and date acceptable to the owner and contractor(s).

b. When contractors finish their work prior to completion by other contractors, these contracts shall be closed out through the final inspection, acceptance and final payment process on recommendation of the designer and approval of the owner.

c. At the final inspection, the designer shall, if job conditions warrant, record a list of items that are found to be incomplete or not in accordance with the contract documents. At the conclusion of the final inspection, the designer and owner shall make the following determinations:

    1. That the project is completed and accepted.

    2. That the project is accepted subject to the list of discrepancies (punch list). All punch list items must be completed within thirty (30) days of acceptance or the owner may invoke Article 28, Owner's Right to Do Work.

    3. That the project is not complete and another date for a final inspection will be established.

d. Within fourteen (14) days of acceptance per Paragraph c1 or within fourteen (14) days after completion of punch list per Paragraph c2 above, the designer shall certify the work and issue applicable certificate(s) of compliance.

e. Any discrepancies listed or discovered after the date of final inspection and acceptance under Paragraphs c1 or c2 above shall be handled in accordance with Article 42.

f. The date of acceptance will establish the following:

    1. The beginning of guarantees and warranties period.

2. The date on which the contractor's insurance coverage for public liability, property damage and builder's risk may be terminated.

3. That no liquidated damages (if applicable) shall be assessed after this date.

4. The termination date of utility cost to the contractor.

ARTICLE 26 – CORRECTION OF WORK BEFORE FINAL PAYMENT

a. Any work, materials, fabricated items or other parts of the work which have been condemned or declared not in accordance with the contract by the designer shall be promptly removed from the work site by the contractor, and shall be immediately replaced by new work in accordance with the contract at no additional cost to the owner. Work or property of other contractors or the owner, damaged or destroyed by virtue of such faulty work, shall be made good at the expense of the contractor whose work is faulty.

b. Correction of condemned work described above shall commence within twenty-four (24) hours after receipt of notice from the designer, and shall make satisfactory progress until completed.

c. Should the contractor fail to proceed with the required corrections, then the owner may complete the work in accordance with the provisions of Article 28.

ARTICLE 27 – CORRECTION OF WORK AFTER FINAL PAYMENT

See Article 35, Performance Bond and Payment Bond, and Article 42, Guarantee. Neither the final certificate, final payment, occupancy of the premises by the owner, nor any provision of the contract, nor any other act or instrument of the owner, nor the designer, shall relieve the contractor from responsibility for negligence, or faulty material or workmanship, or failure to comply with the drawings and specifications. He shall correct or make good any defects due thereto and repair any damages resulting therefrom, which may appear during the guarantee period following final acceptance of the work except as stated otherwise under Article 42, Guarantee. The owner will report any defects as they may appear to the contractor and establish a time limit for completion of corrections by the contractor. The owner will be the judge as to the responsibility for corrections of defects.

ARTICLE 28 – OWNER'S RIGHT TO DO WORK

If, during the progress of the work or during the period of guarantee, the contractor fails to prosecute the work properly or to perform any provision of the contract, the owner, after fifteen (15) days' written notice sent by certified mail, return receipt requested, to the contractor from the designer, may perform or have performed that portion of the work. The cost of the work may be deducted from any amounts due or to become due to the contractor, such action and cost of same having been first approved by the designer. Should the cost of such action of the owner exceed the amount due or to become due the contractor,

then the contractor or his surety, or both, shall be liable for and shall pay to the owner the amount of said excess.

ARTICLE 29 – ANNULMENT OF CONTRACT

If the contractor fails to begin the work under the contract within the time specified, or the progress of the work is not maintained on schedule, or the work is not completed within the time above specified, or fails to perform the work with sufficient workmen and equipment or with sufficient materials to ensure the prompt completion of said work, or shall perform the work unsuitably or shall discontinue the prosecution of the work, or if the contractor shall become insolvent or be declared bankrupt or commit any act of bankruptcy or insolvency, or allow any final judgment to stand against him unsatisfied for a period of forty-eight (48) hours, or shall make an assignment for the benefit of creditors, or for any other cause whatsoever shall not carry on the work in an acceptable manner, the owner may give notice in writing, sent by certified mail, return receipt requested, to the contractor and his surety of such delay, neglect or default, specifying the same, and if the contractor within a period of fifteen (15) days after such notice shall not proceed in accordance therewith, then the owner shall, declare this contract in default, and, thereupon, the surety shall promptly take over the work and complete the performance of this contract in the manner and within the time frame specified. In the event the surety shall fail to take over the work to be done under this contract within fifteen (15) days after being so notified and notify the owner in writing, sent by certified mail, return receipt requested, that he is taking the same over and stating that he will diligently pursue and complete the same, the owner shall have full power and authority, without violating the contract, to take the prosecution of the work out of the hands of said contractor, to appropriate or use any or all contract materials and equipment on the grounds as may be suitable and acceptable and may enter into an agreement, either by public letting or negotiation, for the completion of said contract according to the terms and provisions thereof or use such other methods as in his opinion shall be required for the completion of said contract in an acceptable manner. All costs and charges incurred by the owner, together with the costs of completing the work under contract, shall be deducted from any monies due or which may become due said contractor and surety. In case the expense so incurred by the owner shall be less than the sum which would have been payable under the contract, if it had been completed by said contractor, then the said contractor and surety shall be entitled to receive the difference, but in case such expense shall exceed the sum which would have been payable under the contract, then the contractor and the surety shall be liable and shall pay to the owner the amount of said excess.

ARTICLE 30 – CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE THE CONTRACT

a. Should the work be stopped by order of a court having jurisdiction, or by order of any other public authority for a period of three months, due to cause beyond the fault or control of the contractor, or if the owner should fail or refuse to make payment on account of a certificate issued by the designer within thirty (30) days after receipt of same, then the contractor, after fifteen (15) days' written notice sent by certified mail, return receipt requested, to the

owner and the designer, may suspend operations on the work or terminate the contract.

b. The owner shall be liable to the contractor for the cost of all materials delivered and work performed on this contract plus 20 percent overhead and profit and shall make such payment. The designer shall be the judge as to the correctness of such payment.

ARTICLE 31 – REQUEST FOR PAYMENT

a. Not later than the fifth day of the month, the contractor shall submit to the designer a request for payment for work done during the previous month. The request shall be in the form agreed upon between the contractor and the designer, but shall show substantially the value of work done and materials delivered to the site during the period since the last payment, and shall sum up the financial status of the contract with the following information:

   1. Total of contract including change orders.

   2. Value of work completed to date.

   3. Less five percent (5%) retainage, provided however, that after one hundred percent (100%) of the contractor's work has been satisfactorily completed on schedule, with approval of the owner and written consent of the surety, further requirements for retainage will be waived only so long as work continues to be completed satisfactorily and on schedule.

   4. Less previous payments.

   5. Current amount due.

b. The contractor, upon request of the designer, shall substantiate the request with invoices of vouchers or payrolls or other evidence.

c. Prior to submitting the first request, the contractor shall prepare for the designer a schedule showing a breakdown of the contract price into values of the various parts of the work, so arranged as to facilitate payments to subcontractors in accordance with Article 17, Contractor and Subcontractor Relationships. The contractor(s) shall list the value of each subcontractor and supplier, identifying each minority business subcontractor and supplier as listed in Affidavit C, if applicable.

d. When payment is made on account of stored materials and equipment, such materials must be stored on the owner's property, and the request for payments shall be accompanied by the invoices or bills of sale or other evidence to establish the owner's title to such materials and equipment. Responsibility for such stored materials and equipment shall remain with the contractor regardless of ownership title. Such stored materials and equipment shall not be removed from the owner's property. Should the

space for storage on-site be limited, the contractor, at his option, shall be permitted to store such materials and/or equipment in a suitable space off-site. Should the contractor desire to include any such materials or equipment in his application for payment, they must be stored in the name of the owner in a commercial warehouse approved by the designer and the owner and located as close to the site as possible. The warehouse selected must be approved by the contractor's bonding and insurance companies; the material to be paid for shall be assigned to the owner and shall be inspected by the designer. Upon approval by the designer of the storage facilities and materials and equipment, payment therefore will be certified. Responsibility for such stored materials and equipment shall remain with the contractor. Such stored materials and equipment shall not be moved except for transportation to the project site. Under certain conditions, the designer may approve storage of materials at the point of manufacture, which conditions shall be approved by the designer and the owner prior to approval for the storage and shall include an agreement by the storing party, which unconditionally gives the owner absolute right to possession of the materials at anytime. Bond, security and insurance protection shall continue to be the responsibility of the contractor(s).

e. In the event of beneficial occupancy, retainage of funds due the contractor(s) may be reduced with the approval of the owner to an equitable amount to less than two and one-half (2 ½) times the estimated value of the work to be completed or corrected. Reduction of retainage must be with the consent and approval of the contractor's bonding company.

ARTICLE 32 – CERTIFICATES OF PAYMENT AND FINAL PAYMENT

a. Within five (5) days from receipt of request for payment from the contractor, the designer shall issue and forward to the owner a certificate for payment. This certificate shall indicate the amount requested or as approved by the designer. If the certificate is not approved by the designer, he shall state in writing to the contractor and the owner his reasons for withholding payment.

b. No certificate issued or payment made shall constitute an acceptance of the work or any part thereof. The making and acceptance of final payment shall constitute a waiver of all claims by the owner except:

   1. Claims arising from unsettled liens or claims against the contractor.

   2. Faulty work or materials appearing after final payment.

   3. Failure of the contractor to perform the work in accordance with drawings and specifications, such failure appearing after payment.

   4. As conditioned in the performance bond and payment bond.

c. The making and acceptance of final payment shall constitute a waiver of all claims by the contractor except those claims previously made and remaining unsettled (Article 20(c)).

d. Prior to submitting request for final payment to the designer for approval, the contractor shall fully comply with all requirements specified in the "project closeout" section of the specifications. These requirements include but not limited to the following:

   1. Submittal of Product and Operating Manuals, Warranties and Bonds, Guarantees, Maintenance Agreements, As-Built Drawings, Certificates of Inspection or Approval from agencies having jurisdiction. (The designer must approve the Manuals prior to delivery to the owner.)

   2. Transfer of Required attic stock material and all keys in an organized manner.

   3. Record of Owner's training.

   4. Resolution of any final inspection discrepancies.

e. The contractor shall forward to the designer, the final application for payment along with the following documents:

   1. List of minority business subcontractors and material suppliers showing breakdown of contracts amount.

   2. Affidavit of Release of Liens.

   3. Affidavit of contractors of payment to material suppliers and subcontractors. (See Article 36).

   4. Consent of Surety to Final Payment.

   5. Certificates of state agencies required by state law.

f. The designer will not authorize final payment until the work under contract has been certified by designer, certificates of compliance issued, and the contractor has complied with the closeout requirements. The designer shall forward the contractor's final application for payment to the owner along with respective certificate(s) of compliance required by law.

ARTICLE 33 – PAYMENTS WITHHELD

a. The designer with the approval of the owner may withhold payment for the following reasons:

   1. Faulty work not corrected.

   2. The unpaid balance on the contract is insufficient to complete the work in the judgment of the designer.

   3. To provide for sufficient contract balance to cover liquidated damages that will be assessed.

b. The secretary of the Department of Administration may authorize the withholding of payment for the following reasons:

1. Claims filed against the contractor or evidence that a claim will be filed.

2. Evidence that subcontractors have not been paid.

c. When grounds for withholding payments have been removed, payment will be released. Delay of payment due the contractor without cause will make owner liable for payment of interest to the contractor as provided in G.S. 143-134.1.

ARTICLE 34 – MINIMUM INSURANCE REQUIREMENTS

The work under this contract shall not commence until the contractor has obtained all required insurance and verifying certificates of insurance have been approved in writing by the owner. These certificates shall contain a provision that coverages afforded under the policies will not be cancelled, reduced in amount or coverages eliminated until at least thirty (30) days after mailing written notice, by certified mail, return receipt requested, to the insured and the owner of such alteration or cancellation.

a. **Worker's Compensation and Employer's Liability**

The contractor shall provide and maintain, during the life of the contract, workmen's compensation insurance, as required by law, as well as employer's liability coverage with minimum limits of $100,000.

b. **Public Liability and Property Damage**

The contractor shall provide and maintain, during the life of the contract, comprehensive general liability insurance, including coverage for premises operations, independent contractors, completed operations, products and contractual exposures, as shall protect such contractors from claims arising out of any bodily injury, including accidental death, as well as from claims for property damages which may arise from operations under this contract, whether such operations be by the contractor or by any subcontractor, or by anyone directly or indirectly employed by either of them and the minimum limits of such insurance shall be as follows:

Bodily Injury:	$500,000 per occurrence
Property Damage:	$100,000 per occurrence / $300,000 aggregate

In lieu of limits listed above, a $500,000 combined single limit shall satisfy both conditions.

Such coverage for completed operations must be maintained for at least two (2) years following final acceptance of the work performed under the contract.

c. **Property Insurance (Builder's Risk/Installation Floater)**

The contractor shall purchase and maintain property insurance during the life of this contract, upon the entire work at the site to the full insurable value thereof. This insurance shall include the interests of the owner, the contractor, the subcontractors and sub-subcontractors in the work and shall insure against the perils of fire, extended coverage, and vandalism and malicious mischief. If the owner is damaged by failure of the contractor to purchase or maintain such insurance, then the contractor shall bear all reasonable costs properly attributable thereto; the contractor shall effect and maintain similar property insurance on portions of the work stored off the site when request for payment per articles so includes such portions.

d. **Deductible**

Any deductible, if applicable to loss covered by insurance provided, is to be borne by the contractor.

e. **Other Insurance**

The contractor shall obtain such additional insurance as may be required by the owner including motor vehicle insurance, in amounts not less than the statutory limits.

f. **Proof of Carriage**

The contractor shall furnish the owner with satisfactory proof of carriage of the insurance required before written approval is granted by the owner.

ARTICLE 35 – PERFORMANCE BOND AND PAYMENT BOND

a. Each contractor shall furnish a performance bond and payment bond executed by a surety company authorized to do business in North Carolina. The bonds shall be in the full contract amount. Bonds shall be executed in the form bound with these specifications (Section 307 and Section 308).

b. All bonds shall be countersigned by an authorized agent of the bonding company who is licensed to do business in North Carolina.

ARTICLE 36 – CONTRACTOR'S AFFIDAVIT

The final payment of retained amount due to contractor on account of the contract shall not become due until the contractor has furnished to the owner through the designer an affidavit signed, sworn and notarized to the effect that all payments for materials, services or subcontracted work in connection with his contract have been satisfied, and that no claims or liens exist against the contractor in connection with this contract. In the event that the contractor cannot obtain similar affidavits from subcontractors to protect the contractor and the owner from possible liens or claims against the subcontractor, the contractor shall state in his affidavit that no claims or liens exist against any subcontractor to the best of his (the contractor's) knowledge, and if any appear afterward, the contractor shall save the owner harmless.

ARTICLE 37 – ASSIGNMENTS

The contractor shall not assign any portion of this contract nor subcontract in its entirety. Except as may be required under terms of the performance bond or payment bond, no funds or sums of money due or become due to contractor under the contract may be assigned.

ARTICLE 38 – USE OF PREMISES

a. The contractor(s) shall confine his apparatus, the storage of materials and the operations of his workmen to limits indicated by law, ordinances, permits or directions of the designer and shall not exceed those established limits in his operations.

b. The contractor(s) shall not load or permit any part of the structure to be loaded with a weight that will endanger its safety.

c. The contractor(s) shall enforce the designer's instructions regarding signs, advertisements, fire and smoking.

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

ARTICLE 39 – CUTTING, PATCHING AND DIGGING

a. The contractor shall do all cutting, fitting or patching of his work that may be required to make its several parts come together properly and fit it to receive or be received by work of other contractors shown upon or reasonably implied by the drawings and specifications for the completed structure, as the designer may direct.

b. Any cost brought about by defective or ill-timed work shall be borne by the party responsible therefor.

c. No contractor shall endanger any work of another contractor by cutting, digging or other means. No contractor shall cut or alter the work of any other contractor without the consent of the designer and the affected contractor(s).

ARTICLE 40 – UTILITIES, STRUCTURES, SIGNS

a. The Project Expediter shall provide necessary and adequate facilities for water, electricity, gas, oil, sewer, and other utility services, which may be necessary and required for completion of the project. Any permanent meters installed shall be listed in the Project Expediter's name until his work is fully accepted by the owner.

b. Meters shall be re-listed in the owner's name on the day following completion and acceptance of the Project Expediter's work, and the owner shall pay for services used after that date.

c. The owner shall be reimbursed for all metered utility charges after the meter is re-listed in the owner's name and prior to completion and acceptance of the work of all contractors. Reimbursement shall be made by the contractor whose work has not been completed and accepted. If the work of two or more contractors has not been completed and accepted, reimbursement to the owner shall be paid by the contractors involved on the basis of assessments by the designer.

d. The Project Expediter shall provide, if required and where directed, a shed for toilet facilities and shall furnish and install in this shed all water closets required for a complete and adequate sanitary arrangement. These facilities will be available to other contractors on the job and shall be kept in a neat and sanitary condition at all times. Chemical toilets are acceptable.

ARTICLE 41 – CLEANING UP

The contractors shall keep the surrounding area reasonably free from rubbish at all times, and shall remove debris from the site on a timely basis or when directed to do so by the designer or Project Expediter. The Project Expediter shall provide an on site refuse container(s) for the use of all contractors.

ARTICLE 42 – GUARANTEE

a. The contractor shall unconditionally guarantee materials and workmanship against patent defects arising from faulty materials, faulty workmanship or negligence for a period of twelve (12) months following the date of final acceptance of the work or beneficial occupancy and shall replace such defective materials or workmanship without cost to the owner.

b. Where items or equipment or material carry a manufacturer's warranty for any period in excess of twelve (12) months, then the manufacturer's warranty shall apply for that particular piece of equipment or material. The contractor shall replace such defective equipment or materials, without cost to the owner, within the manufacturer's warranty period.

c. Additionally, the owner may bring an action for latent defects caused by the negligence of the contractor, which is hidden or not readily apparent to the owner at the time of beneficial occupancy or final acceptance, whichever occurred first, in accordance with applicable law.

d. Guarantees for roof, equipment, materials, and supplies shall be stipulated in the specifications sections governing such roof, equipment, materials, or supplies.

ARTICLE 43 – CODES AND STANDARDS

Wherever reference is given to codes, standard specifications or other data published by regulating agencies including, but not limited to, national electrical codes, North Carolina state building codes, federal specifications, ASTM specifications, various institute specifications, etc., it shall be understood that

such reference is to the latest edition including addenda published prior to the date of the contract documents.

ARTICLE 44 – INDEMNIFICATION

To the fullest extent permitted by law, the contractor shall indemnify and hold harmless the owner, the designer and the agents, consultants and employees of the owner and designer, from and against all claims, damages, losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from the performance or failure of performance of the work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission or the contractor, the contractor's subcontractor, or the agents of either the contractor or the contractor's subcontractor. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this article.

ARTICLE 45 – TAXES

a. Federal excise taxes do not apply to materials entering into state work (Internal Revenue Code, Section 3442(3)).

b. Federal transportation taxes do not apply to materials entering into state work (Internal Revenue Code, Section 3475(b) as amended).

c. North Carolina sales tax and use tax, as required by law, do apply to materials entering into state work and such costs shall be included in the bid proposal and contract sum.

d. Local option sales and use taxes, as required by law, do apply to materials entering into state work as applicable and such costs shall be included in the bid proposal and contract sum.

e. **Accounting Procedures for Refund of County Sales & Use Tax**

Amount of county sales and use tax paid per contractor's statements:

Contractors performing contracts for state agencies shall give the state agency for whose project the property was purchased a signed statement containing the information listed in G.S. 105-164.14(e).

The Department of Revenue has agreed that in lieu of obtaining copies of sales receipts from contractors, an agency may obtain a certified statement as of April 1, 1991 from the contractor setting forth the date, the type of property and the cost of the property purchased from each vendor, the county in which the vendor made the sale and the amount of local sales and use taxes paid thereon. If the property was purchased out-of-state, the county in which the property was delivered should be listed. The contractor should also be notified that the certified statement may be subject to audit.

In the event the contractors make several purchases from the same vendor, such certified statement must indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, the counties, and the county sales and use taxes paid thereon.

Name of taxing county: The position of a sale is the retailer's place of business located within a taxing county where the vendor becomes contractually obligated to make the sale. Therefore, it is important that the county tax be reported for the county of sale rather than the county of use. When property is purchased from out-of-state vendors and the county tax is charged, the county should be identified where delivery is made when reporting the county tax.

Such statement must also include the cost of any tangible personal property withdrawn from the contractor's warehouse stock and the amount of county sales or use tax paid thereon by the contractor.

Similar certified statements by his subcontractors must be obtained by the general contractor and furnished to the claimant.
Contractors are not to include any tax paid on supplies, tools and equipment which they use to perform their contracts and should include only those building materials, supplies, fixtures and equipment which actually become a part of or annexed to the building or structure.

ARTICLE 46 – EQUAL OPPORTUNITY CLAUSE

The non-discrimination clause contained in Section 202 (Federal) Executive Order 11246, as amended by Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex or national origin, and the implementing rules and regulations prescribed by the secretary of Labor, are incorporated herein.

ARTICLE 47 – EMPLOYMENT OF THE HANDICAPPED

The contractor(s) agree not to discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices.

ARTICLE 48 – ASBESTOS-CONTAINING MATERIALS (ACM)

The State of North Carolina has attempted to address all asbestos-containing materials that are to be disturbed in the project. However, there may be other asbestos-containing materials in the work areas that are not to be disturbed and do not create an exposure hazard. Contractors are reminded of the requirements of instructions under Instructions to Bidders and General

Conditions of the Contract, titled Examination of Conditions. Statute 130A, Article 19, amended August 3, 1989, established the Asbestos Hazard Management Program that controls asbestos abatement in North Carolina. The latest edition of *Guideline Criteria for Asbestos Abatement* from the State Construction Office is to be incorporated in all asbestos abatement projects for the Capital Improvement Program.

ARTICLE 49 – MINORITY BUSINESS PARTICIPATION

G.S. 143-128.2 establishes a ten percent (10%) goal for participation by minority business in total value of work for each State building project. The document, *Guidelines for Recruitment and Selection of Minority Businesses for Participation in State Construction Contracts* including Affidavits and Appendix E are hereby incorporated into and made a part of this contract.

TECHNICAL SPECIFICATIONS

CONTRACTOR TO USE NCDOT STORMDRAIN SPECIFICATIONS FOR THIS PROJECT.

WHERE NCDOT STANDARDS AND SPECIFICATIONS, LATEST EDITION, DIFFER FROM THE TECHNICAL SPECIFICATIONS PROVIDED, CONTRACTOR SHALL IMMEDIATLEY BRING TO THE ENGINEER'S ATTENTION FOR A DECISION ON WHICH WILL GOVERN.

Elm Street Drainage

NORTH CAROLINA OFFICE OF RECOVERY & RESILIENCY

Constructed in cooperation with the

STATE OF NORTH CAROLINA

ROY COOPER, GOVERNOR

and the

County of Nash

Robbie Davis, Chairman of Nash County Commissioners

Stocks Engineering, PA

Name of General Contractor

EQUAL HOUSING OPPORTUNITY

Special Provisions

1. Accident Prevention

The Contractor shall comply with all pertinent provisions of the "Manual of Accident Prevention in Construction" issued by AGC and the "Safety and Health Regulations for Construction" issued by the US Department of Labor.

2. American, Buy

It is the intent of this specification to convey the preference of the Owner and the Engineer that only domestic products are to be used on this project. If a hardship arises from this requirement or, if a significant cost increase will be incurred by the use of domestic products, bid the project with domestic but, attach an addendum to your bid with the proposed alternate product manufacturers name and cost savings to be realized should the Owner elect to use the alternate product. It the Owner chooses to use the alternate product, the Engineer will request test and/or product data sheets for detailed evaluation of the product. A decision will be rendered prior to award of a contract.

3. Bid Proposal Items Not Listed:

Any item not covered by a unit price in the bid proposal shall otherwise be covered in the line to be laid.

4. Bonds

A. The following Bonds **will** be required:
   1. Bid Bonds
   2. Performance Bonds
   3. Payment Bonds

5. Compaction Testing:

The Engineers reserve the right to determine the quality of compaction as performed by the Contractor. If, in the opinion of the Engineers, the compaction does not meet these specifications, the Engineers may require random compaction tests to be performed by an independent testing laboratory as selected by the Engineers. If any of these tests indicate that the material has not been compacted to the required density, the Contractor shall re-compact said material at no additional cost to the Owner. The Engineers shall then have the right to require additional compaction tests to insure that this or other material is compacted to the proper density without any additional costs to the Owner. The Contractor shall bear all costs associated with any testing if the test fails. The Owner pays for initial testing costs if the compaction testing proves to be within compliance,.

6. Confined Access Entry

The Contractor is to be aware that there may be structures or confined areas on this project that qualify as "confined" requiring compliance with OSHA "Confined Access Entry" regulations. Such areas may include, but are not necessarily limited to combined sewers, sanitary sewer manholes and lift station wetwells. Contractor is to provide certified equipment, proper worker notification and other applicable devices, harnesses, etc. as may necessary to protect workers.

7. Construction Staking

All Construction Staking is to be provided by the Contractor using the services of a Licensed Registered Land Surveyor familiar with construction staking procedures. The cost shall cover all staking required. The Owner is not to be assessed or charged for restaking costs where damage has occurred to stakes by the Contractor or his Subcontractor or any other agency or person since the project is the responsibility of the Contractor during construction until accepted by both the Engineer and the Town.

The Surveyor will not be responsible for quantity verification. The Contractor shall accept the Engineers estimated volumes shown in the proposal as a pay item or verify the quantities by actual finished field measurements by the use of a Licensed Land Surveyor.

8. Construction Time

All work which is included in the Contract Plans and Specifications shall be completed within **150 Calendar Days** of the Notice to Proceed date included in the Contract Documents. Should the Owner or Engineer temporarily suspend the work for causes for which the Contractor is not responsible, as provided elsewhere in these Specifications, the period of such suspension shall be added to the date stated above.

9. Contractor's Responsibility

1. The Contractor shall furnish all labor, materials, tools, equipment and all else required for and to construct the improvements complete, tested and placed into satisfactory operation, in accordance with the Contract Drawings, these specifications, and the Engineer's requirements under them. The Contractor shall be responsible for furnishing details which are required, but not necessarily shown on the Contract Drawings, for the adequate and proper construction and operation of the systems as required by the Engineers.

2. Every item mentioned, described, specified an/or referred to in these specifications, and all items shown, indicated or inferred by the construction of the systems shall be furnished and installed complete in every respect; tested in all manners required and/or necessary; and made ready for complete and regular service, as intended. All materials and equipment of whatever nature shall be furnished by the Contractor.

3. Insofar as possible, existing systems must be kept in operation at all times. The Contractor shall so organize and schedule his work as to cause the least inconvenience to the operation of the existing systems. Should it become necessary to put any part of the existing systems out of operation, the Contractor, without cost to the Owner, shall make such temporary connections, alterations, etc., as may be required to keep the existing systems in operation.

10. Drainage

(1.) Pipe: All pipe installed shall be class III reinforced concrete unless specified otherwise . Joint material shall be "Ram-Nek" or approved equal. In roadway and wet areas only, the pipe shall have a Class C (#57 stone) bedding. Otherwise, Class D bedding is to be used in all areas outside of the right-of-way.

(2.) Backfill of Drainage Pipe: All storm drainage pipe inside the right of way is to be backfilled in accordance with Division 2. Select or Class A Backfill is to be furnished to meet these requirements and all costs are considered incidental to the pipe costs. Stone bedding is to be paid separately when stone under pipe is called for.

11. Emergency/Standby

The Contractor is to furnish the Owner emergency phone numbers of project supervisory personnel on call. These must be people who can be contacted regarding the project during construction as well as during the warranty period.

12. Excavation/Borrow

(1.) The Utility Contractor's attention is directed to Division 2 of the Technical Specifications regarding backfilling and compaction requirements. Trench excavation may be used for backfill as long as the material meets Division 2 and is compatible such that the compaction requirements stated in Division 2 can be met. The Contractor is responsible for guaranteeing the trench against settlement. If sufficient material is not available from the trench excavation, consult with the Engineer regarding placement of either on-site or off-site borrow.

(2.) No payment will be made for disposal of waste or unsuitable material. Disposal of unsuitable material and waste (i.e. concrete, asphalt, stumps roots, rock, etc.) to be at Contractors expense to a location of his choosing which conforms to the current laws and regulations of the solid waste brand of NCDENR.

(3.) Structural fill is to be placed and compacted according to the Technical Specifications.

(4.) Excavated roadway material suitable for structural fill (see Technical Specs for definition Division 2) is to be reused as on-site borrow for which there is no pay item. On-site borrow shall be as defined in the Technical Specifications which generally says material hauled from within a 2,000 ft. radius in considered "on-site borrow" and not subject to payment. Excess excavation is to be wasted offsite. No payment will be made for disposal of unsuitable material or waste deposited, spread, compacted and landscaped within 5,000 ft of this site. The Contractor is to also include in his price all necessary erosion and sedimentation control devices necessary to satisfactory restrain and control sediment migration at the stockpile areas as well as at his offsite disposal areas as required by law.

(5.) The Contractor shall stockpile topsoil, which is free of root matter, objects larger than 2 inches, clay lumps, weeds and other objectionable material for reuse. In areas to receive fill, the topsoil is to first be stripped.

(6.) Fill is to be placed and compacted according to the Technical Specification.

13. Liquidated Damages

For each calendar day that any work shall remain uncompleted after the Contract Period specified for the completion of the work and provided for in the Contract, the sum of **500.00 dollars** per calendar day shall be deducted from any money due the Contractor, not as a penalty but as liquidated damages; provided, however, that due account shall be taken of any authorized adjustments of the Contract Period in favor of the Contractor and which the Owner considers to be equitable.

The Engineers Contract for services terminates at the end of the Contract time stated above. Exceeding the Contract time causes the Engineer to incur additional billable time, which is considered as extra or extra ordinary. These charges are to be assessed against the Contractor and deducted from the final payment as liquidated damages. Damages will not exceed $500 per day but the total number of days exceeded shall be added together and the total extra Engineering charges deducted from the pool of days.

In the event that the Contractor is declared in default for failure to prosecute the work or any separate part thereof in accordance with Article 23 of General Conditions, liquidated damages shall be charged as provided in this Special Condition. If the total amount chargeable as liquidated damages exceeds the amount payable to the Contractor or the surety, then such excess shall be paid to the Owner by the Contractor or his surety.

14. Low Areas Behind Curb/Sidewalk

The plans ordinarily show areas where fill is needed behind curbs to obtain positive surface drainage overtop of curb and prevent ponding or low areas behind curb.

If it is discovered that other areas exist where the curb will block surface runoff and create ponding behind the curb, fill in accordingly to promote positive surface drainage across top of curb.

Advise Engineer or his representative when such is found to exist.

15. Materials Stored On-Site, Payment of

Payment for materials stored on-site will not be allowed on periodic estimates unless agreed upon in writing between the Owner and the Contractor or agreed upon during the preconstruction conference and so stipulated in the preconstruction minutes as agreed to by the Owner. When allowed, invoices shall be submitted for verification of costs and the quantity verified by either the Engineer, his Observer or the Owner. Refer to Article 31 of the "General Conditions".

16. Materials, Storage of

The Contractor shall not store any materials, except pipe, on the street right of way. Pipe shall be stored either behind the curb or the roadside ditch. The Contractor will be responsible for securing a location for storage such as a vacant lot or abandoned street. The Contractor will be responsible for any damages to such sites and shall place them in a

condition equal to or better than the original condition. The Owner will not be liable and the Contractor hereby warrants such be the acceptance of a contract, for damages to any private property as a result of damages sustained either in the storage of materials or construction of the project. See Also Article 31 of the "General Conditions".

17. Overhead Power

There may be overhead power lines that must be crossed beneath during construction. Care shall be taken with the boom of excavators, etc. as well as with personnel when working in close proximity of these lines.

18. Pavement Protection – (On- and Off-site)

The Contractor shall be aware that due care shall be taken to prevent damage to the existing pavement surface by equipment and/or machinery. Street pads shall be used on backhoes when working adjacent to or on existing pavement.

The Contractor should be aware that he is liable for repairs to such damaged or scarred areas as deemed in need by the Town.

The Contractor is advised that he should make every effort to prevent spilling of waste on roads of both the City and NCDOT when enroute either to or from the site. Dump trucks hauling spoil or fill shall either be covered or shall not be loaded higher than 6" from the top of the dump bed.

Spillage on streets shall be removed by jetting or sweeping on the same day as the spill. Failure to comply with these requirements will result in suspension of work and such suspension shall not constitute an extension of the Contract.

19. Progress Meetings

Progress meetings are to be held during the course of the project at the job site as requested by the Owner and/or Engineer. The time of day and the day of the week to meet are to be decided upon at least 24 hours in advance.

20. Property Access – Private

The Contractor shall be responsible for assuring that all drives are left accessible, unless an alternative entrance can be worked out, during the construction of the pipe line or replacement of concrete. All stone (CABC) or pipe needed for drives for temporary access shall be provided by the Contractor. This item is considered incidental and no pay item is given to cover CABC or Temporary Drives.

22. Quantities

Quantities were taken off and then totaled. However, even though the quantities shown in the proposal may be either equal to or greater than will actually be installed, the Contractor will be paid only for the quantities installed – not those shown in the proposal. The quantities shown in the proposal are close if not conservative and are provided both to obtain a contract cost and give the Contractor an idea of the volume, quantities and magnitude of work

proposed.

Contractor is to verify quantities with the inspector prior to the submission of a payment request. If this step is omitted, payment will be delayed, as the inspector will have to meet with the Contractor and verify quantities. Payment request re-submission with corrected quantities may be necessary.

Asphalt, stone and concrete tickets, will be required to be submitted along with payment request. Tickets shall be stamped by supplier with job name on ticket and initialed by driver and or foreman delivering to site. The quantities will be checked to determine if quantities match yardage and depths placed.

23. Restoration of Disturbed Areas

In addition to the landscaping requirements required herein the Contractor shall be required to prepare, fertilize, seed, protect and otherwise establish a protective growth of ground protecting grass on all areas disturbed during his construction operations. These disturbed areas shall include all waste areas, borrow areas, temporary roads, etc., both within and without the Owner's property.

24. Site Investigation

A soils investigation has NOT been performed for this project. However, the Contractor is responsible for making any investigations he feels are warranted to properly determine the extent of work covered under these specifications and plans.

25. Standard Specifications

The term "Standard Specifications" mentioned in a number of the Special Provisions of these Specifications refers to the Town of Nashville Manual of Specifications Standards and Design, latest revision. These specifications are intended to be the standards for construction in this project except where covered by more restrictive requirements in the Technical Specifications. Where conflicts arise, or occur, these Specifications shall govern.

Where conditions are not covered by either of the Technical Specifications the NCDOT "Standard Specifications for Roads and Structures", latest edition shall apply.

26. Subsurface Conditions

The contractors shall be responsible for:

- Performing their own soils investigation.
- Locating, marking, avoiding, or relocating all existing utility lines and subsurface structures. Cost associated with underground utilities shall be the responsibility of the contractor and shall be included in the cost of the line laid.

27. Suspension of Work

Temporary Suspension of Work: The Engineer shall have the authority to suspend the work wholly, or in part, for such period or periods as he may deem necessary, due to unsuitable

weather, or such other conditions as are considered unfavorable for the suitable prosecution of the work, or for such time as is necessary, due to failure on the part of the Contractor to carry out orders given or perform any or all provisions of the Contract.

If it should become necessary to suspend work for an indefinite period, the Contractor shall store all materials in such manner that they will not become an obstruction nor become damaged in any way, and he shall take every precaution to prevent damage to deterioration of the work performed; provided suitable drainage by opening ditches, shoulder drains, et cetera, and erect temporary structures where necessary.

The Contractor shall not suspend the work without written authority from the Engineer, and shall proceed with the work promptly when notified by the Engineer to resume operations.

Adjustments for Suspension of Work: In the event the Contractor is ordered by the Engineer, in writing, to suspend work for some unforeseen cause not provided for in the Specifications, Special Conditions, Proposal, Contract, or work order and over which the Contractor has no control, the Contractor may be reimbursed for actual money expended on the job during the period of shutdown. No allowance will be made for anticipated profits. The period of shutdown shall be computed from the date set out in written order for work to cease until the date of the order for work to resume. Claims for such compensation shall be filed with the Owner within ten (10) days after date of order to resume work or such claim will not be considered. The Contractor shall submit his claim, substantiating papers covering the entire amount shown on the claim. The Owner shall take the claim under consideration, and may make such investigations as are deemed necessary, and shall be the sole judge as to the equitability of such a claim and such decisions shall be final. No provisions of this Special Condition shall be construed as entitling the Contractor to compensation for delays due to inclement weather, delays due to failure for surety, for suspension made at the request of the Contractor, or for any other delay, provided for in the Specifications, Special Conditions, Proposal, Contract, or work order.

28. *Taxes*

All bids shall include all applicable sales, use and excise taxes.

29. *Time Limit*

All work which is included in the Contract Plans and Specifications shall be completed within **150 Calendar Days** of the Notice to Proceed date included in the Contract Documents. Should the Owner or Engineer temporarily suspend the work for causes for which the Contractor is not responsible, as provided elsewhere in these Specifications, the period of such suspension shall be added to the date stated above.

30. *Time/Cost Damages*

(1) The Contractor is responsible for providing materials, labor, equipment and manpower to efficiently expedite the work as called for in these specifications.

(2) Damages will be imposed when the contract time, less credited rain days, is exceeded. The Contractor's attention is directed to Art 23 of the General Conditions, which stipulate that all Engineering Administrative and Inspection services, which occur beyond the contract time, are expenses that will be chargeable to the

Contractor. Such charges are applicable and subject to payment by the Owner recoverable in the form of liquidated damages from the Contractor.

(3) Damages will be set at $500.00 per day for each day the contract time, less credited rain days, is exceeded.

31. Traffic (NCDOT)

A. The Contractor shall provide all traffic control devices as required by the NCDOT in accordance with the NCDOT Construction and Maintenance Operations Supplement to the Manual on Uniform Traffic Control Devices.

B. All applicable street closed and detour signs will be posted in accordance with the NCDOT Construction and Maintenance Operations Supplement and a Detour Plan approved by the District Engineer's office.

C. All open areas, cuts depressions, etc. shall be visibly marked and barricaded with flashing lights for the life of the cut.

D. Pavement cuts shall not be left open and traffic blocked from by lane or street overnight. Suitable and approved means shall be provided for passing traffic over a cut to prevent danger to the motoring public limited to asphalt patching or stone screenings. Once a cut is made in the pavement, asphalt replacement must be performed within 48 hours after the line is backfilled. Further skin patches may be necessary to level the patch later in the project. This cost shall be considered incidental to the initial patch cost as proper compaction of backfill is required in all cases.

32. Traffic Control

Furnish all signs, flashers, barricades, cones, flagmen, etc. necessary to efficiently and safely convey to the motoring public to desired traffic flow and to properly delineate/mark the work zone.

(A.) During the progress of construction, the Contractor shall mark all hazards with well-maintained signs, barricades, or other warning or channelizing devices.

(B.) Vehicular access shall be maintained to all dwellings, schools, hospitals mailboxes or other emergency services.

(C.) The Contractor shall not work on both sides of an existing travel way simultaneously with the same area.

33. Underground Damage Protection

In accordance with the 1985 session of the General Assembly, Senate Bill 168, the Contractor is required to give notice to the utility company of not less than two (2) days, nor more than ten (10) days prior to starting excavation.

By Law, the utility shall provide, to the extent such information is reflected by the records in the possession of and reasonably available to the utility owner:

A. Location and description of the underground utilities.

B. Location and description of all utility markers indicating the location of the underground utilities.

C. Any other information that would assist in locating and avoiding damage to underground utilities, including providing temporary marking.

34. Utility Protection

The Contractor shall be responsible for protecting all existing utilities, which could be damaged by trenching, etc. Damages as a result of his work will be his responsibility. Only in the case where the Contractor was misdirected by a Utility agent will the Contractor have cause to seek relief from the Utility or the Owner.

The Contractor shall be responsible for protecting all existing utilities, which could be damaged by excavation near the proposed line.

35. Warranty, One-Year

Attention is directed to the requirements of General Condition, Article 42.

36. Water Service Interruption

All ties to existing water mains, etc. shall be coordinated with the Water and Sewer Superintendent to minimize disruption of water service, and prevent liability to the Contractor. During those periods where a line is to be cut off for a tie, the water and sewer department must be contacted at least twenty four hours prior to cut off.

37. Work Procedure and Scheduling, Safety and Protection

The Contractor shall be aware that early completion is an essential element of the Contract and that his work must be scheduled accordingly. However, this does not relieve the Contractor of his responsibility to so conduct his construction operations that the traveling public is subjected to a minimum of delay and hazard.

The Contractor shall project the traveling public from all damage to person and property within the limits of and for the duration of the Contract in accordance with the Plans and Specifications. He shall furnish and erect all necessary signs, barricades and bridging, and provide for the adequate lighting at night of all signs, barricades and points of special hazard. The Contractor shall be responsible for settling all claims arising from failure to adequately protect traffic.

No trench shall be allowed to remain partially or totally open overnight, without proper signs, barricades, and temporary lighting.

The Engineer, acting on behalf of the Owner, assumes no responsibility for or control over the Contractor's safety programs, nor any responsibility for the Contractor's work procedures, methods, sequences, techniques of construction, equipment, etc. Representatives of the Engineer are at the site only on behalf of the Owner to determine compliance with the Contract Documents, to measure work item quantities for payment, and to determine the

acceptability of the final product.

The following paragraph of the Specifications shall be posted on the job site during construction for the information of the workmen:

"NOTICE TO WORKMEN: The Engineer, acting on behalf of the Owner, assumes no responsibility for or control over the Contractor's safety programs, nor any responsibility for the Contractor's work procedures, methods, sequences, techniques of construction, equipment, etc. Representatives of the Engineer are at the site only on behalf of the Owner to determine compliance with the Contract Documents, to measure work item quantities for payment, and to determine the acceptability of the final product. Should any worker feel that work is proceeding in an unsafe manner, it is recommended that he notify his foreman, the project superintendent, the North Carolina Department of Labor, the Occupational Safety and Health Administration, and/or any other regulatory agency having jurisdiction."

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. 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 regulations issued 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 equivalents 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 l(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 29 CFR 5.5(a)(1)(iv); 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 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 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics 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. HUD shall approve an additional classification and wage rate and fringe benefits therefor 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; and

(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 HUD or its designee 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 HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee 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. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work 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 Section l(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 l(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which 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 records which show the costs anticipated or the actual cost 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. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee 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 HUD or its designee. 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 *http://www.dol.gov/esa/whd/forms/wh347instr.htm* or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee 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 HUD or its designee, 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 subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(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) That 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) That each laborer or 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 29 CFR Part 3;

(3) That 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 subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee 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, HUD or its designee 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, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, 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 Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the 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 subcontractor'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 Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, 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 which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the 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 29 CFR Part 5 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 will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, 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 the contract clauses in this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 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 HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. 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) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(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) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than $5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable where the amount of the prime contract exceeds $100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(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 the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, 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 subparagraph (1) of this paragraph, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.

(3) **Withholding for unpaid wages and liquidated damages.** HUD or its designee 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 contract, 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 subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety. The provisions of this paragraph C are applicable where the amount of the prime contract exceeds $100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

MINORITY BUSINESS ENTERPRISE AND WOMEN BUSINESS ENTERPRISE:
(10-16-07) SP1G68

Policy

It is the policy of Nash County that Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) as defined in *GS 136-28.4* shall have the equal opportunity to compete fairly for and to participate in the performance of contracts financed in whole or in part by Public Funds.

Obligation

The Contractor, subcontractor, and sub-recipient shall not discriminate on the basis of race, religion, color, creed, national origin, sex, handicapping condition or age in the performance of this contract. The Contractor shall comply with applicable requirements of *GS 136-28.4* in the award and administration of publicly funded contracts. Failure by the Contractor to comply with these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the County deems necessary.

Definitions

Commitment - The approved MBE/WBE participation submitted by the prime contractor during the bidding process.

Committed MBE/WBE - Any MBE/WBE listed on the MBE/WBE commitment list approved by the Department at the time of bid submission or any MBE/WBE utilized as a replacement for a MBE/WBE firm listed on the commitment list.

Department (DOT)- North Carolina Department of Transportation

Municipality – The entity letting the contract, when this provision refers to the Department or DOT, it shall mean the municipality, if applicable.

Minority Business Enterprise (MBE) – A firm certified as a Disadvantaged Minority-Owned Business Enterprise through the North Carolina Unified Certification Program.

Women Business Enterprise (WBE) – A firm certified as a Disadvantaged Women-Owned Business Enterprise through the North Carolina Unified Certification Program.

MBE/WBE – This term is used for convenience only. Minority Business Enterprise and Women Business Enterprise are not interchangeable terms and the goals for either or both are not interchangeable.

Goal - The MBE/WBE participation specified herein

Letter of Intent – Written documentation of the bidder/offeror's commitment to use a MBE/WBE subcontractor and confirmation from the MBE/WBE that it is participating in the contract.

Manufacturer - A firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Contractor.

Regular Dealer - A firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. A regular dealer engages in, as its principal business and in its own name, the purchase and sale or lease of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers are not regarded as manufacturers or regular dealers within the meaning of this section.

Form RS-1-D - Form for subcontracts involving MBE/WBE subcontractors attesting to the agreed upon unit prices and extensions for the affected contract items.

North Carolina Unified Certification Program - A program that provides comprehensive information to applicants for certification, such that an applicant is required to apply only once for a MBE/WBE certification that will be honored by all recipients of USDOT funds in the state and not limited to the Department of Transportation only. The Certification Program is in accordance with *49 CFR Part 26*.

Standard Specifications – The general term comprising all directions, provisions, and requirements contained or referred to in the *North Carolina Department of Transportation Standard Specifications for Roads and Structures* and any subsequent revisions or additions to such book that are issued under the title *Supplemental Specifications*.

Contract Goal

The following goals for participation by Minority Business Enterprises and Women Business Enterprises are established for this contract.

(A) Minority Business Enterprises **(Ten)** 10%

(1) *If the goal is more than zero*, the Contractor shall exercise all necessary and reasonable steps to ensure that Minority Business Enterprises participate in at least the percent of the contract as set forth above as the goal.

(2) *If the goal is zero*, the Contractor shall continue to recruit the MBEs and report the use of MBEs during the construction of the project. A good faith effort will not be required with a zero goal.

(B) Women Business Enterprises (**Zero)** 0%

(1) *If the goal is more than zero*, the Contractor shall exercise all necessary and reasonable steps to ensure that Women Business Enterprises participate in at least the percent of the contract as set forth above as the goal.

(2) *If the goal is zero*, the Contractor shall continue to recruit the WBEs and report the use of WBEs during the construction of the project. A good faith effort will not be required with a zero goal.

Contract Requirement

The approved MBE/WBE participation submitted by the Contractor shall be the **Contract Requirement.**

Certified Transportation Firms Directory

Real-time information about firms doing business with the Department and firms that are certified through North Carolina's Unified Certification Program is available in the Directory of Transportation Firms. The Directory can be accessed by the link on the Department's homepage or by entering https://apps.dot.state.nc.us/vendor/directory in the address bar of your web browser. Only firms identified as MBE/WBE certified in the Directory can be utilized to meet the contract goals.

The listing of an individual firm in the Department's directory shall not be construed as an endorsement of the firm's capability to perform certain work.

Listing of MBE/WBE Subcontractors in Contract

Only those MBE/WBE firms with current certification are acceptable for listing in the bidder's submittal of MBE/WBE participation. The Contractor shall indicate the following required information:

(A) *If the goal is more than zero* bidders, at the time the bid proposal is submitted, shall submit a listing of MBE/WBE participation on the appropriate form (or facsimile thereof) contained elsewhere in the contract documents in order for the bid to be considered responsive. Bidders shall indicate the total dollar value of the MBE/WBE participation for the contract. If the bidder has no MBE/WBE participation, he shall indicate this on the form "Listing of MBE/WBE Subcontractors" by entering the word or number zero. This form shall be completed in its entirety. **Blank forms will not be deemed to represent zero participation**. Bids submitted that do not have WBE/MBE participation indicated on the appropriate form will not be read publicly during the opening of bids. The Department will not consider these bids for award and the proposal will be returned to the bidder.

(B) *If the goal is zero,* bidders at the time the bid proposal is submitted, shall enter the word "zero" or number "0" or if there is participation, add the value on the "Listing of MBE/WBE Subcontractors" (or facsimile thereof) contained elsewhere in the contract documents.

Written Documentation – Letter of Intent

The bidder shall submit written documentation of the bidder/offeror's commitment to use MBE/WBE subcontractors whose participation it submits to meet a contract goal and written confirmation from each MBE/WBE, listed in the proposal, indicating their participation in the contract. This documentation shall be submitted on the Department's form titled "Letter of Intent to Perform as Subcontractor". This letter of intent form is available at: http://www.ncdot.org/doh/preconstruct/ps/contracts/letterofintent.pdf. It shall be received in the office of the Engineer no later than 5:00 PM of the Seventh (7th) calendar day following opening of bids.

If the bidder fails to submit the letter of intent from each committed MBE/WBE listed in the proposal indicating their participation in the contract, the MBE/WBE participation will not count toward meeting the goal.

Counting MBE/WBE Participation Toward Meeting MBE/WBE Goal of Zero or More

(A) If a firm is determined to be an eligible MBE/WBE firm, the total dollar value of the participation by the MBE/WBE will be counted toward the contract requirement. The total dollar value of participation by a certified MBE/WBE will be based upon the value of work actually performed by the MBE/WBE and the actual payments to MBE/WBE firms by the Contractor.

(B) When a MBE/WBE performs as a participant in a joint venture, the Contractor may count toward its MBE/WBE goal a portion of the total value of participation with the MBE/WBE in the joint venture, that portion of the total dollar value being a distinct clearly defined portion of work that the MBE/WBE performs with its forces.

(C) (1) The Contractor may count toward its MBE/WBE goal only expenditures to MBE/WBEs that perform a commercially useful function in the work of a contract. A MBE/WBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the MBE/WBE shall also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable) and paying for the material itself. To determine whether a MBE/WBE is performing a commercially useful function, Nash County will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it

is actually performing and the MBE/WBE credit claimed for its performance of the work, and other relevant factors.

(2) A MBE/WBE may enter into subcontracts. Work that a MBE/WBE subcontracts to another MBE/WBE firm may be counted toward the contract goal. Work that a MBE/WBE subcontracts to a non-MBE/WBE firm does not count toward the contract goal. If a MBE/WBE contractor or subcontractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of standard industry practices, the MBE/WBE shall be presumed not to be performing a commercially useful function. The MBE/WBE may present evidence to rebut this presumption to Nash County for commercially useful functions. Nash County's decision on the rebuttal of this presumption will be final.

(3) The following factors will be used to determine if a MBE/WBE trucking firm is performing a commercially useful function.

(a) The MBE/WBE shall be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there shall not be a contrived arrangement for the purpose of meeting MBE/WBE goals.

(b) The MBE/WBE shall itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

(c) The MBE/WBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

(d) The MBE/WBE may lease trucks from another MBE/WBE firm, including an owner-operator who is certified as a MBE/WBE. The MBE/WBE who leases trucks from another MBE/WBE receives credit for the total value of the transportation services the lessee MBE/WBE provides on the contract.

(e) The MBE/WBE may also lease trucks from a non-MBE/WBE firm, including from an owner-operator. The MBE/WBE who leases trucks from a non-MBE/WBE is entitled to credit for the total value of transportation services provided by non-MBE/WBE lessees not to exceed the value of transportation services provided by MBE/WBE-owned trucks on the contract. Additional participation by non-MBE/WBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement.

(f) For purposes of this paragraph, a lease shall indicate that the MBE/WBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the

consent of the MBE/WBE, so long as the lease gives the MBE/WBE absolute priority for use of the leased truck. Leased trucks shall display the name and identification number of the MBE/WBE.

(D) A contractor may count toward its MBE/WBE goals 60 percent of its expenditures for materials and supplies required to complete the contract and obtained from MBE/WBE regular dealer and 100 percent of such expenditures to a MBE/WBE manufacturer.

(E) A contractor may count toward its MBE/WBE goals the following expenditures to MBE/WBE firms that are not manufacturers or regular dealers:

(1) The fees or commissions charged by a MBE/WBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, provided the fees or commissions are determined to be reasonable and not excessive as compared with fees and commissions customarily allowed for similar services.

(2) The fees or commissions charged for assistance in the procurement of the materials and supplies, or for transportation charges for the delivery of materials or supplies required on a job site (but not the cost of the materials and supplies themselves), provided the fees are not from a manufacturer or regular dealer and provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.

Good Faith Effort for Projects with Goals more than Zero

If the MBE/WBE participation submitted in the bid by the apparent lowest responsive bidder does not meet or exceed the MBE/WBE contract goals, the apparent lowest responsive bidder shall submit to the Engineer documentation of its good faith efforts made to reach each contract goal. One complete set and 9 copies of this information shall be received in the office of the Engineer no later than 10 calendar days following opening of bids. Where the information submitted includes repetitious solicitation letters it will be acceptable to submit a representative letter along with a distribution list of the firms that were solicited. Documentation of MBE/WBE quotations shall be a part of the good faith effort submittal as necessary to demonstrate compliance with the factors listed below which Nash County considers in judging good faith efforts. This documentation may include written subcontractor quotations, telephone log notations of verbal quotations, or other types of quotation documentation.

The following factors will be used to determine if the bidder has made adequate good faith effort:

(A) Whether the bidder attended any pre-bid meetings that were scheduled by Nash County to inform MBE/WBEs of subcontracting opportunities.

(B) Whether the bidder provided solicitations through all reasonable and available means (e.g. advertising in newspapers owned and targeted to the MBE/WBEs at least 10 calendar days prior to bid opening). Whether the bidder provided written notice to all MBE/WBEs listed in the NCDOT Directory of Transportation Firms, within the Divisions and surrounding Divisions where the project is located, that specialize in the areas of work (as noted in the MBE/WBE Directory) that the bidder will be subletting.

(C) Whether the bidder followed up initial solicitations of interests by contacting MBE/WBEs to determine with certainty whether they were interested. If a reasonable amount of MBE/WBEs within the targeted Divisions do not provide an intent to quote or no MBE/WBEs specialize in the subcontracted areas, the bidder shall notify MBE/WBEs outside of the targeted Divisions that specialize in the subcontracted areas, and call the Engineer to give notification of the bidder's inability to get MBE/WBE quotes.

(D) Whether the bidder selected portions of the work to be performed by MBE/WBEs in order to increase the likelihood of meeting the contract goals. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE/WBE participation, even when the bidder might otherwise perform these work items with its own forces.

(E) Whether the bidder provided interested MBE/WBEs with adequate and timely information about the plans, specifications and requirements of the contract.

(F) Whether the bidder negotiated in good faith with interested MBE/WBEs without rejecting them as unqualified without sound reasons based on a thorough investigation of their capabilities. Any rejection should be noted in writing with a description as to why an agreement could not be reached.

(G) Whether quotations were received from interested MBE/WBE firms but rejected as unacceptable without sound reasons why the quotations were considered unacceptable.

(H) Whether the bidder specifically negotiated with subcontractors to assume part of the responsibility to meet the contract MBE/WBE goals when the work to be sublet includes potential for MBE/WBE participation.

(I) Whether the bidder made any efforts and/or offered assistance to interested MBE/WBEs in obtaining the necessary equipment, supplies, materials, insurance, and/or bonding to satisfy the work requirements in the bid proposal.

(J) Any other evidence that the bidder submits which show that the bidder has made reasonable good faith efforts to meet the contract goal.

If a bidder is the apparent lowest responsive bidder on more than one project within the same letting located in the same geographic area of the state, as a part of the good faith effort Nash County will consider allowing the bidder to combine the MBE participation as long as the MBE overall goal value of the combined projects is achieved.

If a bidder is the apparent lowest responsive bidder on more than one project within the same letting located in the same geographic area of the state, as a part of the good faith effort Nash County will consider allowing the bidder to combine the WBE participation as long as the WBE overall goal value of the combined projects is achieved.

If Nash County does not award the contract to the apparent lowest responsive bidder, Nash County reserves the right to award the contract to the next lowest responsive bidder that can satisfy Nash County that the contract goal can be met or that adequate good faith efforts have been made to meet the goal.

MBE/WBE Replacement

The Contractor shall not terminate a committed MBE/WBE subcontractor for convenience or perform the work with its own forces or those of an affiliate. If the Contractor fails to demonstrate reasonable efforts to replace a committed MBE/WBE firm that does not perform as intended with another committed MBE/WBE firm or completes the work with its own forces without the Engineer's approval, the Contractor may be disqualified from further bidding for a period of up to 6 months.

The Contractor shall comply with the following for replacement of committed MBE/WBE.

(A) Performance Related Replacement

When a MBE/WBE is terminated or fails to complete its work on the contract for any reason, the Contractor shall take all necessary, reasonable steps to replace the MBE/WBE subcontractor with another MBE/WBE subcontractor to perform at least the same amount of work as the MBE/WBE that was terminated. The Contractor is encouraged to first attempt to find another MBE/WBE firm to do the same work as the MBE/WBE that was being terminated.

To demonstrate necessary, reasonable good faith efforts, the Contractor shall document the steps they have taken to replace any MBE/WBE subcontractor who is unable to perform successfully with another MBE/WBE subcontractor. Such documentation shall include but not be limited to the following:

(1) Copies of written notification to MBE/WBEs that their interest is solicited in subcontracting the work defaulted by the previous MBE/WBE subcontractor or in subcontracting other items of work in the contract.

(2) Efforts to negotiate with MBE/WBEs for specific subbids including, at a minimum:

(a) The names, addresses, and telephone numbers of MBE/WBEs who were contacted.

(b) A description of the information provided to MBE/WBEs regarding the plans and specifications for portions of the work to be performed.

(3) For each MBE/WBE contacted but rejected as unqualified, the reasons for the Contractor's conclusion.

(4) Efforts made to assist the MBE/WBEs contacted, if needed, in obtaining bonding or insurance required by the Contractor.

(B) Decertification Replacement

(1) When a committed MBE/WBE is decertified by Nash County after a Request for Subcontract has been received by Nash County, the County will not require the Prime Contractor to solicit replacement MBE/WBE participation equal to the remaining work to be performed by the decertified firm. The participation equal to the remaining work performed by the decertified firm will count toward the contract requirement.

(2) When a committed MBE/WBE is decertified prior to Nash County receiving a Request for Subcontract for the named MBE/WBE firm, the Prime Contractor shall take all necessary and reasonable steps to replace the MBE/WBE subcontractor with another MBE/WBE subcontractor to perform at least the same amount of work to meet the contract goal or demonstrate that it has made a good faith effort to do so.

Changes in the Work

When the Engineer makes changes that result in the reduction or elimination of work to be performed by a committed MBE/WBE, the Contractor will not be required to seek additional participation. When the Engineer makes changes that result in additional work to be performed by a MBE/WBE based upon the Contractor's commitment, the MBE/WBE shall participate in additional work to the same extent as the MBE/WBE participated in the original contract work.

When the Engineer makes changes that result in extra work, which has more than a minimal impact on the contract amount, the Contractor shall seek additional participation by MBE/WBEs unless otherwise approved by the Engineer.

When the Engineer makes changes that result in an alteration of plans or details of construction and a portion or all of work had been expected to be performed by a committed MBE/WBE, the Contractor shall seek participation by MBE/WBEs unless otherwise approved by the Engineer.

When the Contractor requests changes in the work that result in the reduction or elimination of work that the Contractor committed to be performed by a MBE/WBE, the Contractor shall seek additional participation by MBE/WBEs equal to the reduced MBE/WBE participation caused by the changes.

Reports

All requests for subcontracts involving MBE/WBE subcontractors shall be accompanied by a certification executed by both the Prime Contractor and the MBE/WBE subcontractor attesting to the agreed upon unit prices and extensions for the affected contract items. This information shall be submitted on the Department Form RS-1-D, located at: http://www.ncdot.org/doh/forms/files/FORMRS-1-D.doc unless otherwise approved by the Engineer. Nash County reserves the right to require copies of actual subcontract agreements involving MBE/WBE subcontractors.

Within 30 (Thirty) calendar days of entering an agreement with a MBE/WBE for materials, supplies or services, not otherwise documented by a Request for Subcontract as specified above, the Contractor shall furnish the Engineer a copy of the agreement. The documentation should also indicate the percentage (60% or 100%) of expenditures claimed for MBE/WBE credit.

All certifications will be considered a part of the project records, and consequently will be subject to penalties under State Law associated with falsifications of records related to projects.

Commitment

MBE/WBE firms submitted with the Letter of Intent to participate in the work shall be used unless otherwise approved by the Department. Provisions for replacement of MBE/WBE firms are included in this provision.

Reporting MBE/WBE Participation

(A) The Contractor shall provide the Engineer with an accounting of payments made to MBE/WBE firms, including material suppliers, contractors at all levels (prime, subcontractor, or second tier subcontractor). This accounting shall be furnished to the Engineer for any given month by the end of the following month. Failure to submit this information accordingly may result in the following action:

(1) Withholding of money due in the next partial pay estimate; or

(2) Removal of an approved contractor from the prequalified bidders list or the removal of other entities from the approved subcontractors list.

(B) The Contractor shall report the accounting of payments on the Department's MBE/WBE Subcontractor Payment Information Form DBE-IS, which is available at http://www.ncdot.org/doh/forms/files/DBE-IS.xls. This shall be reported to the Engineer.

(C) Contractors reporting transportation services provided by non-MBE/WBE lessees shall evaluate the value of services provided during the month of the reporting period only.

Prior to payment of the final estimate, the Contractor shall furnish an accounting of total payment to each MBE/WBE. A responsible fiscal officer of the payee contractor, subcontractor,

or second tier subcontractor who can attest to the date and amounts of the payments shall certify that the accounting is correct.

While each contractor (prime, subcontractor, 2nd tier subcontractor) is responsible for accurate accounting of payments to MBE/WBEs, it shall be the prime contractor's responsibility to report all monthly and final payment information in the correct reporting manner.

Because NCDOT funding is being used to fund this project, failure on the part of the Contractor to submit the required information in the time frame specified may result in the disqualification of that contractor and any affiliate companies from further bidding on any NCDOT funded projects until the required information is submitted.

Because NCDOT funding is being used to fund this project, failure on the part of any subcontractor to submit the required information in the time frame specified may result in the disqualification of that contractor and any affiliate companies from further working on any State or Federally funded projects until the required information is submitted.

Failure to Meet Contract Requirements

Failure to meet contract requirements in accordance with Article 102-16(J) of the *Standard Specifications* may be cause to disqualify the Contractor.

NCORR

NORTH CAROLINA OFFICE OF RECOVERY AND RESILIENCY

Section 3 of the Housing and Urban Development Act of 1968

Policy and Procedures

August 1, 2020

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North Carolina Office of Recovery and Resiliency
Section 3
Policies and Procedures

GLOSSARY
SECTION 3 DEFINITIONS

Awardee - The recipient of an NCORR award subject to the provisions of Section 3.

Category 1 & 2 Residents – In Public and Indian Housing programs, all efforts shall be directed to provide training and employment opportunities to Section 3 residents in the following order of priority:(i) Residents of the housing development or developments for which the Section 3 covered assistance is expended (category 1 residents); or (ii) Residents of other housing developments managed by the Housing Authority that is expending the Section 3 covered housing assistance (category 2 residents).

Contractor - Any entity which contracts to perform work generated by the expenditure of Section 3 covered assistance, or work in connection with a Section 3 covered contract.

First Source Hiring - First source hiring ordinances, contract clauses, and related agreements seek to provide meaningful employment opportunities to residents living within communities most directly impacted by local development projects. First source hiring initiatives seek to ensure that local residents receive a fair share of the economic benefits of public development projects.

HUD –United States Department of Housing and Urban Development.

Low- Income – Individuals and families whose incomes do not exceed 80 per cent of the median income for the area. The HUD Secretary can make adjustments for smaller and larger families, or make exceptions to the income ceilings that are either higher or lower than 80 percent of the median for the area. Local income levels can be obtained online at: http://www.huduser.org/DATASETS/il.html.

New Hire – Full-time employees for permanent, temporary or seasonal employment created as a direct result of the expenditure of Section 3 covered financial assistance.

Section 3 - Section 3 of the Housing and Urban Development Act of 1968 as found at 12 U.S.C. 1701u.

Section 3 Business Concern – A Business Concern that meets the following criteria:

1. 51% or more owned by Section 3 resident(s); or
2. Whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or during the three years of the date of first employment with the business concern were Section 3 residents: or
3. Any Business Concern that commits to subcontract over 25% of the total dollar award of all their subcontracts to Section 3 Business Concerns that meet the qualifications set forth in (1) or (2) of this paragraph.

Section 3 Contract Clause – The contract provisions that bind parties to make the "greatest extent feasible" efforts to adhere to the Section 3 program as set forth in Section 24 CFR 135.38.

Section 3 Covered Contracts – A contract or subcontract (including a professional service contract) awarded by a recipient or contractor for work generated by the expenditure of Section 3 covered assistance, or for work arising in connection with a Section 3 covered project. Section 3 covered contracts do not include contracts for the purchase of supplies and materials. However, whenever a contract for materials includes the installation of the materials, the contract constitutes a Section 3 covered contract.

Section 3 Plan – A comprehensive document that identifies the goals, objectives, and actions that will be implemented by Awardees and/or Contractors to ensure compliance with the requirements of Section 3. The plan identifies a list of strategies to be adopted for compliance with the stated employment, training and contracting goals.

Section 3 Resident - A public housing resident, or a "low-income" individual, or a "very-low income" individual as defined herein.

Step-Up Employment Program – A "Step-Up" employment program is a new national program developed by HUD with the cooperation of the Department of Labor and the National Association of Housing and Redevelopment Officials (NAHRO) to provide job and job training opportunities on HUD-assisted construction to residents of public housing and other low-income people.

Subcontractor - Any entity which has a contract with a contractor to undertake a portion of the contractor's obligation for the performance of work generated by the expenditure of Section 3 covered assistance, or arising in connection with a Section 3 covered project.

Subrecipient – A non-profit, Unit of General Local Government (UGLG), including, but not limited to a city, county, or township, or any entity which receives Section 3 covered assistance, directly from HUD or from another recipient of eligible, federal HUD funding.

To the greatest extents feasible – a documented effort by Grantees or recipients of federal HUD eligible funding and their subrecipients, developers/contractors that must be taken to make every effort to recruit, target, and direct economic opportunities to local low-income persons and businesses that substantially employ those persons.

Very Low- Income - Families (including single persons) whose incomes do not exceed 50 per cent of the median income for the area. The HUD Secretary can make adjustments for smaller and larger families, or may establish income ceilings that are higher or lower than 50 percent of the median for the area. Local income levels can be obtained online at: http://www.huduser.org/DATASETS/il.html.

WHAT IS SECTION 3?

Section 3 of the Housing and Urban Development Act of 1968, (12U.S.C.1701u)(Section3) and implementing regulations at 24 C.F.R. Part 135 states the purpose of Section 3 is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to businesses which provide economic opportunities to low- and very low-income persons.

NCORR fully embraces its requirements and obligations under Section 3 and has set forth policies and procedures to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, be directed to low- and very-low income persons, and to businesses which provide economic opportunities to low- and very-low income persons. To that end, the North Carolina Office of Recovery and Resiliency (NCORR) and its awardees has delegated the responsibility for enforcing NCORR's Section 3 program to the NCORR Compliance and Monitoring Team and the Director of Monitoring and Compliance, along with the federal Fair Housing and Equal Opportunity Office (FHEO) of HUD in Washington, D.C..

WHY IS SECTION 3 IMPORTANT TO NCORR?

NCORR, as a state grantee for the federal Community Development Block Grant – Disaster Recovery and Mitigation (CDBG-DR and CDBG-MIT) funds, is required by HUD to develop and implement a Section 3 plan and program designed to provide employment opportunities for Section 3 eligible residents as well as contracting and subcontracting opportunities for Section 3 designated businesses for all Section 3 covered projects. NCORR embraces the spirit and intent of its obligations under Section 3, and has set forth the following policies which are applicable to recipients of certain HUD funds including subgrantees, subrecipients, contractors, subcontractors, non-profits and/or developers and others based on the requirements of Section 3 and its regulations found at 24 CFR Part 135.30.

These policies are defined and presented throughout the remainder of this Policies and Procedures Manual, as part of the State's overall disaster recovery, rebuilding, and resiliency strategy to provide greater economic opportunities for the entire state of North Carolina and its impacted areas.

NCORR'S POLICIES REGARDING SECTION 3

NCORR's Section 3 policies require that new employment opportunities be extended to low- and very-low income residents of the area with priority consideration for employment, training and business contracting where the project is being implemented. In essence, Section 3 eligible residents are to be extended priority in new hiring situations which result from the infusion of HUD sourced funds. As a recipient of eligible Section 3 funding, NCORR is bound by Section 3 in its hiring and applicable contracting practices.

These policies also require that NCORR extend to qualified Section 3 businesses are to be extended priority consideration for opportunities in contracting, sub-contracting, and non-construction, professional services, including engineering, architecture, and legal services to name a few that lead to public construction.

APPLICABILITY THRESHOLDS FOR SECTION 3

NCORR's Section 3 Policy also establishes funding thresholds that trigger Section 3 covered funding applicability across its programs; Housing, Infrastructure, and Public Services funded by CDBG-DR or CDBG-MIT. The recipient thresholds for Section 3 requirements apply to recipients of other housing and community development program assistance for a section 3 covered project(s) for which the amount of the assistance exceeds $200,000. In addition, contractor and subcontractor thresholds requirements apply to contractors and subcontractors performing work on section 3 covered project(s) for which the amount of the assistance exceeds $200,000; and the contract or subcontract
exceeds $100,000.

Applicability thresholds for Section 3 covered housing and community development assistance is summarized in the following table.

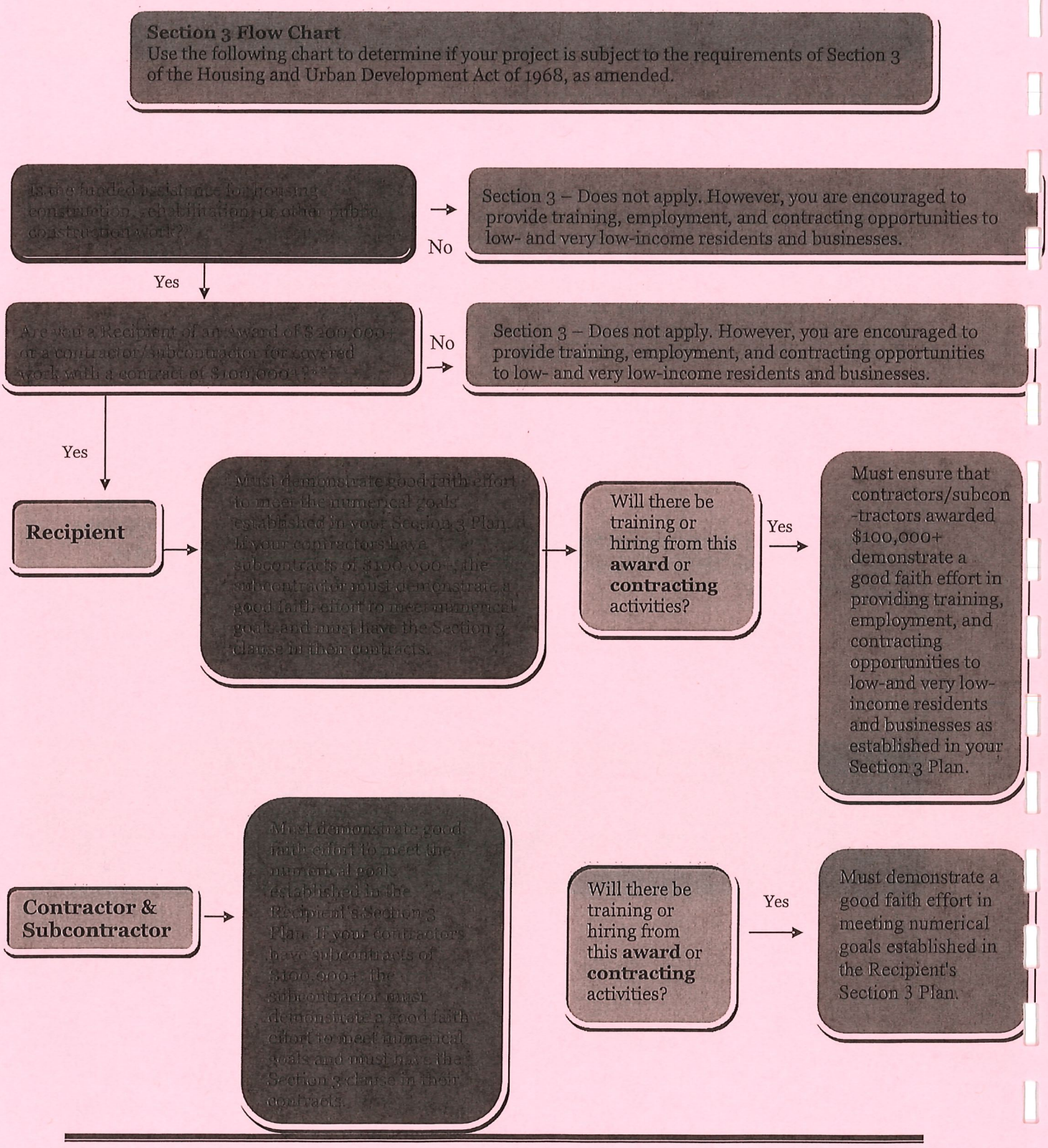
Table 1: Applicability Thresholds for Section 3

(A) **Recipient thresholds.** The requirements of this part apply to recipients of other housing and community development program assistance for a section 3 covered project(s) for which the amount of the assistance exceeds $200,000.		
Are you the recipient of housing and community development assistance? **Recipient** – any entity which receives section 3 covered assistance, directly from HUD or from another recipient and includes, but is not limited to, any State, unit of local government, PHA, IHA, Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization, resident management corporation, resident council, or cooperative association. Recipient also includes any successor, assignee or transferee of any such entity, but does not include any ultimate beneficiary under the HUD program to which section 3 applies and does not include contractors. (24 CFR 135.5) **Housing and community development assistance** – any financial assistance provided or otherwise made available through a HUD housing or community development program through any grant, loan, loan guarantee, cooperative agreement, or contract, and includes community development funds in the form of community development block grants and loans guaranteed under section 108 of the Housing and Community Development Act of 1974, as amended. Housing and community development assistance does not include financial assistance provided through a contract of insurance or guaranty.	If **YES**, then proceed to question 2.	If **NO**, then refer to 24 CFR part 135 for applicability of Section 3 to other HUD programs.

Will the assistance be expended on work arising in connection with section 3 covered project(s)? **Section 3 covered project** – construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), other public construction which includes buildings or improvements (regardless of ownership) assisted with housing or community development assistance.	If **YES**, then proceed to question 3.	If **NO**, then Section 3 requirements do not apply.
Will the amount of the assistance for the Section 3 covered project(s) exceed $200,000?	If **YES**, then the Section 3 requirements apply to the training, employment, and contracting activities of the grantee or subgrantee. Proceed to questions below to determine applicability to contracts and subcontracts.	IF **NO**, then Section 3 requirements do not apply.
(B) **Contractor and subcontractor thresholds.** The requirements of this part apply to contractors and subcontractors performing work on Section 3 covered projects(s) for which the amount of the assistance exceeds $200,000; and the contract or subcontract exceeds $100,000.		
Are you a contractor or subcontractor performing work on a Section 3 covered project(s)?	If **YES**, then proceed to question 2.	If **NO**, then Section 3 does not apply.
Does the amount of the assistance for the Section 3 covered project(s) exceed $200,000 AND the contract or subcontract exceed $100,000?	If **YES**, then Section 3 applies to the contract and subcontract, even if the contract or subcontract is privately funded. See 24 CFR 135.3(b) below.	If **NO**, then Section 3 does not apply to the contract or subcontract but does apply to the grantee or subgrantee. See below.

(C) **Threshold met for recipients, but not contractors or subcontractors.** If a recipient receives Section 3 covered housing or community development assistance in excess of $200,000, but no contract exceeds $100,000, the Section 3 preference requirements only apply to the recipient.		
Are you the recipient of Section 3 covered housing or community development assistance in excess of $200,000? **Section 3 covered assistance** - (4) Assistance provided under any HUD housing or community development program that is expended for work arising in connection with: (i) housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement); (ii) housing construction; or (iii) other public construction project (which includes other buildings or improvements, regardless of ownership).	If **YES**, then the Section 3 requirements apply to the training, employment, and contracting activities of the grantee or subgrantee.	If **NO**, then Section 3 does not apply.
Are there contracts or subcontracts for work arising in connection with the Section 3 covered assistance in excess of $100,000?	If **YES**, then the Section 3 requirements apply to all contracts and subcontracts in excess of $100,000, regardless of funding source, as well. See 24 CFR 135.3(b) below.	If **NO**, then Section 3 does not apply to the contract or subcontract but does apply to the grantee or subgrantee.
24 CFR 135.3(b) Applicability of section 3 to entire project or activity funded with section 3 assistance. The requirements of this part apply to the entire project or activity that is funded with Section 3 covered assistance, regardless of whether the Section 3 activity is fully or partially funded with Section 3 covered assistance.		

Section 3 Flow Chart
Figure No. 1



Section 3 Plan

The overall Section 3 Plan is an essential component of NCORR's Section 3 program's success and compliance with HUD. Included in the Section 3 Plan for both NCORR and its awardees are the Section 3 Hiring and Business Opportunity Policy, which is to be submitted to NCORR's Section 3 Coordinator for final approval. NCORR's Coordinator must review and, where necessary, assist the grantee with revising their plan in a manner that will ensure its approval by the NCORR's Compliance Team, before the agency may award any NCORR-funded contract to any subgrantee, subrecipient, contractor, subcontractor, nonprofits and/or developer. It is the policy of NCORR that it will not fund any project until there is an approved Section 3 Plan in place.

An awardee's refusal to fulfill Section 3 contractual obligations with NCORR pursuant to an approved Section 3 Plan will be construed as a breach of contract and face further sanctions, including but not limited to cancellation of the initial award, requiring additional certifications or assurances of compliance, repayment of Section 3 covered financial assistance, ineligibility for future HUD financial assistance, withholding HUD financial assistance (invoice payments and awards), suspension, debarment, limited denial in HUD programs pursuant to 2 CFR, Part 2424 or possible relief provided to the aggrieved entities.

Section 3 Hiring Policy

NCORR's Section 3 Hiring Policy is the essential component of any Section 3 Plan submitted to NCORR for approval by a subgrantee, subrecipient, contractor, subcontractor, nonprofit and/or developer. NCORR recognizes the importance of making sure that low- and very-low income residents benefit from any and all NCORR funded, Section 3 covered projects built in their communities, particularly those impacted by Hurricane's Matthew or Florence and who are recipients of government assistance for housing and businesses that provide economic opportunities to low- and very low income persons to achieve these objectives. Subgrantees, subrecipients, contractors, subcontractors, and/or developers are expected by NCORR to demonstrate in their Section 3 Plans and through their subsequent implementation actions that Section 3 eligible residents are priority in employment, training and contracting opportunities. Plans should also be consistent with the defined hiring goals included in the plans and recipients are indeed beneficiaries of the plan's hiring policies and practices.

Section 3 is the LAW, it is not an option. The following low- and very-low income resident hiring goals apply to all projects for which Section 3 guidelines are applicable:

NCORR requires that priority consideration will be given to Section 3 residents for new employment and training opportunities generated as a result of Section 3 covered assistance. Section 3 residents must NOT be given preference as reflected in a set-aside or quota. Section 3 residents must possess the same or similar job qualifications, skills, and meet the eligibility criteria as other applicants for the same employment and training opportunities.

- **Employment and Training:** Thirty percent (30%) of the aggregate number of new hires during a one year period of the project. (Example: A construction contractor hires ten (10) new workers. Three (3) of the new workers should be Section 3 eligible persons.)

- ***Highest Priority:*** Low- and very-low income residents certified as Section 3 eligible residing in the neighborhood where the project is located.
- ***Second Priority*:** Participants of public and social service programs funded by HUD funding.
- ***Third Priority:*** Other low- and very-low income residents throughout the MID or surrounding impacted area certified as Section 3 eligible.

All employment opportunities resulting from Section 3 eligible project awards must be published and posted in accordance with the NCORR Language Access Plan (LAP) for Limited English Proficient (LEP) individuals and persons as well as in accordance with Section 504 of the Rehabilitation Act of 1973 and in accordance with the Americans with Disabilities Act (ADA), where applicable in order to make Section 3 residents aware of the opportunities. Under the NCORR's Section 3 Hiring Policy, funded subgrantees, subrecipients, contractors, subcontractors, nonprofits and developers must:

- Develop and comply with all Section 3 policies and procedures in accordance with 24 CFR, Part 135.9;
- Maintain lists of eligible Section 3 residents that have asked to receive priority consideration for employment and training;
- Ensure that priority consideration is provided to Section 3 residents in the orders of priority consideration as listed above and reference in 24 CFR, Part 135.57;
- Conduct aggressive employment outreach to a number of community-based agencies for all new hires and training opportunities; [See Appendix I]
- Provide and post appropriate employment outreach signage, including LEP persons at the project site and throughout the project area to inform low- and very low-income neighborhood residents of employment opportunities;
- Distribute employment and outreach flyers throughout the Section 3 Local and MID Area, neighborhood and community, including with community-based organizations regarding the available employment and training opportunities; and
- Conduct outreach and marketing strategies to engage and recruit Section 3 residents through ads in newspapers, periodicals and magazines, including those specific to various ethnic and cultural organizations in the Section 3 Local and MID Area.

Certification Procedures for Section 3 Residents

Individuals interested in applying and self-certifying to become a Section 3 resident should contact the NCORR or download an application at www.rebuild.nc.gov/section3. A copy of the application is included in Appendix "E".

Eligibility

Individuals interested in applying for Section 3 status with NCORR or any of its subgrantees, subrecipients, contractors, subcontractors, nonprofits and/or developers must meet the following criteria:

- Live in the State of North Carolina
- 80% or below the area median income

- Live within the primary MSA of the neighborhood where project of activity is taking place

Each application must include the following documentation:

- Section 3 Residence or Employee Household Income Verification
- Form Section 3 Residence Preference Claim Form
- Proof of residency (lease in a HUD or other federally assisted program)
- Proof of Income (one of the following is acceptable)
- Proof of public assistance, e.g. Temporary Assistance to Needy Families (TANF) recipients, etc.
- Proof of participation in a federally assisted program such as job training programs, etc.
- Proof of participation in a state or local assistance program, or other program that assists low- or very-low income persons
- Lease or other proof of participation in a HUD or other federally assisted program

2019 Income thresholds for State of North Carolina are listed below.

FY 2019 Very Low-Income (50%) Limit (VLIL)								
Median Family Income	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
66,200	23,150	26,5800	29,800	33,100	35,750	38,400	41,050	43,700
FY 2019 Extremely Low-Income (30%) Limit (ELIL)								
	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
	13,900	15,900	17,850	19,850	21,450	23,050	24,650	26,200
FY 2019 Low-Income (80%) Limit (LIL)								
	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
	37,050	42,350	47,650	57,200	62,200	61,450	65,650	69,900

The HUD Income Determination website is available on line. You may find other North Carolina income data sets at the following address:

http://www.huduser.gov/portal/datasets/il/il2019/select_Geography.odn

Once an individual is deemed job ready and has completed all eligibility requirements, they will receive a letter confirming the certification has been approved and will be added to a list of Section 3 certified residents. A list of all the Section 3 certified residents will be provided to subgrantees, subrecipients, contractors, subcontractors, and/or developers post award or as required.

Residents will also be provided with a list of organizations to contact regarding available positions. To the extent feasible, NCORR will also maintain a list of local housing authorities within close proximity to MIDs and projects being funded by NCORR.

Process for Training Entry

NCORR will encourage subgrantees, subrecipients, contractors, subcontractors, nonprofits and/or developers to work with a number of organizations to identify workforce development opportunities for Section 3 Residents such as housing authorities, nonprofits and social service agencies, employment agencies, resident organizations, and other ethnic organizations such as Urban League, NAACP, Latin America Coalition, North Carolina Community College System, NC Works, and North Carolina Association of Contractors to name a few. Section 3 Residents will be encouraged to participate in DOL certified training programs such as YouthBuild, or others offered by these organizations.

Subrecipients, Contractors, Subcontractors, Non-Profits and/or Developers Employment Obligations – 30% Hiring Goal

Under NCORR's Section 3 Hiring Policy, funded subgrantees, subrecipients, contractors, subcontractors, nonprofits and/or developers responsibilities include, but are not limited to:

- Implementing procedures designed to notify Section 3 residents about training and employment opportunities generated by Section 3 covered assistance.
- Facilitating the training and employment of Section 3 residents by undertaking activities such as described in the Appendix H, as appropriate, to reach the goals set forth in the Section 3 Plan. Recipients, at their own discretion, may establish reasonable numerical goals for the training and employment of Section 3 residents.
- Documenting actions taken to comply with meeting the Section 3 employment goals, the results of actions taken and impediments, if any.

What is the Section 3 Business Opportunity Policy?

NCORR's Section 3 Business Opportunity Policy is another essential component of any Section 3 Plan. NCORR is committed to making sure that designated Section 3 eligible businesses derive economic benefit from any and all NCORR and HUD sourced projects. Subrecipients, contractors, subcontractors, and/or developers are expected by NCORR to demonstrate in their Section 3 Plans and through their subsequent implementation actions that Section 3 certified businesses are included in their contracting goals and are indeed economic beneficiaries of the plan's business and procurement policies and practices. Under NCORR's Section 3 policy, Section 3 eligible businesses will be given priority consideration in contracting for appropriate work in NCORR's housing and community development effort.

Contracting and Subcontracting Opportunities

On behalf of NCORR, the subrecipients, contractors, subcontractors, nonprofits and/or developers will work to uphold the Section 3 subcontracting and employment goals on an annual basis, as well as on a project-by-project basis. NCORR will review and approve a contractor's Section 3 Plan and ensure compliance throughout the project with the project goals before a recommendation for award of a contract with NCORR or CDBG-DR or CDBG-MIT funded

agencies. The current Section 3 contracting and subcontracting goals are as follows:

- **At least 10% percent of the total dollar amount of all Section 3 covered contracts for building trades, including those Professional Services firms work arising in connection with housing rehabilitation, construction and other public construction with Section 3 covered federal funding; and**
- **At least 3% of the total dollar amount of all Section 3 covered contracts to eligible Section 3 Professional Services businesses.**

  **** This is not to be confused with North Carolina's State's Historically Underutilized Business Goals. This is separate, apart and in addition to North Carolina's State MWBE HUB Goals.***

Certification Procedures for Section 3 Businesses

Businesses interested in applying for Section 3 business certification can obtain an application by contacting the NCORR Section 3 Coordinator, one of its agencies or downloading the application at www.rebuild.nc.gov/section3. A copy of the packet is included in Appendix F. Businesses are also allowed to self-certify through the HUD Business Registry Program https://portalapps.hud.gov/Sec3BusReg/BRegistry/BRegistryHome.

Eligibility

Businesses interested in seeking certification in NCORR's or its subgrantees, subrecipients, contractors, subcontractors, and/or developer's HUD Section 3 program must meet one of the following criteria:

- **51% Section 3 resident-owned enterprise. The business entity must meet the definition of a resident owned business as defined in 24 CFR 963.5**
  1. is at least 51% owned by one or more public housing residents; and
  2. whose management and daily operations are controlled by one or more of such individuals
- **30% of permanent, full-time employees include persons who are currently Section 3 residents, or within three years of the date of first employment, were Section 3 residents**

Commitment to subcontract at least 25% of the total dollar award of all present and future HUD sourced, Section 3 covered contracts to Section 3 eligible businesses

Each applicant must attach the following documentation to their application:

For businesses claiming status as a Section 3 resident-owned enterprise, submit one of the following:

- Copy of a public or subsidized housing lease Proof of public assistance
- Proof of unemployment benefits or other government subsidies

**Businesses certified with other jurisdictions in another North Carolina county, village or city are only required to submit proof of residency and a copy of the certification letter. Other documents may be required if there is more than one owner.*

For businesses claiming Section 3 status by subcontracting at least 25% of the dollar awarded for Section 3 covered eligible projects to qualified Section 3 businesses:

- List of subcontracted Section 3 business(es) and subcontract amount for the fiscal year applying for certification (January - December);
- List of all contracts received in the fiscal year applying for certification (January - December); and
- If unable to provide copies of contracts, documentation of commitment to subcontract all future awards to eligible Section 3 certified companies.

**MWBE businesses certified with other jurisdictions must only submit a list of current full-time employees' and identify 30% of employees are eligible for Section 3 resident status within the State of North Carolina.*

For businesses claiming Section 3 status by meeting the definition as defined in 24 CFR 963.5 - 1) is at least 51% owned by one or more public housing residents; and 2) whose management and daily operations are controlled by one or more of such individuals:

- Percentage of ownership;
- Disclose all persons who possess day-to-day decision making responsibility;
- Disclose any persons who are NOT public housing residents; and
- Any relationship with persons in another business of similar type and nature.

For business entity as applicable must provide:

- Copy of Articles of Incorporation
- Certificate of Good Standing
- Assumed Business Name Certificate
- Partnership Agreement
- List of owners/stockholders and % ownership of each
- Corporation Annual Report
- Latest Board minutes appointing officers or statement explaining the organization does not have Board minutes
- Organization chart with names and titles and brief function statement
- Affirmative Action Assurance Form

- State of North Carolina Vendor Registration Application
- North Carolina State MWBE or HUB Certification, if applicable
- Additional documentation as requested

Evidence of ability to perform successfully under the terms and conditions of the proposed contract

- Current financial statement
- List of owned equipment
- List of all contracts for the past two years
- Resume or description of experience
- Schedule business site visit with Section 3 Coordinator

Upon receipt of the completed application, the Section 3 Coordinator will review the application and determine eligibility as a certified business. If approved, the business will receive a letter confirming the certification has been approved. The business will be added to the Section 3 certification list distributed to prime contractors at all pre-bid meetings. The list is also available on NCORR's website at www.rebuild.nc.gov/section3. Or https://portalapps.hud.gov/Sec3BusReg/BRegistry/BRegistryHome

If the application is incomplete, the Section 3 Coordinator will contact the applicant to inform them of all missing documentation that is needed to complete the certification process. The application will be held in pending status until all appropriate documentation has been secured.

Subrecipients, Contractors, Subcontractors, and/or Developers Contractual Obligations

Under NCORR's Section 3 Business Opportunity Policy, funded subgrantees, subrecipients, contractors, subcontractors, nonprofits and/or developers are obligated to the "greatest extent feasible" meet and demonstrate the program goals:

- Recipients will implement procedures and strategies by which they will comply throughout the program period of performance.
- Create and submit an acceptable and approved Section 3 Plan.
- Development of appropriate policies and procedures that are in accordance with HUD guidelines;
- Conduct aggressive subcontractor outreach to Section 3 eligible businesses for sub-contracting and business opportunities.
- Give priority consideration to Section 3 qualified persons for employment and training opportunities;
- Accept and give priority business engagement consideration to qualified Section 3 businesses.

- Provide appropriate subcontractor outreach signage at the project site and throughout the project area to inform Section 3 eligible businesses of business opportunities.
- Document aggressive outreach efforts, including to those Limited English Proficient (LEP) persons and other vulnerable populations related to Section 3 eligible businesses. See Appendix I.
- Maintain proper documentation of utilization of Section 3 eligible businesses. See Appendix D.

It is NCORR's policy that funded subrecipients, contractors, subcontractors, nonprofits and/or developers adhere to approved procurement and bidding procedures, and therefore no "sole sourcing" of contracts shall be allowed directly to any Section 3 business. All Section 3 businesses shall be licensed, when appropriate, and have experience in the services to be provided to NCORR or its subrecipients. There must be none found on the debarment list.

SECTION 3 COORDINATOR'S RESPONSIBILITIES

NCORR's Compliance and Monitoring Office has been tasked with the overall responsibility for implementation and monitoring of NCORR's Section 3 policies. NCORR is to designate a Section 3 Coordinator to ensure subreceipents, contractors, subcontractors, vendors and businesses are in compliance with the NCORR's Section 3 guidelines. The Section 3 Coordinator will be dedicated to ensuring Section 3 registered businesses and contractors awarded HUD CDBG-DR and CDBG-MIT sourced contracts are in compliance with NCORR's Section 3 guidelines and that local area residents are identified and provided employment opportunities on Section 3 funded projects and opportunities. In addition, the Section 3 Coordinator will manage education and outreach efforts and other activities that ensure NCORR meets its Section 3 obligations.

The Section 3 Coordinator leads NCORR's review of Section 3 Plans and provides review findings within five (5) business days. All approved Section 3 Plans will become an essential component of any commitment of funds by NCORR and any contractual relationship. The Section 3 Coordinator and NCORR's Compliance and Monitoring Team will be assigned technical assistance and will be available to provide technical assistance to the subgrantees, subrecipients, contractor, subcontractor, nonprofits and/or developers and others during the process of developing a Section 3 Plan. NCORR's Section 3 Coordinator provides the subgrantee, subrecipient, contractor, subcontractor, nonprofits and/or developer with a current list of Section 3 certified businesses and certified Section 3 eligible residents seeking employment opportunities. The primary objective is to connect low- and very- low income persons with economic opportunities associated with NCORR's Section 3 covered projects. The Section 3 Coordinator, along with the compliance and monitoring team also monitors the work site to ensure that contractors are adhering to the Section 3 guidelines.

The NCORR Section 3 Coordinator will be responsible for overseeing the implementation of all Section 3 Plans which are approved by NCORR and become part of the contract. Contracts will be vigorously monitored by the NCORR Compliance and Monitoring Team. Failure to fulfill contractual obligations with NCORR pursuant to the Section 3 Plan can be construed as a breach of contract and can result in contract termination, a penalty or other sanctions as allowable under the regulations and defined in the contract terms, including but not limited to possible relief to aggrieved entities.

The Section 3 Coordinator will work closely with NCORR's Director of Monitoring and Compliance to ensure a comprehensive and seamless implementation process that compliments other NCORR procurement and diversity programs. The Coordinator will also ensure that NCORR's hiring processes are in compliance with Section 3, In addition, the designated staff person will be responsible for providing technical support to the awarding departments and their subgrantees, subrecipients, contractors, subcontractors, and/or developers.

WHAT PROJECTS MUST FOLLOW NCORR'S SECTION 3 POLICIES?

NCORR's Section 3 policies are applicable to all HUD sourced, covered construction projects related to:

- Housing Rehabilitation, including demolition that leads to construction
- Housing Constructions
- Demolition
- Public Construction
- Public Facilities Construction
- Economic Development projects involving public construction
- Professional Services Contracts that lead to public construction or to be performed and arising in connection with a Section 3 covered, public construction project.

Housing and Community Development assistance that is used for acquisition, routine maintenance, operations, administrative costs, and project rental assistance contracts (PRAC) are exempt from compliance with Section 3 as these activities are not considered construction or rehabilitation activities.

SECTION 3 REQUIREMENTS FOR PROSPECTIVE BIDDERS

It is important to emphasize that the infusion of any HUD sourced CDBG-DR or CDBG-MIT dollars through NCORR into a project at any point in a project and at any level, exceeding the federal thresholds triggers the full applicability of NCORR's Section 3 Policies to the entire project. Competitively funded, public projects awarded to subrecipients that exceed $200,000 and publicly bid projects that exceed $100,000 are subject to Section 3 requirements.

Publicly Bid Projects

NCORR, its subrecipients, contractors, subcontractors, nonprofits and/or developers uses a responsive bid process when accepting bid proposals. This means that all contractors must submit documentation of how they will meet Section 3 participation goals at the time of the bid opening. For those bids submitted without a completed Section 3 Plan, they will be considered noncompliant with the bid requirements and considered invalid. For all contracts for which Section 3 contract goals have been established, the prime bidder shall be required to submit the appropriate HUD Section 3 Plan (Appendix C) to NCORR with its bid. Commitment to Section 3 utilization will be a factor in the bid selection process. The successful bidder will then have an opportunity to finalize the Section 3 Plan for approval by NCORR and the approved plan will become a part of the contract with NCORR. The Section 3 Plan must include specific information regarding the following:

- Identification of the Project MID Area
- Specific information about the contractor's **current** workforce (payroll reports, etc.)
- Specific plan for priority hiring Section 3 eligible residents
- Specific plan for engaging Section 3 designated businesses, which should include the

name, address, tax identification number and certification number, if applicable, of each HUD Section 3 registered business that will participate in the contract

- A description of work each named HUD Section 3 registered business will perform with the dollar amount of participation
- Sign an Acknowledgement of Receipt of Information Regarding Section 3 Requirements and Obligations of a business awarded a project with HUD NCORR funding
- Firm commitment to include the HUD Section 3 Clause in all sub-contracts
- Firm commitment to conduct aggressive outreach and notification to potential Section 3 residents and businesses of hiring opportunities using site signage, flyers, etc.

After the bid opening and within two (2) business days after a request from the Procurement Officer, or his/her designee, bidders shall submit the following:

- Written documentation of the bidder's commitment to use a HUD Section 3 subcontractor whose participation it submits to meet a contract goal;
- Written confirmation from the HUD Section 3 certified business that it is participating in the contract as provided in the prime contractor's commitment; and
- Any additional edits requested by the Section 3 coordinator to ensure that the contractor has, to the greatest extent feasible, attempted to contract with HUD Section 3 contractors and/or hire Section 3 eligible residents where applicable

Procurement

NCORR's policy is to ensure that Section 3 persons and businesses, including those low and very low-income persons receive top priority for all Section 3 covered projects. It is top priority that NCORR as the grantee, its subrecipients, contractors, subcontractors and vendors to the greatest extent feasible meet the stated goals to maximize the overall economic impact of the Section 3 covered projects across the State of North Carolina. The Section 3 ten (10%) percent contracting goal is separate and apart from North Carolina's ten [10]%) percent HUB goal.

NCORR intends to use the services and assistance, as appropriate, of such organizations as the Small Business Administration, the federal Department of Commerce's Minority Business Development Agency and the North Carolina's Division of Minority and Women Owned Historically Underutilized Business (HUB) Development in the solicitation and utilization of small, minority and women-owned firms. NCORR's recipients of Section 3 covered funding should also utilize these sources as a resource.

As an additional step to help maximize the utilization of and priority given to Section 3 persons and businesses, NCORR will implement the following procurement guidelines:

1. Small Purchase Procedures. For Section 3 covered contracts aggregating no more than $250,000, the methods set forth in this paragraph (1) or the more formal procedures set forth in paragraphs (2) and (3) of this Section III may be utilized.
    a. Solicitation. Quotations may be solicited by telephone, letter or other informal procedure provided that the manner of solicitation provides for participation by a

reasonable number of competitive sources. At the time of solicitation, the parties must be informed of:

i. the Section 3 covered contract to be awarded with sufficient specificity;

ii. the time within which quotations must be submitted; and

iii. the information that must be submitted with each quotation.

b. If the method described in paragraph (1)(A) is utilized, there must be an attempt to obtain quotations from a minimum of three qualified sources in order to promote competition. Fewer than three quotations are acceptable when the contracting party has attempted, but has been unable, to obtain a sufficient number of competitive quotations. In unusual circumstances, the contracting party may accept the sole quotation received in response to a solicitation provided the price is reasonable. In all cases, the contracting party shall document the circumstances when it has been unable to obtain at least three quotations.

c. Award. Where the Section 3 covered contract is to be awarded based upon the lowest price, the contract shall be awarded to the qualified Section 3 business concern with the lowest responsive quotation, if it is reasonable and no more than 5 percent higher than the quotation of the lowest responsive quotation from any qualified source. If no responsive quotation by a qualified Section 3 business concern is within 5 percent of the lowest responsive quotation from any qualified source, the award shall be made to the source with the lowest quotation.

d. Where the Section 3 covered contract is to be awarded based on factors other than price, a request for quotations shall be issued by developing the particulars of the solicitation, including a rating system for the assignment of points to evaluate the merits of each quotation. The solicitation shall identify all factors to be considered, including price or cost. The rating system shall provide for a range of 15 to 25 percent of the total number of available rating points to be set aside for the provision of priority for Section 3 business concerns and Section 3 hiring and training personnel. The purchase order shall be awarded to the responsible firm whose quotation is the most advantageous, considering price and all other factors specified in the rating system.

2. Procurement by sealed bids (Invitations for Bids). Preference in the award of Section 3 covered contracts that are awarded under a sealed bid (IFB) process may be provided as follows:

a. Bids shall be solicited from all businesses (Section 3 business concerns and non-Section 3 business concerns). An award shall be made to the qualified Section 3 business concern with the highest priority ranking and with the lowest responsive bid if that bid:

i. is within the maximum total contract price established in the contracting party's budget for the specific project for which bids are being taken; and

ii. is not more than "5%" higher than the total bid price of the lowest responsive bid from any responsible bidder.

b. If no responsive bid by a Section 3 business concern meets the requirements of paragraph (2)(i) of this section, the contract shall be awarded to a responsible bidder with the lowest responsive bid.

3. Procurement under the competitive proposals method of procurement (Request for Proposals (RFP)).

   a. For contracts and subcontracts awarded under the competitive proposals method of procurement (2 CFR 200.320), a Request for Proposals (RFP) shall identify all evaluation factors (and their relative importance) to be used to rate proposals.

   b. One of the evaluation factors shall address both the preference for Section 3 business concerns and the acceptability of the strategy for meeting the greatest extent feasible requirement (Section 3 Plan), as disclosed in proposals submitted by all business concerns (Section 3 and non-Section 3 business concerns). This factor shall provide for a range of 15 to 25 percent of the total number of available points to be set aside for the evaluation of these two components.

   c. The component of this evaluation factor designed to address the priority for Section 3 business concerns must establish a priority for these business concerns in the order of priority ranking as described in 24 CFR 135.36.

   d. With respect to the second component (the acceptability of the Section 3 Plan), the RFP shall require the disclosure of the contractor's Section 3 Plan to comply with the Section 3 employment and training priority, or contracting priority, or both, if applicable. A determination of the contractor's responsibility will include the submission of an acceptable Section 3 Plan. The contract award shall be made to the responsible firm (either Section 3 or non-Section 3 business concern) whose proposal is determined most advantageous, considering price and all other factors specified in the RFP.

Waivers Requests

If the NCORR Section 3 Plan submitted by the bidder does not meet the HUD Section 3 project goals, the bidder must still demonstrate to "the greatest extent feasible," including any identified impediments, to meet employment goals with its bid. The bidder shall attach documentation of efforts to subcontract with Section 3 certified businesses with the Section 3 Plan prior to the submission of its bid, to meet the HUD Section 3 goal for the project. Documentation must show that the contractor, "to the greatest extent feasible", made efforts to sub-contract with certified businesses. These efforts should exceed a good faith efforts. Examples of meeting the greatest extent feasible requirement can be found in Appendix I. HUD does NOT typically allow granting of any waivers or exemptions in the Section 3 program. **Section 3 is the LAW**.

Greatest Extent Feasible Efforts

To demonstrate sufficient greatest extent feasible efforts to meet the HUD Section 3 contract goals, upon request by the Procurement Officer, or his/her designee, a bidder shall document the steps it has taken to obtain HUD Section 3 participation. The responsibility is on the Bidder to demonstrate their "greatest extent efforts."

NCORR requires all Section 3 covered projects to be able to demonstrate to the greatest extent feasible their compliance with the goals as set forth in this policy manual. Where a recipient is unable to reach the stated and defined numerical goals as set forth in Section 135.35, such inability to meet the goals does not mean that efforts were not made. In accordance with the HUD regulations, any such recipient of Section 3 covered funding that does not meet the

minimum numerical goals is required to demonstrate in writing a justification explaining the following:

- Why it was unable to meet the goals?;
- Any impediments encountered by the recipient that impacted the reaching of the goals;
- Any and all actions taken by the recipient to meet the numerical goals of the program, including such documentation, i.e., ads, advertising slicks and/or mock ups, letters, program agendas, meeting minutes or notes, newspaper ads, etc.; and
- Any and all actions to be taken by the recipient to address the impediments in the future.

Bidders must earn at least sixty-five (65) points from the greatest extent feasible efforts listed below for their bid to be considered responsive:

1. (10 pts) Solicited, through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising in applicable publications and/or written notices) the interest of all certified HUD Section 3 certified businesses that have the capability to perform the work of the contract. The bidder must solicit this interest within ten (10) business days of the bid submission deadline, in order to permit the HUD Section 3 certified business time to respond to the solicitation. The bidder must determine with certainty if the HUD Section 3 certified business is interested by taking the appropriate steps to follow up initial on solicitations. This includes contacting the NCORR Section 3 Coordinator when the certified company cannot be reached to ensure that their information is accurate.

2. (10 pts) Select portions of the work to be performed by HUD Section 3 certified business in order to increase the likelihood that the HUD Section 3 goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate HUD Section 3 participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

3. (15 pts) Provided interested HUD Section 3 certified businesses with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation and able to provide documentation of such.

4. (20 pts) Negotiated to the greatest extent feasible with interested HUD Section 3. It is the bidder's responsibility to make a portion of the work available to HUD Section 3 subcontractors and suppliers and to select those portions of the work or material needs consistent with the available HUD Section 3 subcontractors and suppliers, so as to facilitate HUD Section 3 participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of HUD Section 3 that were considered, a description of the information provided regarding the plans and specifications for the work selected for subcontracting, and evidence as to why additional agreements could not be reached for HUD Section 3 to perform the work. Documentation must be detailed and will be verified prior during the bid review.

5. (10 pts) Considered a number of factors in its negotiation with HUD Section 3 subcontractors, and took subcontractors' price and capabilities, as well as the contract goals, into consideration. However, the fact that there may be some additional costs involved in finding and using HUD Section 3 subcontractors is not itself sufficient reason for a bidder's failure to meet the contract HUD Section 3 goals, as long as such costs are reasonable. The ability or desire of a prime contractor to perform the work of a contract within its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from HUD Section 3 subcontractors if the price difference is excessive or unreasonable.

6. (10 pts) Did not reject HUD Section 3 as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

7. (15 pts) Made efforts to assist interested HUD Section 3 businesses in obtaining bonding, lines of credit, or insurance as required by NCORR or the contractor.

8. (25 pts) Made efforts to assist interested HUD Section 3 businesses in obtaining necessary equipment, supplies, materials, or related assistance or services.

9. (10 pts) Effectively used the services of community organizations, contractors' groups, local, state and federal business assistance offices, workforce development agencies, housing authorities, ethnic minority groups, and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of HUD Section 3 businesses.

10. (35 pts) The bidder is actively participating in an ongoing mentor/protégé relationship with a HUD Section 3 business in the assistance of their business growth and development.

The Contractor shall pay all skilled labor not less than the minimum wage rates predetermined by the Department of Labor prevailing wage (if applicable) for this project as listed in the bid form.

In determining whether a bidder has met greatest extent feasible efforts, the Procurement Officer, or his/her designee, may take into account the performance of other bidders in meeting the goal. For example, when the apparent successful lowest bidder fails to meet the contract goal, but others meet it, the Procurement Officer, or his/her designee, may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal.

If the apparent successful bidder fails to meet the goal, but meets or exceeds the average HUD Section 3 participation obtained by other bidders, the Procurement Officer, or his/her designee, may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made efforts to the greatest extent feasible.

In the event that the Section 3 Plan submitted with the bid proposal, requires additional information prior to approval, the contractor is required to meet with the Section 3 Coordinator and/or NCORR officials to discuss NCORR's review of the submitted Section 3 Plan and modify the plan based on feedback from NCORR's Section 3 Coordinator or their professional technical assistance consultant team. The Coordinator will review Section 3 Plans and provide review findings within three (3) business days. Review comments will be made available to both the contractor, the awarding department, and others, when necessary. It is important to note that NCORR will not move forward with funding of any project until the Section 3 Plan receives approval by NCORR's designee, a representative from the awarding department and the Director of Compliance and Monitoring.

If NCORR approves a Section 3 Plan and decides to move forward with an actual commitment of funds for the project, then the contractor is expected to sign a contract with NCORR, which incorporates the Section 3 Plan as one of the essential components which will be monitored by the NCORR Compliance and Monitoring Team. A certified list of Section 3 employees and/or a copy of the payroll with each employee's name, employee number (last four digits of SSN only) and rate of pay must be submitted as of the date of the award. The information must be submitted prior to or at the project pre-construction meeting.

Once there is a contractual agreement with NCORR, the contractor is obligated to make available all documentation necessary to enable NCORR staff to conduct compliance reviews, which consist of comprehensive analysis and evaluation of compliance with the approved Section 3 Plan. Where noncompliance is found, NCORR will issue immediate notification, within three (3) business days to the recipient of the nature of the deficiency and issue directives for corrective actions. The contractor is expected, under the contractual obligation with NCORR, to adhere to implementing the approved Section 3 Plan. The contractor is subject to a compliance review by HUD and NCORR. The contractor and their subcontractors are required to maintain records in a manner where they will be readily available to HUD and NCORR staff.

Subrecipient Agreements

For all contracts for which Section 3 contract goals have been established, the prospective subrecipient shall be required to submit the appropriate HUD Section 3 Plan (Appendix C) to NCORR with the proposal response. Commitment to Section 3 utilization will be a factor in the proposal selection process. All subrecipient agreements must also include the appropriate Section 3 clause. The successful subrecipient will then have an opportunity to finalize the Section 3 Plan for approval by NCORR and the approved plan will become a part of the contract with NCORR. The Section 3 Plan must include specific information regarding the following:

- Identification of the Project Area;
- Specific information about the current workforce (payroll reports, etc.);
- Specific plan for hiring and giving priority to Section 3 eligible residents, including those Limited English Proficient (LEP) and other vulnerable persons;
- Specific plan for engaging Section 3 designated businesses that includes the name, address, tax identification number and certification number, if applicable, of each HUD Section 3 certified business that will participate in the contract.

- A description of work each named HUD Section 3 certified business will perform with the dollar amount of participation;
- Sign an Acknowledgement of Receipt of Information Regarding Section 3 Requirements and Obligations of a business awarded a project with HUD sourced NCORR HOME or CDBG funding.
- Firm commitment to include as part of all bids the Section 3 Plan (once approved by the NCORR) which identifies activities to comply with the Section 3 program and the NCORR's Section 3 Clause provided in all subcontracts; and
- Firm commitment to conduct aggressive outreach and notification to potential Section 3 residents and businesses of hiring opportunities using site signage, flyers, applicable advertising, outreach, etc.

If NCORR approves a Section 3 Plan and decides to move forward with an actual commitment of funds for the project, then the subrecipient is expected to sign a grant agreement with NCORR which incorporates the Section 3 Plan as one of the essential components which will be vigorously monitored by the NCORR Monitoring and Compliance Team. A core list of employees with each employee's name, employee number (last four digits of SSN only), and rate of pay must be submitted as of the date the contract was awarded. The information must be submitted prior to or at the post-award meeting.

Once there is a contractual agreement with NCORR, the subrecipient is obligated to make available all documentation necessary to enable NCORR Compliance and Monitoring staff to conduct compliance reviews, which consist of comprehensive analysis and evaluation of compliance with the approved Section 3 Plan. Where noncompliance is found, NCORR will issue immediate notification to the recipient of the nature of the deficiency and issue directives for corrective actions. The subrecipient is expected, under the contractual obligation with NCORR, to adhere to implementing the approved Section 3 Plan. The subrecipient and their subcontractors are subject to a compliance review by HUD and NCORR. The subrecipients and their subcontractors are required to maintain records in a manner where they will be readily available to HUD and NCORR staff.

ASSURING COMPLIANCE WITH SECTION 3 POLICIES

Assuring compliance with Section 3 policies involves affirmative measures on both NCORR and its recipients. Subrecipients, contractors, subcontractors, and/or developers are required to provide other economic opportunities to Section 3 residents and businesses pursuant to 24 CFR Part 135. Subgrantees, subrecipients, contractors, subcontractors, and/or developers who refuse to comply with NCORR's Section 3 policies will be subject to the penalties and sanctions identified in the Refusal to Comply section of the Plan.

To ensure compliance subrecipients, contractors, subcontractors, and developers must:

- Submit a Section 3 Plan reflective of NCORR's stated Section 3 goals;
- Develop policies and procedures to assure compliance with Section 3 goals;
- Implement an approved Section 3 Plan meeting the approved Section 3 goals (hiring and

contracting);

- Document all aspects of implementation of their approved Section 3 Plan;
- Records should be maintained and available for monitoring/compliance reviews; and
- Submit required reports in a timely manner.

NCORR, however, recognizes that the ultimate responsibility rests with NCORR to institute the Section 3 program and its policies. NCORR will institute the following:

- Establish a Section 3 Outreach Plan, to include LEP populations to support various Section 3 initiatives;
- Ensure that the Section 3 implementation procedures are consistently carried out consistent with and in accordance to the HUD guidelines 24 CFR Part 135;
- Issue Section 3 compliance procedures to subgrantees, subrecipients, contractors, subcontractors, nonprofits and/or developers;
- Incorporate the Section 3 program guidelines in all solicitations;
- Require submission of Section 3 Plans as components of each bid for review and approval by the Section 3 Coordinator prior to the commitment by NCORR of any funding (HUD sourced) to projects;
- Conduct meetings, trainings and technical assistance with subgrantees, contractors, subcontractors, nonprofits and/or developers to address concerns with submitted Section 3 Plans;
- Require approved Section 3 Plans to become a part of the contract and/or grant agreement which officially commits HUD sourced funding to projects;
- Regularly conduct compliance monitoring of all contracts that include approved Section 3 Plans;
- Facilitate workshops and technical assistance on the Section 3 program and policies;
- Prepare and submit annual reports to HUD on the Section 3 program results;
- Work with community organizations to identify and/or establish training programs for Section 3 eligible residents;
- Annually review staffing and hiring needs of NCORR in connection with Section 3 covered projects including management, professional services, and administrative jobs connected to Section 3 covered projects;
- Document any and all aspects of the hiring and employment policies that present barriers to complying with Section 3; and
- Refer businesses to organizations [technical assistance consultants] that provide technical assistance to small businesses in an effort to build capacity.

NCORR's Commitment to Outreach and Training

In addition to NCORR's firm commitment to the above stipulated goals, NCORR also recognizes the need for broad outreach, technical assistance and capacity building, education and training relative to Section 3. The cornerstone of NCORR's outreach and training effort is the [establishment of] relationship with organizations that are involved in the regions workforce development and small business development efforts. These organizations bring a wealth of training and outreach resources to NCORR's Section 3 outreach and education effort. A list of organizations can be found in Appendix I. NCORR has [intends to] partner with jurisdictions throughout the state and region and with other partnering agencies to engage in ongoing technical assistance, training, outreach and educational efforts throughout the year including:

- Section 3 job fairs and networking opportunities;
- Development and distribution of Section 3 informational and educational materials;
- Media presentations;
- Targeted community group mailings;
- Providing Section 3 resources on NCORR's website;
- Partnerships with Nork Carolina's State Workforce Investment Boards and their affiliates;
- Include Section 3 opportunities with the North Carolina's State Department of Administration's certified HUB program or those seeking HUB certification; and
- Providing technical assistance, including lists and contact information to units of general local government and housing authorities to help identify Section 3 businesses and persons.

Annual Report

NCORR will submit the annual Section 3 report to HUD as part of its Disaster Recovery Grant Reporting System (DRGR0 Report. All reports shall be submitted on HUD Form 60002 (see APPENDIX D for a copy of the HUD 60002 form). NCORR will submit its Annual Report in accordance with and at the end of its annual fiscal year calendar on [Month Year]. An additional copy of the annual HUD Form 60002 for NCORR projects will be submitted to the HUD's Fair Housing Equal Opportunity Offices FHEO at the time of the submission and through the online reporting system at www.hud.gov/section3. NCORR as the recipient of Section 3 covered HUD financial assistance shall submit an annual report for the purpose of determining the effectiveness of Section 3. Section 3 summary reports, form HUD 60002, are required even if the recipient agency did not undertake any activities that triggered the requirements. No subrecipient, contractor, subcontractor, nonprofits and/or developer should not submit Section 3 reports to NCORR. Only NCORR is required to submit Section 3 reports to HUD for its recipients. Subrecipients, contractors, subcontractors, nonprofits and/or developers are required to submit their forms and reporting to NCORR on a quarterly basis or upon submission of draw requests. It is extremely important that subrecipients, contractors, subcontractors, nonprofits and/or developers maintain adequate documentation to demonstrate compliance with Section 3 and forward information to the direct recipient as directed or upon request.

NCORR will receive and maintain records to document compliance with the Section 3 program objectives. At a minimum, records will include specific information and documentation to demonstrate whether the numerical goals were met and that the recipient and contractors, subgrantees, subrecipients, subcontractors, nonprofits and/or developers carried out their responsibilities.

NCORR Section 3 Reporting

Section 3 Annual Summary Reports are intended to measure each recipient's, including NCORR as the grantee's efforts to comply with the statutory and regulatory requirements of Section 3 in its own operations AND those of its covered subgrantees, subrecipients, contractors, subcontractors, nonprofits and/or developers. Each submission of form HUD 60002 should indicate the following:

- The total dollar amount of HUD funding that was received by the recipient for the specified reporting period;
- The total number of new employees that were hired by the recipient and/or its covered subgrantees, subrecipients, contractors, subcontractors, nonprofits and/or developers, as a result of performing or completing covered project/activities;
- The number of new employees that were hired by the recipient (or its covered subgrantees, subrecipients, contractors, subcontractors, nonprofits and/or developers) as a result of covered projects/activities, that met the definition of a Section 3 resident;
- The total number of man hours worked on covered projects (optional);
- The aggregate number of hours worked by Section 3 residents on covered projects (optional);
- The total number of Section 3 residents that participated in training opportunities that were made available by the recipient agency, its subgrantees, subrecipients, contractors, subcontractors, nonprofits and/or developers, or other local community resource agencies;
- The total dollar amount of construction and/or nonconstruction contracts (or subcontracts) that were awarded with covered funding;
- The dollar amount of the recipient's construction or nonconstruction contracts (or subcontracts) that were awarded to Section 3 business concerns; and
- Detailed narrative descriptions of the specific actions that were taken by the recipient (or its covered subgrantees, subrecipients, contractors, subcontractors, nonprofits developers, or others) to comply with the requirements of Section 3 and/or meet the minimum goals for employment and contracting opportunities.

COMPLIANCE

The Section 3 Coordinator will coordinate and conduct regular compliance reviews, which consist of comprehensive analysis and evaluation of the subgrantee, subrecipient, contractor, subcontractor, nonprofits and/or developer documentation of meeting Section 3 goals. Subcontractors are subject to the same Section 3 responsibilities as the prime contractor or NCORR subrecipient. When noncompliance is found, NCORR will notify the recipient of the deficiency and recommendations for corrective actions. If a contractor's or subrecipient's

subcontractors are found to be noncompliant, notification will be sent to the contractor or subrecipient with recommendations. It is the contractor's or subrecipient's responsibility to ensure their subcontractors implement recommendations for corrective actions. On complaints sent to the regional HUD office, the Fair Housing Equal Opportunity (FHEO) Staff in most cases will conduct an evaluation and make recommendations for corrective actions. NCORR will work with HUD to further determine sampling of self-certified or presumed benefit residents and businesses as HUD continues to define these regulations.

Section 3 Designee

Subrecipients, contractors, subcontractors, nonprofits and/or developers of Section 3 eligible funds are encouraged to designate someone within the project organization as the Section 3 Coordinator. This will be the person that NCORR's Section 3 Coordinator [or its designee] will be in contact with about reports and other necessary information. This will also be the person within the recipient's organization responsible for making sure that the project adheres to NCORR's Section 3 requirements and the projected Section 3 Plan as set forth in NCORR's contract.

Outreach Requirements

All bid announcements and complete specifications, subcontracting opportunities, and any other opportunities for Section 3 businesses or residents for Section 3 applicable projects and funded activities must be sent to the organizations listed in Appendix I two (2) calendar weeks prior to the bid closing date. This is not an exhaustive list and every effort should be made to disseminate information to as many organizations as possible to ensure that NCORR, its subrecipients, contractors, subcontractors, nonprofits and vendors are recruiting Section 3 businesses and residents to the greatest extent feasible as required by HUD and NCORR's Section 3 policies. Documentation of recruitment and outreach efforts must be forwarded to the Section 3 Coordinator. This includes employment announcements, contracting opportunities, apprenticeships, trainings and any other marketing materials related to outreach activities.

Monthly Reports

NCORR requires [monthly/quarterly] reports to be submitted to the Section 3 Coordinator. Reports are due by the 10th of each month until the project has ended. The following reports should be submitted regardless if the work has been completed for that month or not:

- Payroll Certification
- Worker Utilization Form
- Subcontractor Drawdown Form (must be signed by prime contractor and subcontractor)
- Job postings
- Advertisement for employment opportunities
- Copies of applications received and results
- Documentation of training provided to Section 3 employees
- Pictures of job site signage with the date the picture was taken

- Any other documentation of methods used to notify businesses and residents of opportunities.

These reports shall be submitted to the Section 3 Coordinator. Copies of the worker utilization forms are included in Appendix D. Information may also be submitted electronically. For instructions on how to submit data electronically, contact the NCORR Section 3 Coordinator (000) 000-0000.

Record Maintenance and Documentation

All projects which are subject to Section 3 guidelines are required to maintain comprehensive documentation of their Section 3 outreach efforts and implementation activities both during the period of performance and for five (5) years after project closeout. There should be clearly maintained Section 3 documentation files available to be produced to and reviewed by NCORR and/or HUD officials. NCORR cannot emphasize enough the importance of documentation. Before any waiver is granted, NCORR will look very strongly at the documentation, including process and demonstrated effort by the subrecipient or contractor to comply with Section 3. Section 3 annual reporting is required to either coincide with the recipient's fiscal year or program calendar year. If the entity has neither, then the entity is expected to adopt the Federal fiscal year end (October 1 thru September 30) in order to be in compliance with annual Section 3 reporting. Otherwise reports are due by January 10 of the following year. **All program records should be maintained for a period of no less than five years.**

Signage

Section 3 signage is required for all Section 3 covered construction projects . The sign must be large enough to be visible from the street. The sign must: (a) identify the name of the project; (b) state —This is a HUD Section 3 Project; and (c) provide the contractor's contact information including name and a telephone number. Also, it would be wise to name the Coordinator that is handling Section 3 for the particular project and contractor.

Enforcement - Complaints and Compliance Reviews (Pursuant to 24 CFR § 135.)

Compliance Monitoring and Reviews

The Section 3 Coordinator along with the assigned Monitoring and Compliance Team will conduct regular compliance reviews which consist of comprehensive analysis and evaluation of the subrecipient's or contractor's compliance with Section 3. Since the source of these funds is HUD, federal officials maintain the right and responsibility to conduct Section 3 Compliance reviews which may involve any and all Section 3 projects funded by NCORR. Where noncompliance is found, NCORR will notify the subrecipient or contractor of the deficiency and recommendations for corrective actions. If noncompliance is found with contractor's or subrecipient's subcontractors, notification will be sent to the contractor or subrecipient who will be responsible for ensuring compliance from their subcontractor. A finding of noncompliance by NCORR or HUD may result in penalties based on the program under which the Section 3 covered assistance was funded. Refer to the penalties section for additional information.

NCORR's Complaint Process

Any Section 3 resident or business may file a complaint alleging noncompliance with Section 3 by a subgrantee, subrecipient, contractor, subcontractor, and/or developer. Complaints must be submitted to HUD within 180 days of the action or omission upon which the complaint is based. Complaints, upon notification from HUD will be investigated by the NCORR Monitoring and Compliance Unit. Written complaints must contain:

- Name and address of the person filing the complaint;
- Name and address of the subject of complaint (NCORR/HUD Recipient or Contractor);
- Description of acts or omissions in alleged violation of Section 3; and
- Statement of corrective action sought.

Written complaints should be filed with:

Upon receipt of a written complaint from HUD, the Monitoring and Compliance Unit will designate a person(s) to investigate the specific allegations of the complaint and render a finding. If it is determined that the subgrantee, subrecipient, contractor, subcontractor, and/or developer has functioned in such a manner as to breach the contractual obligations of the approved Section 3 Plan, the Monitoring and Compliance Unit or designee will notify the appropriate department heads and parties of such findings and of the corrective measures that will be required. The Section 3 Coordinator will respond to the complainant.

HUD's Complaint Process

Any Section 3 resident or business may file a complaint alleging noncompliance with Section 3 by a subgrantee, subrecipient, contractor, subcontractor, and/or developer. Complaints will be investigated; if appropriate, voluntary resolutions will be sought. There are appeal rights to the Secretary. Section 3 residents and businesses may also seek judicial relief. Complaints are to be filed in writing to the regional HUD FHEO office:

NORTH CAROLINA REGIONAL FIELD OFFICE FHEO
Intake Branch Officer or Designee
U.S. Department of Housing and Urban Development, Region IV
Asheville Federal Building
1500 Pinecroft Road, Suite 401
Greensboro, NC 27407-3838

or: The Assistant Secretary for Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development 451 Seventh Street, SW, Room 5100
Washington, DC 20410-2000

A written complaint must contain:

- Name and address of the person filing the complaint
- Name and address of the subject of complaint (HUD Recipient or Contractor)

- Description of acts or omissions in alleged violation of Section 3
- Statement of corrective actions sought

Findings

A finding of noncompliance by NCORR or HUD may result in sanctions or penalties. In the event the subgrantee, subrecipient, contractor, subcontractor, and/or developer refuses to comply with the Section 3 provisions of the contract, including employment and contracting goals, or with any of the rules, regulations, or orders referred to, it is agreed that NCORR, at its option, may apply any or all of the penalties or sanctions listed in the Refusal to Comply section of the Guide Book, including possible relief being provided to the aggrieved entities.

Refusal to Comply

In the event the subgrantee, subrecipient, contractor, subcontractor, and/or developer refuses to comply with the Section 3 provisions of the contract, including employment and contracting goals, or with any of the rules, regulations, or orders referred to, it is agreed that NCORR, at its option, may apply any or all of the penalties or sanctions listed in this section:

- Cancel, terminate, or suspend this contract, in whole or in part;
- Declare the contractor or vendor ineligible for further NCORR contracts;
- Be subject to a voluntary compliance agreement that will be drafted to protect the public's interest, provide denied economic opportunities to Section 3 residents and businesses, and may include damages and other relief for those injured by the recipient's noncompliance;
- Recover from the contractor or vendor by offset against the unpaid portion of the contract price, or otherwise pursuant to this contract, the sum of $50.00 per day, as liquidated damages and not as a penalty, for each day that the subgrantee, subrecipient, contractor, subcontractor, and/or developer shall fail to comply with these provisions of the contract, as determined by the NCORR in accordance with its rules and regulations, the said sum being fixed and agreed upon by and between the contractor and NCORR because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages which NCORR would sustain in the event of such a breach of contract, and that amount is agreed to be the amount of damages which NCORR would sustain; and
- Impose such other penalties as may be imposed by HUD or seek such other remedies as may be provided by law. Penalties include, but are not limited to, the following:

    1. Once a Section 3 Plan is approved, subgrantees, subrecipients, contractors, subcontractors, and/or developers will be required to contribute the difference between the approved goal amounts and the achieved goal amounts to NCORR's Section 3 Training Fund if the subgrantee, subrecipient, contractor, subcontractor, and/or developer refuses to meet the goal in the approved plan. The penalty will be recovered by the subgrantees, subrecipients, contractors, subcontractors, and/or developers by set-off against the unpaid portion of the contract price.
    2. Penalty for failure to meet employment goals will be based on the amount paid to the employees hired to fill eligible Section 3 positions. The penalty will be recovered by

the subgrantees, subrecipients, contractors, subcontractors, nonprofits and/or developers by set-off against the unpaid portion of the contract price.

3. A penalty will also be assessed for entering into a contract with contractors that fail to comply with 24 CFR § 135.32(d). The penalty assessed will be a minimum of 10% of the total contract to the noncompliant contractor not to exceed the total contract amount paid to the contractor. The penalty assessed will be based on whether or not the prime contractor has repeatedly contracted with contractors that have violated 24 CFR § 135.32(d). The penalty will be recovered by the subrecipients, contractors, subcontractors, and/or developers by set-off against the unpaid portion of the contract price.

In instances where there is a change in the scope of work or other unforeseen circumstances beyond the control of the subgrantee, subrecipient, contractor, subcontractor, nonprofits and/or developer, NCORR may not impose a penalty for failure to meet the Section 3 goal. Penalties cannot be paid from HUD funding sources. Unpaid penalties may result in decertification from the Section 3 program and/or ineligibility to bid on future NCORR projects.

This Section 3 Plan is intended to provide guidance to follow the spirit of the regulation as found in 24 CFR Part 135, Economic Opportunities for Low Income Persons; Section 3 of the Housing and Urban Development Act of 1968. NCORR intends to comply with all the requirements as cited in the regulation and hold its subrecipients and contractors to a high level of accountability and transparency in order that persons of lower socioeconomic status can participate in the overall Super Storm Sandy disaster recovery process. NCORR seeks to deploy a strategy that will be effective in meeting the numeric goals of Section 3, while being proactive both before and during program monitoring to assist disaster grant recipients in meeting their goals by providing training and technical assistance. Super Storm Sandy not only impacted the state's housing, small businesses and infrastructure, but it also impacted the lives of those persons and families most vulnerable. By implementing this Section 3 Plan, including the training and technical assistance, NCORR intends to help these vulnerable populations be more resilient in dealing with the impact of present and future storm recovery operations.

APPENDIX A - SECTION 3 CLAUSE

All Section 3 covered contracts shall include the following clause (referred to as the "Section 3 Clause"):

A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected by before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

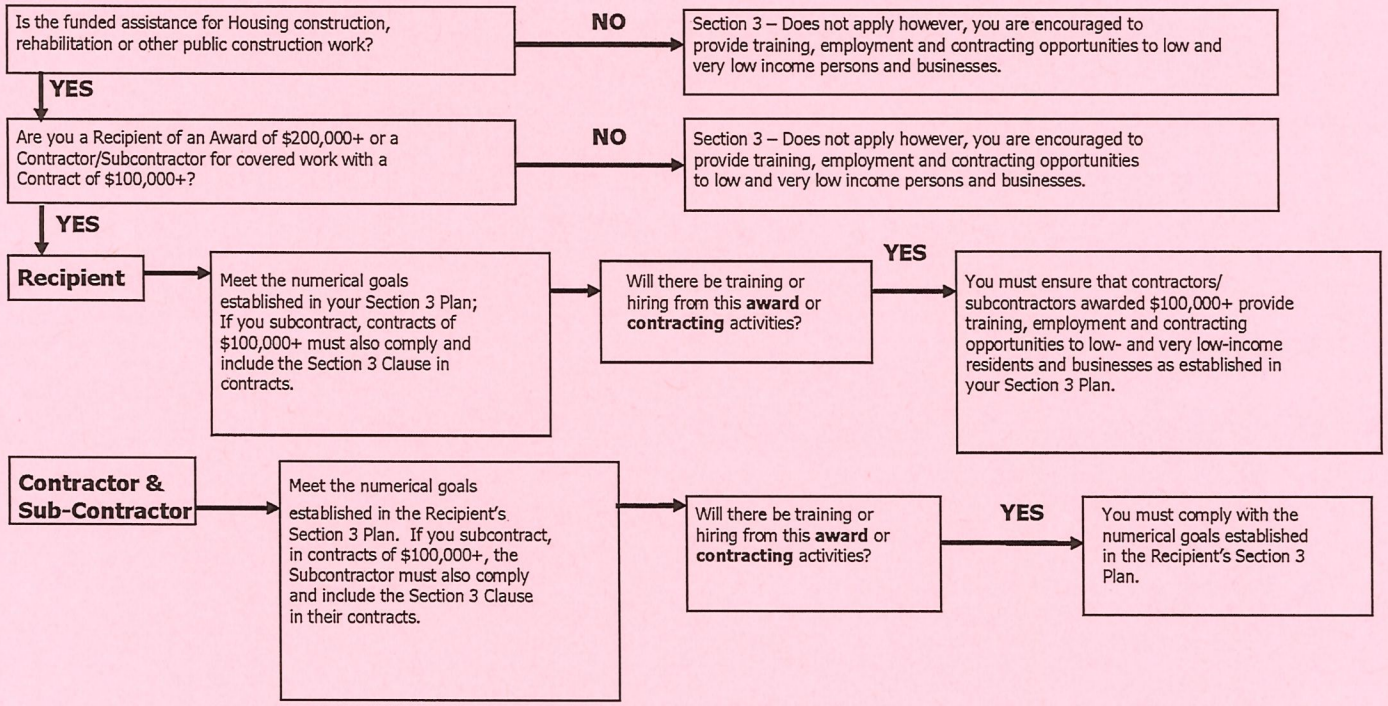
F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

APPENDIX B - SECTION 3 FLOW CHART

Section 3 Flow Chart

Use the following chart to determine if your project is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended.



If state or private funds are combined with federal funds to finance an eligible Section 3 project, the combined amount (Total Development Cost) is subject to the Section 3 requirements.

APPENDIX C - SECTION 3 PLAN TEMPLATE

C.1 - NCORR SECTION 3 DEVELOPER/CONTRACTOR PARTICIPATION PLAN TEMPLATE

C.2 - NCORR SECTION 3 CITIES/TOWNS/VILLAGES PARTICIPATION PLAN TEMPLATE

C.3 - NCORR SECTION 3 HOUSING AUTHORITY PARTICIPATION PLAN TEMPLATE

*** ALL NCORR Section 3 Plans can be downloaded on NCORR's Section 3 Web Page:*

www.rebuild.nc.gov/Section3

SECTION 3 PLAN

(Owner/Developer and General Contractor)

For _____

_____

(Name and Address of Construction Project)

Submitted by:

Name of Owner/Developer:
Address:
Primary Contact:
Phone number:
Email:

Name of General Contractor:
Address:
Primary Contact:
Phone number:
Email:

General Statement

_____, the owner/developer, and _____, the general contractor, are committed to complying with the provisions of the Section 3 statute, the Section 3 regulations, and the (City/County/Village of "X") Section 3 Guidelines (hereinafter "Section 3"). It is our desire to work together to ensure compliance, to the greatest extent feasible, through the awarding of contracts for work and services to Section 3 companies, and to provide employment and training to Section 3 Residents. We commit to include the Section 3 clause in the construction contract and all subcontracts. All subcontractors interested in submitting bids for contracts will be informed of the Section 3 requirements and goals. We agree to provide the City/County/Village of "X" with copies of all bids received in response to the invitation to bid and copies of all contracts awarded in excess of $100,000.00.

Contracting Goals

To demonstrate compliance with Section 3 regulations, it is expected to award at least 10% of the total dollar amount of all Section 3 covered contracts for building trades work, and, at least 3% of the total dollar amount of all other Section 3 covered contracts (i.e., professional services) to Section 3 Business Concerns.

Dollar amount of the construction contract: $_____

10% of the total contract is: $_____

3% of the total contract is: $_____

I understand these goals as stated above and hereby agree to perform my duties in support of working towards these goals. Initials: (Owner/Developer) _____ (General Contractor) _____

If we do not feel it is feasible to meet the minimum goals set forth above, we will be prepared to demonstrate why it was not possible. We understand failure to follow our Section 3 Plan could result in North Carolina Office of Recovery and Resiliency ("NCORR") and/or the Secretary of Housing and Urban Development ("HUD") considering us non-compliant with the Section 3 regulations or obligations.

Employment and Training:

To demonstrate compliance with Section 3 regulations, it is expected to employ Section 3 Residents as 30% of the aggregate number of new hires, and to provide technical training to those new hires. We agree to provide information regarding existing employees and hiring prerequisites as a part of this Plan.

A concerted effort will be made to meet the goals in this Plan. If we do not feel it is feasible to meet the minimum goals set forth above, we will be prepared to demonstrate why it was not possible, and documentation of our efforts to reach these goals

Outreach

We are committed to conducting an aggressive outreach campaign to make Section 3 Businesses and Section 3 Residents aware of contracting and employment opportunities in connection with this Section 3 Covered Project. The efforts will include, but will not be limited to:

- Publication of opportunities in newsletters or other local newspapers, including those targeted to Limited English Proficient populations.
- Publication of opportunities within North Carolina's Department of Administration's HUB Office.
- Publication of opportunities on the Section 3 website maintained by NCORR's Fair & Equitable Housing Office.
- Extend invitations to Section 3 Business Concerns to relevant bidding opportunities.
- Use of signage at the project site and flyers posted in the neighborhood and surrounding areas.
- Notification to NAACP, Urban League, the Latin America Coalition, and other appropriate cultural and ethnic organizations.
- Notification of potential bidding opportunities, training or employment opportunities to neighborhood and non-profits groups servicing low-income persons.
- Communicate opportunities to contractor and trade organizations, employment agencies and career centers.

It is not required to include all of these methods in a Section 3 implementation strategy. However, a robust strategy that makes a good faith effort to meet the objectives stated in this Section 3 Plan is expected. NCORR and the (City/County/Village of "X") reserves the right to request, at any time, documentation of efforts made (e.g., proof of advertisement in local newspapers, flyers, and other modes of communications) in order to meet Section 3 goals.

Most Impacted and Distressed (MID) Area

The project MID area is: _____.
This area will be the primary focus for all outreach attempts.

Section 3 Coordinator

Name:
Contact number:
Email:
This person will serve as the main point of contact for all Section 3 related issues on behalf of the owner, general contractor, and subcontractors.

Reporting

We agree to provide NCORR and/or the City/County/Village of "X" the following documentation after the Section 3 qualified project is substantially completed, and will freely submit this information at any time if requested by the City.

- City/County/Village of "X" Section 3 Summary Report
- Contract and Subcontract Activity Report

Attachments

The following attachments are incorporated into and made a part of this Section 3 Plan:

- Attachment 1: Section 3 Clause to be included in all contracts
- Attachment 2: Estimated Workforce Needed for Section 3 Covered Project (Owner/Developer)
- Attachment 3: Estimated Workforce Needed for Section 3 Covered Project (Prime/General Contractor)
  (Not necessary if the Owner/Developer is acting as the General Contractor)
- Attachment 3: Outreach to Solicit Bids from Section 3 Businesses

Submitted to the City/County/Village of "X"

Date: _____

Owner/Developer:

_____
(Print/type name of organization)
By: _____
_____
(Print/type name and title)

Date: _____

General Contractor:

_____
(Print/type name of organization)
By: _____
_____
(Print/type name and title)

Attachment 1: Section 3 Clause

All Section 3 covered contracts shall include the following clause (referred to as the "Section 3 Clause"):

A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applications for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

Attachment 2: Estimated Workforce Needed for Section 3 Covered Project (Owner/Developer)

Name of Company	
Project Name	
Period Covered	
Date Submitted	

Job Category	Total Estimated Positions Needed for Project	Number of Positions Occupied by Permanent Employees	Number of Positions to be Filled with Section 3 Residents

If no new job opportunities will be available during this project, state the reason below:

Attachment 3: Estimated Workforce Needed for Section 3 Covered Project (Prime/General Contractor)

Name of Company	
Project Name	
Period Covered	
Date Submitted	

Job Category	Total Estimated Positions Needed for Project	Number of Positions Occupied by Permanent Employees	Number of Positions to be Filled with Section 3 Residents

If no new job opportunities will be available during this project, state the reason below:

Attachment 4: Outreach to Solicit Bids from Section 3 Businesses

General Contractor	
Project Name	
Period Covered	
Date Submitted	

Indicate the efforts that will be made to notify Section 3 Business Concerns of contracting opportunities generated by HUD financial assistance for housing and community development programs, to the greatest extent feasible (using additional pages if necessary). All efforts must be documented. After the contracts are awarded, attach copies of all publications, notices, pictures of posted notices, and any other outreach material utilized, along with a list of all Section 3 Business Concerns that responded to your outreach efforts (bid tabulations, etc).

SECTION 3 PLAN
ACKNOWLEDGMENT & CERTIFICATION FORM

The Awardee agrees to develop procedures designed to implement the following steps towards increased opportunities for training and employment directed to lower income residents and increase the contracting opportunities of Business Concerns within the Section 3 covered area.

I understand the responsibilities under Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. § 1701u (2014), Section 3 regulations, 24 C.F.R. §§ 135.1–.92 (1994), and hereby agree to perform my duties as _____ in full compliance with these statutory provisions and the Awardee Participation Plan.

Non-compliance with the Section 3 regulations Awardee Participation Plan may result in NCORR implementing appropriate sanctions including withholding contract payments, terminating contracts or debarment/suspension of Awardee from future Section 3 eligible award contract(s) for a determined period of time.

As chief local executive or administrative officer of Awardee, I agree to actively pursue full implementation of this program.

Signature: _____

Print Name: _____

Job Title: _____

Awardee: _____

Date: _____

Attachment 1: Section 3 Clause

All Section 3 covered contracts shall include the following clause (referred to as the "Section 3 Clause"):

H. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

I. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

J. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applications for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

K. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

L. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected by before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

M. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

N. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

Attachment 2: Estimated Workforce Needed for Section 3 Covered Project (Owner/Developer)

Name of Company	
Project Name	
Period Covered	
Date Submitted	

Job Category	Total Estimated Positions Needed for Project	Number of Positions Occupied by Permanent Employees	Number of Positions to be Filled with Section 3 Residents

If no new job opportunities will be available during this project, state the reason below:

(Prime/General Contractor)

Name of Company	
Project Name	
Period Covered	
Date Submitted	

Job Category	Total Estimated Positions Needed for Project	Number of Positions Occupied by Permanent Employees	Number of Positions to be Filled with Section 3 Residents

If no new job opportunities will be available during this project, state the reason below:

Attachment 4: Outreach to Solicit Bids from Section 3 Businesses

General Contractor	
Project Name	
Period Covered	
Date Submitted	

Indicate the efforts that will be made to notify Section 3 business concerns of contracting opportunities generated by HUD financial assistance for housing and community development programs, to the greatest extent feasible (using additional pages if necessary). All efforts must be documented. After the contracts are awarded, attach copies of all publications, notices, pictures of posted notices, and any other outreach material utilized, along with a list of all Section 3 business concerns that responded to your outreach efforts (bid tabulations, etc.).

Certification

I certify that to the best of my knowledge and belief all of the information on this form is correct. I also understand that failure to report completely and accurately may result in sanctions under my policy, including but not limited to voidance of the policy, and in criminal or civil penalties

Comments:

_____

_____

_____

_____

Adopted _____ Passed by _____

Signed by _____ Title _____

Date _____ Attest _____

Reviewed by _____ Approved by _____

OCR Program Staff _____ Date _____

Section 3 Compliance Specialist _____ Date _____

TOWNSHIP/VILLAGE/CITY/COUNTY OF _____

Section 3 Plan for Section 3 Covered Contracts

Background:

Section 3 of the Housing and Urban Development Act of 1968, as amended, ("Section 3") requires that economic opportunities generated by certain U.S. Department of Housing and Urban Development financial assistance for housing and community development programs be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and business concerns which provide economic opportunities to low- and very low income persons[1].

Pursuant to Section 3 of the Housing and Urban Development Act of 1968, as amended and 24 CFR Part 135, The Units of General Local Government (UGLG) adopts this Section 3 Plan for Section 3 Covered Contracts. The policy will provide direction for implementing Section 3, when required.

Policy Statement:

The UGLG shall provide opportunities to low- and very low-income persons residing in the State of North Carolina (as defined in § 135.5 of 24 CFR Part 135) and to businesses meeting the definition of "Section 3 Business Concern" (as defined by 24 CFR Part 135). Accordingly, the UGLG shall implement policies and procedures to ensure that Section 3, when required, is followed and develop programs and procedures necessary to implement this policy covering all procurement contracts where labor and/or professional services are provided. This policy shall not apply to contractors who only furnish materials or supplies through Section 3 covered assistance. It will apply to contractors who install materials or equipment. (See the definition of "Section 3 Covered Contracts" below.) There is nothing in this policy that should be construed to require the employment or contracting of a Section 3 resident or contractor who does not meet the qualifications of the position to be filled or who cannot fulfill the contract requirements.

Definitions:

The UGLG incorporates into this policy the definitions contained in § 135.5 of 24 CFR Part 135.

- ***Section 3*** – Section 3 is a provision of the Housing and Urban Development Act of 1968, which recognizes that HUD funds are typically one of the largest sources of federal funding expended in communities through the form of grants, loans, entitlement allocations and other forms of financial assistance. Section 3 is intended to ensure that when employment or contracting opportunities are generated because a covered project or activity necessitates the employment of additional persons or the awarding of contracts for work, preference must be given to low- and

[1] 124 CFR 135.1

very low-income persons or business concerns residing in the community where the project is located.

- ***Section 3 Recipient*** – means any entity which receives Section 3 covered assistance, directly from HUD or from another recipient and includes, but is not limited to, any State, unit of local government, PHA, IHA, Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization, resident management corporation, resident council, or cooperative association. Recipient also includes any successor, assignee or transferees of any such entity, but does not include any ultimate beneficiary under the HUD program to which Section 3 applies and does not include contractors.

- ***Section 3 Resident*** – A section 3 resident is:
  - a public housing resident; or
  - a low- or very low-income person residing in the metropolitan area or non-metropolitan county in which the Section 3 covered assistance is expended.

- ***Section 3 Business Concern(s)*** – Section 3 Business Concerns are businesses that can provide evidence that they meet one of the following:
  - 51% or more owned by Section 3 residents; or
  - At least 30% of its full time employees include persons that are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents; or
  - Provides evidence, as required, of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications in the above two paragraphs.

- ***Section 3 Covered Assistance***–
  - Public and Indian housing development, operating or capital funds; or other housing assistance and community development assistance expended for housing rehabilitation, housing construction or other public construction projects, such as: CDBG, HOME, 202/811, Lead-Based Paint Abatement, etc.
  - The following definition for Section 3 Covered Assistance comes from 24 CFR 135.5:

    1) Public and Indian housing development assistance provided pursuant to section 5 of the 1937 Act;
    2) Public and Indian housing operating assistance provided pursuant to section 9 of the 1937 Act;
    3) Public and Indian housing modernization assistance provided pursuant to section 14 of the 1937 Act;
    4) Assistance provided under any HUD housing or community development program that is expended for work arising in connection with:

a. Housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement);
b. Housing construction; or
c. Other public construction project which includes other buildings or improvements, regardless of ownership.

- ***Section 3 Covered Contract*** – means a contract or subcontract (including a professional service contract) awarded by a recipient or contractor for work generated by the expenditure of Section 3 Covered Assistance, or for work arising in connection with a Section 3 Covered Project. "Section 3 Covered Contracts" do not include contracts awarded under HUD procurement program, which are governed by the Federal Acquisition Regulation System (see 48 CFR, Chapter 1). "Section 3 Covered Contracts" do not include contracts for the purchase of supplies and materials. However, whenever a contract for materials includes the installation of the materials, the contract constitutes a Section 3 Covered Contract. For example, a contract for the purchase and installation of a furnace would be a Section 3 Covered Contract because the contract is for work (i.e., the installation of the furnace) and thus is covered by Section 3.

- ***Section 3 Covered Project*** – A section 3 covered project involves the construction or rehabilitation of housing (including reduction of lead-based paint hazards), or other public construction such as street repair, sewage line repair or installation, updates to building facades, or other public construction, etc.

- ***Section 3 Covered Community Planning and Development Funding*** – Community Development Block Grants – Disaster Recovery (CDBG-DR), Community Development Block Grant – Mitigation (CDBG-MIT), and certain grants awarded under HUD Notices of Funding Availability (NOFA). The requirements for Section 3 only apply to the portion(s) of covered funding that were used for project/activities involving housing construction, rehabilitation, demolition, or other public construction.

Responsibilities:

1. The UGLG that receives community development or housing assistance covered by Section 3 has the responsibility to comply with Section 3 in its own operations. This responsibility includes:

    - Notifying Section 3 residents and businesses about job opportunities and contracts generated by Section 3 covered assistance so that residents may seek jobs and businesses may submit bids/proposals for available contracts;
    - Notifying potential contractors of the objectives of Section 3 and ways in which each contractor can assist the sub-recipient to meet its goal;
    - Facilitating the training and employment of Section 3 residents and the award of contracts to Section 3 business concerns; and
    - Documenting the action that the sub-recipient takes to comply with the Section 3 requirements, the results of the actions, and impediments, if any.

2. The UGLG has a responsibility to "ensure compliance" of their contractors and subcontractors. This means that a sub-recipient must:

    - Notify contractors of their responsibilities under Section 3 including, but not limited to,

incorporating the Section 3 Clause in contract documents.

- Refrain from entering into contracts with contractors that are in violation of the regulations in 24 CFR Part 135.
- Respond to complaints made to the recipient by Section 3 residents or
- Business concerns that the sub-recipient, a contractor or subcontractor, is not in compliance with 24 CFR Part 135.
- Cooperate with HUD in obtaining the compliance of contractors and subcontractors when allegations are made that the sub-recipient's contractors and subcontractors are not in compliance with the regulation of 24 CFR Part 135.

Goals:

All contractors undertaking Section 3 covered projects and activities are expected to meet the Section 3 requirements. To demonstrate compliance with the "greatest extent feasible" requirement of Section 3, contractors must meet the goals set forth below for providing training, employment and contracting opportunities to Section 3 residents and Section 3 business concerns. To meet the goals, contractors must select Section 3 residents based on the following priorities pursuant to § 135.34, 24 CFR Part 135:

- First Priority - Residents of the development where the work is to be performed.
- Second Priority - Other residents of the neighborhood where the work is to be performed.
- Third Priority - Other residents of the neighborhood who are participants in HUD-YouthBuild or others federal, state, and local job programs being carried out in the city or county area.
- Fourth Priority - Other persons from the project metropolitan area who meet the definition of Section 3 resident contained in § 135.5 of 24 CFR Part 135.

Employment:

All contractors will seek low- or very low-income persons residing in the property metropolitan area for 30% of all new hires. When applicable, the contractor must show evidence of seeking project residents for 15% of the new hires.

Eligibility for employment or contracting -nothing in this policy shall be construed to require the employment or contracting of a Section 3 resident or contractor who does not meet the qualifications of the position to be filled or who cannot perform the contract.

Preference for Section 3 Business Concerns:

Preference shall be awarded to Section 3 Business Concerns according to the following system:

1. Where the Section 3 Covered Contract is to be awarded based upon the lowest price, the contract shall be awarded to the qualified Section 3 Business Concern with the lowest responsive quotation, if it is reasonable and no more than 10 percent higher than the quotation of the lowest responsive quotation from any qualified source. If no responsive quotation by a qualified Section 3 Business Concern is within 10 percent of the lowest responsive quotation from any qualified source, the award shall be made to the source with the lowest quotation. If it is reasonable and no more than 10 percent higher than the quotation of the lowest responsive quotation from any qualified source. If no responsive quotation by a qualified Section 3 Business Concern is within 10 percent of the lowest responsive quotation from any qualified source, the award shall be made to

the source with the lowest quotation.

2. Where the Section 3 Covered Contract is to be awarded based on factors other than price, a request for quotations shall be issued by developing the particulars of the solicitation, including a rating system for the assignment of points to evaluate the merits of each quotation. The solicitation shall identify all factors to be considered, including price or cost. The rating system shall provide for a range of 15 to 25 percent of the total number of available rating points to be set aside for the provision of preference for Section 3 Business Concerns. The purchase order shall be awarded to the responsible firm whose quotation is the most advantageous, considering price and all other factors specified in the rating system.

Competitive Bids: Procurement by Sealed Bids (Invitations for Bids)

Preference in the award of Section 3 Covered Contracts that are awarded under a sealed bid process may be provided as follows:

Bids shall be solicited from all businesses (Section 3 Business Concerns, and non-Section 3 Business Concerns). An award shall be made to the qualified Section 3 Business Concern with the highest priority ranking and with the lowest responsive bid if that bid—

1. Bids shall be solicited from all businesses (i.e. Section 3 Business Concerns and non- Section 3 Business Concerns). An award shall be made to the qualified Section 3 Business Concern with the highest priority ranking (as defined in 24 CFR Part 135) and with the lowest responsive bid if that bid:

   A) is within the maximum total contract price established in The UGLG's budget for the specific project for which bids are being taken; and

   B) is not more than "X" higher than the total bid price of the lowest responsive bid from any responsible bidder. "X" is determined as follows:

   X = lesser of:

When the lowest responsive bid is less than $100,000	10% of that bid or $9,000
When the lowest responsive bid is:	
At least $100,000, but less than $200,000	9% of that bid or $16,000
At least $200,000, but less than $300,000	8% of that bid or $21,000
At least $300,000, but less than $400,000	7% of that bid or $24,000
At least $400,000, but less than $500,000	6% of that bid or $25,000
At least $500,000, but less than $1 million	5% of that bid or $40,000
At least $1 million, but less than $2 million	4% of that bid or $60,000
At least $2 million, but less than $4 million	3% of that bid or $80,000
At least $4 million, but less than $7 million	2% of that bid or $105,000
$7 million or more	1.5% of the lowest responsive bid, with no dollar limit.

2. If no responsive bid by a Section 3 Business Concern meets the requirements of paragraph 1 of this section, the contract shall be awarded to a responsible bidder with the lowest responsive bid.

3. In both paragraphs 1 and 2 above, a bidder, to be considered as responsible, must demonstrate

compliance with the "greatest extent feasible" requirement of Section 3.

Compliance:

HUD holds NCORR accountable for compliance with Section 3 requirements. In contracts entered into with NCORR, recipients agree to comply with Section 3. When a housing partner is unable to meet Section 3 goals, NCORR will place the burden of proving compliance with Section 3 on the recipient.

The minimum numerical goal for employment 30 percent of the aggregate number of new hires shall be Section 3 residents annually—i.e., 1 out of 3 new employees needed to complete a Section 3 covered project/activity shall be a Section 3 resident.

The minimum goals for contracting are:

- Ten percent of the total dollar amount of all Section 3 covered contracts for building trades work for maintenance, repair, modernization or development of public or Indian housing or building trades work arising in connection with housing rehabilitation, housing construction and other public construction, shall be awarded to Section 3 businesses; and
- Three percent of the total dollar amount of all non-construction Section 3 covered contracts, shall be awarded to Section 3 businesses.

Safe harbor and compliance determinations: In the absence of evidence to the contrary (i.e., evidence that efforts to the "greatest extent feasible" were not expended), if the UGLG or contractor meets the minimum numerical goals shown above, the recipient or contractor is considered to have complied with Section 3 preference requirements.

The UGLG will be expected to demonstrate why it was not feasible to meet the goals. At a minimum, if recipients of Section 3 Assistance are unable to meet their Section 3 training, hiring, and contracting goals, they should ***sponsor or participate*** in upward mobility programs, hire eligible residents in trainee positions with regard to training and employment, or form Section 3 joint ventures with various local employment agencies.

Data Collection and Reporting:

The UGLG will collect and submit required Section 3 data and complete Section 3 reporting requirements.

SECTION 3 PLAN
ACKNOWLEDGMENT & CERTIFICATION FORM

The *Awardee* agrees to develop procedures designed to implement the following steps towards increased opportunities for training and employment directed to lower income residents and increase the contracting opportunities of Business Concerns within the Section 3 covered area.

I understand the responsibilities under Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. § 1701u (2014), Section 3 regulations, 24 C.F.R. §§ 135.1–.92 (1994), and hereby agree to perform my duties as _____ in full compliance with these statutory provisions and the Awardee Participation Plan.

Non-compliance with the Section 3 regulations Awardee Participation Plan may result in NCORR implementing appropriate sanctions including withholding contract payments, terminating contracts or debarment/suspension of Awardee from future Section 3 eligible award contract(s) for a determined period of time.

As chief local executive or administrative officer of Awardee, I agree to actively pursue full implementation of this program.

Signature: _____

Print Name: _____

Job Title: _____

Awardee: _____

Date: _____

SECTION 3 PLAN

FOR

NASH COUNTY

OFFICE OF ECONOMIC OPPORTUNITY
FAIR HOUSING EQUAL OPPORTUNITY
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

RESOLUTION

A RESOLUTION TO ADOPT THE SECTION 3 PLAN TO COMPLY WITH 24 CFR, PART 135 OF THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT SECTION 3

WHEREAS, the United States Congress passed Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3) to further the goal of ensuring that federal funds benefit the residents of projects funded wholly or in part by those funds, and

WHEREAS, Part 135 of Section 3 is to establish the standards and procedures to be followed to ensure that the objectives of Section 3 are met; and

WHEREAS, Nash County staff has developed a revised Section 3 Plan in adherence to 24 CFR, Part 135 that more comprehensively addresses the standards and procedures prescribed in the Act; and

WHEREAS, the Section 3 Plan has been reviewed by Nash County _____ senior staff members and their comments incorporated into the Plan.

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Commissioners or County authorizes the _____ to adopt and implement the revised Section 3 Plan to ensure compliance with Federal Law.

APPROVED AND ADOPTED this _____ day of _____ _____

_____ Chairperson

_____ Secretary

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Exhibits/Forms

Exhibit 1:	Certification for Business Concerns Seeking Section 3 Preference
Exhibit 2:	Certification of Residents Seeking Preference in Training and Employment
Exhibit 3:	Contracting Policy & Procedure
Exhibit 4:	Special Conditions

General Policy Statement

It is the policy of the _____ of _____ to require its contractors to provide equal employment opportunity to all employees and applicants for employment without regard to race, color, religion, sex, national origin, disability, veteran's or marital status, or economic status and to take affirmative action to ensure that both job applicants and existing employees are given fair and equal treatment.

Nash County implements this policy through the awarding of contracts to contractors, vendors, and suppliers, to create employment and business opportunities for residents of the _____ and other qualified low- and very low-income persons residing:

The policy shall result in a reasonable level of success in the recruitment, employment, and utilization of _____residents and other eligible persons and business by _____ contractors working on contracts partially or wholly funded with the United States Department of Housing and Urban Development (HUD) monies. The _____ shall examine and consider a contractor's or vendor's potential for success by providing employment and business opportunities to _____ residents prior to acting on any proposed contract award.

Section 3 Purpose

Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) (Section 3) requires Nash County to ensure that employment and other economic and business opportunities generated by the Department of Housing and Urban Development (HUD) financial assistance, to the greatest extent feasible, are directed to public housing residents and other low-income persons, particularly recipients of government housing assistance, and business concerns that provide economic opportunities to low- and very-low income persons.

Section 3 Contracting Policy and Procedure

The _____ will incorporate Section 3 in its existing Procurement Policy and adopt a Section 3 Contracting Policy and Procedure to be included in all procurements generated for use with HUD funding. This policy and procedure contains goal requirements for awarding contracts to Section 3 Business Concerns.

All contractors/businesses seeking Section 3 preference must before submitting bids/proposals to the _____ be required to complete certifications, as appropriate, as acknowledgement of the Section 3 contracting and employment provisions required by this section. Such certifications shall be adequately supported with appropriate documentation as referenced in the form.

The existing Procurement Policy is not to be confused with the ten (10%) percent goal requirements for awarding contracts to Historically Underutilized Businesses (HUBs)

.

Section 3 Plan

The _____, in conjunction with the _____, will develop a Section 3 Plan to identify the goals, objectives, and actions that will be implemented to ensure compliance with the requirements of Section 3.

_____ intent to develop this plan is to include input from various county departments to include and, as well as HUD. Where applicable, input from other agencies and companies will be included.

Section 3 Employment & Training Goals

It is the policy of the _____ to utilize residents and other Section 3 eligible persons and businesses in contracts partially or wholly funded with monies from the Department of Housing and Urban Development (HUD). _____ has established employment and training goals that contractors and subcontractors should meet in order to comply with Section 3 requirements. (Reference 24 CFR 135.30 – Numerical goal for meeting the greatest extent feasible requirement). The numerical goal is:

- Thirty percent (30%) of the aggregate number of new hires in any fiscal year.

It is the responsibility of contractors, vendors and suppliers to implement progressive efforts to attain Section 3 compliance. Any contractor that does not meet the Section 3 numerical goals must demonstrate why meeting the goals were not feasible. All contractors submitting bids or proposals to the _____ are required to certify that they comply with the requirements of
Section 3.

The Section 3 Contract Clause specifies the requirements for contractors hired for Section 3 covered projects. The Section 3 Clause must be included in all Section 3 covered projects. The Section 3 Contract Clause is included in Exhibit 3.

Section 3 Program Participant Certification Procedure

The _____ will certify Section 3 program participants who reside in Nash County
and who are seeking preference in training and employment by completing and attaching adequate proof of Section 3 eligibility, as required (see Exhibit 3 – Section 3 Participant Eligibility for Preference form).

- All persons living in the County to meet the Section 3 eligibility guidelines can, by appointment, visit with the Section 3 Coordinator to complete a job readiness assessment.

- Once this assessment is complete, the Section 3 Coordinator will determine if the individual meets the eligibility requirements and is job ready.

- If the individual is deemed eligible for Section 3 participation and deemed not ready for employment, a referral will be made to other agencies that are better equipped to address the individual's needs, i.e., substance abuse providers, etc.

- The Section 3 job readiness component is a part of the _____ commitment to provide economic opportunities and training to residents/eligible participants to become gainfully employed.

Resident Hiring Requirements

The _____ has adopted the following scale for resident hiring that is to be used on all construction contracts, service contracts and professional service contracts that contain a labor component. It is expected that an appropriate number of residents with particular qualifications or a willingness to begin unskilled labor will be able to participate in _____ contracted labor efforts. A prime contractor may satisfy _____ resident hiring requirements through its subcontractors.

TOTAL LABOR DOLLARS USE TOTAL CONTRACT AMOUNT FOR SERVICE CONTRACTS	RESIDENT AS A % OF TOTAL LABOR DOLLARS
Labor dollars $25,000 but less than $100,000	10% of the labor dollars
$100,000, but less than $200,000	9% of the labor dollars
At least $200,000, but less than $300,000	8% of the labor dollars
At least $300,000, but less than $400,000	7% of the labor dollars
At least $400,000, but less than $500,000	6% of the labor dollars
At least $500,000, but less than $1 million	5% of the labor dollars
At least $1 million, but less than $2 million	4% of the labor dollars
At least $2 million, but less than $4 million	3% of the labor dollars
At least $4 million, but less than $7 million	2% of the labor dollars
$7 million or more	1 – ½% of the labor dollars

With this sliding formula, it is expected that an appropriate number of _____ public housing residents and neighborhood residents with particular qualifications or willingness to begin unskilled labor will be able to participate in contracted labor efforts. A prime contractor, through its subcontractor(s), may satisfy _____ resident hiring requirement set forth above.

1. Subcontract or joint venture with a resident owned business. The business must be 51% of more owned by _____ public housing residents, or subcontract/joint venture with a business that employs full-time, 30% or more _____ or low and very-income individuals within the Nash County , or

2. Direct hiring of _____ Nash County _____ public housing residents and/or low and very low-income neighborhood residents based on the Resident Hiring Scale, or

3. Contractor incurs the cost of providing skilled training for residents in an amount commensurate with the sliding scale set forth in the Resident Hiring Scale, or

4. Contractor makes a contribution to _____ Education Fund to provide assistance to residents to obtain training. The level of contribution would be commensurate with the sliding scale set forth in the Resident Hiring Scale.

Proposal For

Elm Street Drainage Project

Project Number: SE-17-040
Nash County, North Carolina

Nash County
120 West Washington St.
Nashville, NC 27856

Dear Mr. Lamb:

The Undersigned, have visited and examined the site and, having carefully studied the Contract Documents and Drawings for the **Elm Street Drainage Project (#SE-17-040)**, do hereby propose to furnish all labor, mechanics, superintendence, tools, materials, equipment and all utilities, transportation and services necessary to perform and complete said work, and work incidental thereto, in a workmanlike manner, as described in said Drawings, Specifications and other Contract Documents, including Addenda issued thereto, in accordance with the prices hereinafter set forth in this proposal and Bid Schedule. The Bidder, by virtue of this bid, acknowledges receipt of all Addenda.

1. **BID TOTALS:**

PROJECT NUMBER: SE-17-040	
BASE BID	$ 624,165.75
ALTERNATE 1	$ 14,535.00

2. **CONTRACT TIME has been set for 150 days with credit for rain days that exceed the NOAA 5 year average.**

3. **MISCELLANEOUS ADDITIONS AND DEDUCTIONS**

The Undersigned agrees that the Owner has the full unconditional right to select any combination of additions or deductions and adjust the total Contract price accordingly. For additions or deductions as directed by Engineer, the unit prices on the Bid Sheet shall apply. Additional mobilizations or additional cost for type of work can not be added.

4. **PRICE AND QUANTITY**

For each bid item, the bidder shall quote a unit price. The price shall include all labor, equipment, and material necessary to complete the item of work.

5. **SITE INSPECTION**

The Undersigned further certifies that he has personally inspected the actual location of work, together with the local sources of supply, and that he understands the conditions under which the work is to be performed, or that if he has not so inspected the site and conditions of work, that he waives all right to plead any misunderstanding regarding the work required or conditions peculiar to the same.

6. PROPOSAL ACCEPTANCE

The Undersigned hereby agrees to sign the Contract within ten (10) working days from and after acceptance of this Proposal and further agrees to begin and complete all work covered by the Plans and Specifications within the time limits set forth.

7. CONTRACTOR'S LICENSE

The undersigned certified that they (~~he~~/they) are (~~is~~/are) licensed as a Contractor under the Specific State Law Regulating (~~his~~/their) particular trade and that the number of (~~his~~/their) license, under which (~~he~~/they) (~~is~~/are) now operating is 3194.

Respectfully Submitted,

Signature of Bidder:

a. If an Individual doing business as: _____

b. If a Partnership: _____
(Member of Firm)

c. If a Corporation: Barnhill Contracting Company
(Name of Corporation)
William H. Wilfong
(Officer)
Vice President
(Title)

BARNHILL CONTRACTING COMPANY CORPORATE SEAL 1949 N.C.

ATTEST: Gwendolyn P Ahmad Date: 11/24/2020
(Witness)

Current Contractor's North Carolina Registration Number: 3194

Business Address: P.O. Box 7948
Rocky Mount NC 27804

8. ADDENDA ACKNOWLEDGE

Receipt of the following Addenda is hereby acknowledged:

Addendum No.	Addendum Date
1	11/4/2020
2	11/20/2020

bidprop.doc

Bid Sheets

PROJECT NAME:	Elm Street Drainage
NEIGHBORHOOD NAME:	Town of Nashville
SECTION NO.	N/A
NUM. OF LOTS: N/A	L.F. STREET: N/A
PROJECT LOCATION:	Nashville, NC
PROJECT OWNER:	Nash County
PROJECT ESTIMATOR:	JKV

Elm Street Drainage

All Line Items Shall be Considered Minor and May be Added or Deleted at the Specified Unit Cost at the Owners Discretion

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
	CONSTRUCTION STAKING				
1	Construction Staking	1	LS	$ 29,280.00	$ 29,280.00
	MOBILIZATION				
2	Mobilization	1	LS	$ 31,700.00	$ 31,700.00
	DEMOLITION				
3	Remove 48" CMP	122	LF	$ 16.65	$ 2031.30
4	Sawcut & Remove Asphalt and Stone	16,790	SF	$ 0.15	$ 2,518.50
5	Sawcut & Remove Curb and Gutter	1,184	LF	$ 4.50	$ 5,328.00
6	Remove Ex. RCP (Misc. Sizes 15", 18", 24")	588	LF	$ 10.00	$ 5,880.00
7	Remove Ex. 30" RCP	147	LF	$ 10.00	$ 1,470.00
8	Remove Ex. 8" Sewer Line	57	LF	$ 26.25	$ 1,496.25
9	Remove Existing Catch Basin	14	EA	$ 166.40	$ 2,329.60
10	Remove Existing Drop Inlet	4	EA	$ 166.65	$ 666.60
11	Remove Existing Storm Drain M.H. / Junction Box	5	EA	$ 500.00	$ 2,500.00
12	Fill Existing 24" RCP w/ Grout	216	LF	$ 44.00	$ 9,504.00
13	Fill Existing 18" RCP w/ Grout	143	LF	$ 40.25	$ 5,755.75
14	Fill Existing 15" HDPE w/ Grout	120	LF	$ 29.35	$ 3,522.00
15	Remove Ex. Sidewalk	185	SF	$ 4.25	$ 786.25
16	Remove Ex. Tree	2	EA	$ 226.95	$ 453.90

Bid Sheets

PROJECT NAME:	Elm Street Drainage
NEIGHBORHOOD NAME:	Town of Nashville
SECTION NO.	N/A
NUM. OF LOTS: N/A	L.F. STREET: N/A
PROJECT LOCATION:	Nashville, NC
PROJECT OWNER:	Nash County
PROJECT ESTIMATOR:	JKV

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
	EARTHWORK, STONE, PAVING				
17	4" Concrete Sidewalk	175	SF	$ 12.10	$ 2,117.50
18	Wheel Chair Ramp w/ Truncated Dome Mat	3	EA	$ 1,865.00	$ 5,595.00
19	NCDOT STD. 30" Curb & Gutter	1,052	LF	$ 23.70	$ 24,932.40
20	NCDOT Screenings for Backfill	660	TONS	$ 23.50	$ 15,510.00
21	4" S9.5B Asphalt	14,600	SF	$ 3.00	$ 43,800.00
22	CABC	6	CY	$ 145.00	$ 870.00
23	6" Concrete 4,500 PSI @ 28 Days	160	SF	$ 13.15	$ 2,104.00
24	Undercut	1,000	CY	$ 52.60	$ 52,600.00
25	Trench Borrow	500	CY	$ 24.00	$ 12,000.00
26	Misc #57 Stone (as approved by ENGINEER)	250	tons	$ 32.50	$ 8,125.00
	DRAINAGE				
27	48" CMP w/ #57 Stone Bedding	60	LF	$ 190.00	$ 11,400.00
28	48" RCP w/ #57 Stone Bedding	403	LF	$ 207.00	$ 83,421.00
29	42" RCP w/ #57 Stone Bedding	278	LF	$ 126.50	$ 35,167.00
30	36" RCP w/ #57 Stone Bedding	281	LF	$ 94.70	$ 26,610.70
31	30" RCP w/ #57 Stone Bedding	104	LF	$ 88.00	$ 9,152.00
32	24" RCP w/ #57 Stone Bedding	89	LF	$ 146.00	$ 12,994.00
33	18" RCP w/ #57 Stone Bedding	97	LF	$ 81.00	$ 7,857.00
34	15" RCP w/ #57 Stone Bedding	50	LF	$ 97.00	$ 4,850.00
35	15" HDPE w/ #57 Stone Bedding	12	LF	$ 215.00	$ 2,580.00
36	NCDOT Catch Basin (0'-6' Deep)	4	EA	$ 3,215.00	$ 12,860.00
37	NCDOT Catch Basin (6'-8' Deep)	12	EA	$ 4,460.00	$ 53,520.00
38	NCDOT Catch Basin (8'-10' Deep)	1	EA	$ 5,460.00	$ 5,460.00
39	6' DIA Junction Box (6'-8' Deep)	2	EA	$ 5,550.00	$ 11,100.00
40	6' DIA Conflict Box (6'-8' Deep)	3	EA	$ 6,680.00	$ 20,040.00
41	NCDOT Drop Inlet (0'-6' Deep)	2	EA	$ 3,215.00	$ 6,430.00
42	NCDOT Drop Inlet (6'-8' Deep)	2	EA	$ 5,285.00	$ 10,570.00
43	NCDOT CB Oversized (3'x8')	1	EA	$ 12,740.00	$ 12,740.00

Bid Sheets

PROJECT NAME:	Elm Street Drainage
NEIGHBORHOOD NAME:	Town of Nashville
SECTION NO.	N/A
NUM. OF LOTS: N/A	L.F. STREET: N/A
PROJECT LOCATION:	Nashville, NC
PROJECT OWNER:	Nash County
PROJECT ESTIMATOR:	JKV

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
	MISCELLANEOUS				
44	8" DIP Sewer Line	57	LF	$ 394.00	$ 22458.00
45	4' x 8' Site Project Sign	1	EA	$ 805.00	$ 805.00
46	Hardware Cloth & Gravel Inlet Protection	3	EA	$ 425.00	$ 1,275.00
	Base Bid (Transfer this number to Sheet B-1)				$ 624,165.75

	Alternate Bid Items				
47	Mill and Overlay Ex. Asphalt to Match Ex. Street	5,700	SF	$ 2.55	$ 14535.00

Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid

Identification of Minority Business Participation

I, Barnhill Contracting Company
(Name of Bidder)

do hereby certify that on this project, we will use the following minority business enterprises as construction subcontractors, vendors, suppliers or providers of professional services.

Firm Name, Address and Phone #	Work type	*Minority Category
Fulford + Jones 2378 Womble Brooks Road Wilson, NC 27893 (252)237-0552	Concrete Curb and Sidewalk	F

*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) American Indian (**I**), Female (**F**) Socially and Economically Disadvantaged (**D**)

The total value of minority business contracting will be ($) 34,560.10 .

MBForms 2002-R

LISTING OF MBE & WBE SUBCONTRACTORS

Sheet 1 of 4

FIRM NAME AND ADDRESS	MBE or WBE	ITEM NO.	ITEM DESCRIPTION	* AGREED UPON UNIT PRICE	** DOLLAR VOLUME OF ITEM
Fulford + Jones 2328 Womble Brooks Road Wilson, NC 27893	WBE	1	Mobilization	$1,500.00	$1,500.00
		17	4" Sidewalk	$ 11.50	$2,012.50
		18	Wheel Chair Ramps	$ 1,775.00	$5,325.00
		19	30" Curb + Gutter	$ 22.55	$23,722.60
		23	6" Driveway	$ 12.50	$2,000.00

Contract No. SE-17-040 County Nash Firm Barnhill Contracting Co.

This form must be completed in order for the Bid to be considered responsive and be publicly read.
Bidders with no MBE and/or WBE participation must so indicate this on the form by entering the word or number *zero*.

LISTING OF MBE & WBE SUBCONTRACTORS

Sheet 2 of 4

FIRM NAME AND ADDRESS	MBE or WBE	ITEM NO.	ITEM DESCRIPTION	* AGREED UPON UNIT PRICE	** DOLLAR VOLUME OF ITEM

Contract No. SE-17-040 **County** Nash **Firm** Barnhill Contracting Co.

This form must be completed in order for the Bid to be considered responsive and be publicly read.
Bidders with no MBE and/or WBE participation must so indicate this on the form by entering the word or number *zero*.

LISTING OF MBE & WBE SUBCONTRACTORS

Sheet 3 of 4

FIRM NAME AND ADDRESS	MBE or WBE	ITEM NO.	ITEM DESCRIPTION	* AGREED UPON UNIT PRICE	** DOLLAR VOLUME OF ITEM

Contract No. SE-17-040 County Nash Firm Boonhill Contracting Co.

This form must be completed in order for the Bid to be considered responsive and be publicly read.
Bidders with no MBE and/or WBE participation must so indicate this on the form by entering the word or number *zero*.

LISTING OF MBE & WBE SUBCONTRACTORS

Sheet 4 of 4

FIRM NAME AND ADDRESS	MBE or WBE	ITEM NO.	ITEM DESCRIPTION	* AGREED UPON UNIT PRICE	** DOLLAR VOLUME OF ITEM

* The Dollar Volume shown in this column shall be the Actual Price Agreed Upon by the Prime Contractor and the MBE and/or WBE subcontractor, and these prices will be used to determine the percentage of the MBE and/or WBE participation in the contract.

** Must have entry even if figure to be entered is zero.

** Dollar Volume of MBE Subcontractor $ 0.00

MBE Percentage of Total Contract Bid Price 0 %

** Dollar Volume of WBE Subcontractor $ 34,560.10

WBE Percentage of Total Contract Bid Price 5.54 %

This form must be completed in order for the Bid to be considered responsive and be publicly read.
Bidders with no MBE and/or WBE participation must so indicate this on the form by entering the word or number *zero*.

Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid

State of North Carolina AFFIDAVIT A – Listing of Good Faith Efforts

County of Nash

(Name of Bidder)

Affidavit of Barnhill Contracting Company

I have made a good faith effort to comply under the following areas checked:

Bidders must earn at least 50 points from the good faith efforts listed for their bid to be considered responsive. (1 NC Administrative Code 30 I.0101)

- ☑ **1 – (10 pts)** Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor, or available on State or local government maintained lists, at least 10 days before the bid date and notified them of the nature and scope of the work to be performed.
- ☑ **2 --(10 pts)** Made the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bids are due.
- ☑ **3 – (15 pts)** Broken down or combined elements of work into economically feasible units to facilitate minority participation.
- ☑ **4 – (10 pts)** Worked with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.
- ☑ **5 – (10 pts)** Attended prebid meetings scheduled by the public owner.
- ☐ **6 – (20 pts)** Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.
- ☑ **7 – (15 pts)** Negotiated in good faith with interested minority businesses and did not reject them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.
- ☐ **8 – (25 pts)** Provided assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.
- ☐ **9 – (20 pts)** Negotiated joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
- ☑ **10 - (20 pts)** Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon scope of contract to be executed with the Owner. Substitution of contractors must be in accordance with GS143-128.2(d) Failure to abide by this statutory provision will constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of the minority business commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: 11/24/2020 Name of Authorized Officer: William H. Wilson

Signature:

Title: Vice President

BARNHILL CONTRACTING COMPANY CORPORATE SEAL 1949 N.C.

State of North Carolina, County of Nash

Subscribed and sworn to before me this 24 day of November 20 20

Notary Public Gwendolyn F Hinnant

My commission expires 2-20-2025

GWENDOLYN F HINNANT NOTARY PUBLIC NASH COUNTY, NC My Commission Expires 02-20-2025 SEAL

MBForms 2002R

Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid

State of North Carolina --AFFIDAVIT B-- Intent to Perform Contract with Own Workforce.

County of _____

Affidavit of _____
(Name of Bidder)

I hereby certify that it is our intent to perform 100% of the work required for the _____

_____ contract.
(Name of Project)

In making this certification, the Bidder states that the Bidder does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform all elements of the work on this project with his/her own current work forces; and

The Bidder agrees to provide any additional information or documentation requested by the owner in support of the above statement.

The undersigned hereby certifies that he or she has read this certification and is authorized to bind the Bidder to the commitments herein contained.

Date: _____ Name of Authorized Officer: _____

Signature: _____

Title: _____

SEAL

State of North Carolina, County of _____

Subscribed and sworn to before me this _____ day of _____ 20___

Notary Public _____

My commission expires _____

Do not submit with bid Do not submit with bid Do not submit with bid Do not submit with bid

State of North Carolina - AFFIDAVIT C - Portion of the Work to be Performed by Minority Firms

County of _____

(Note this form is to be submitted only by the apparent lowest responsible, responsive bidder.)

If the portion of the work to be executed by minority businesses as defined in GS143-128.2(g) is equal to or greater than 10% of the bidders total contract price, then the bidder must complete this affidavit. This affidavit shall be provided by the apparent lowest responsible, responsive bidder within **72 hours** after notification of being low bidder.

Affidavit of _____ I do hereby certify that on the
(Name of Bidder)

_____
(Project Name)

Project ID#_____ Amount of Bid $_____

I will expend a minimum of _____% of the total dollar amount of the contract with minority business enterprises. Minority businesses will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below. Attach additional sheets if required

Name and Phone Number	*Minority Category	Work description	Dollar Value

*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) American Indian (**I**), Female (**F**) Socially and Economically Disadvantaged (**D**)

Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with Minority Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of this commitment and is authorized to bind the bidder to the commitment herein set forth.

Date:_____ Name of Authorized Officer:_____

Signature:_____

Title:_____

SEAL

State of North Carolina, County of _____

Subscribed and sworn to before me this _____day of _____20____

Notary Public_____

My commission expires_____

MBForms 2002-R

Do not submit with the bid Do not submit with the bid Do not submit with the bid Do not submit with the bid Do not submit with the bid

State of North Carolina AFFIDAVIT D – Good Faith Efforts

County of _____

(Note this form is to be submitted only by the apparent lowest responsible, responsive bidder.)

If the goal of 10% participation by minority business **is not** achieved, the Bidder shall provide the following documentation to the Owner of his good faith efforts:

(Name of Bidder)

Affidavit of: _____

I do certify the attached documentation as true and accurate representation of my good faith efforts.

(Attach additional sheets if required)

Name and Phone Number	*Minority Category	Work description	Dollar Value

*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) American Indian (**I**), Female (**F**) Socially and Economically Disadvantaged (**D**)

Documentation of the Bidder's good faith efforts to meet the goals set forth in these provisions. Examples of documentation include, but are not limited to, the following evidence:

A. Copies of solicitations for quotes to at least three (3) minority business firms from the source list provided by the State for each subcontract to be let under this contract (if 3 or more firms are shown on the source list). Each solicitation shall contain a specific description of the work to be subcontracted, location where bid documents can be reviewed, representative of the Prime Bidder to contact, and location, date and time when quotes must be received.

B. Copies of quotes or responses received from each firm responding to the solicitation.

C. A telephone log of follow-up calls to each firm sent a solicitation.

D. For subcontracts where a minority business firm is not considered the lowest responsible sub-bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.

E. Documentation of any contacts or correspondence to minority business, community, or contractor organizations in an attempt to meet the goal.

F. Copy of pre-bid roster.

G. Letter documenting efforts to provide assistance in obtaining required bonding or insurance for minority business.

H. Letter detailing reasons for rejection of minority business due to lack of qualification.

I. Letter documenting proposed assistance offered to minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letter of credit, including waiving credit that is ordinarily required.

Failure to provide the documentation as listed in these provisions may result in rejection of the bid and award to the next lowest responsible and responsive bidder.

Date:_____ Name of Authorized Officer:_____

Signature:_____

Title:_____

SEAL

State of North Carolina, County of _____

Subscribed and sworn to before me this _____day of _____20____

Notary Public_____

My commission expires _____

MBForms 2002-R

APPENDIX E

MBE DOCUMENTATION FOR CONTRACT PAYMENTS

Prime Contractor/Architect: _____

Address & Phone: _____

Project Name: _____

Pay Application #: _____ Period: _____

The following is a list of payments to be made to minority business contractors on this project for the abovementioned period.

Firm Name	* Minority Category	Payment Amount	Owner Use Only

*Minority categories: Black, African American (B), Hispanic (H), Asian American (A), American Indian (I), Female (F), Socially and Economically Disadvantages (D)

Date: _____ Approved/Certified By: _____

Name

_____

Title

_____

Signature

****THIS DOCUMENT MUST BE SUBMITTED WITH EACH PAY REQUEST & FINAL PAYMENT****

COMMUNITY DEVELOPMENT BLOCK GRANT – DISASTER RECOVERY GRANT SUBRECIPIENT AGREEMENT BETWEEN THE NC DEPARTMENT OF PUBLIC SAFETY, OFFICE OF RECOVERY AND RESILIENCY; AND NASH COUNTY

This Subrecipient Agreement ("Agreement") between the NC Department of Public Safety, Office of Recovery and Resiliency ("NCORR" or "Grantee"); and Nash County ("Subrecipient"), is intended to support the Subrecipient's efforts to promote the recovery of the county and its residents in the aftermath of Hurricane Matthew. The Agreement is made effective July 1, 2019.

RECITALS

WHEREAS, on October 8-9, 2016, Hurricane Matthew hit central and eastern North Carolina, including Nash County, with record-breaking rainfall that created 1,000-year flood events that devastated the people, infrastructure, businesses, and schools of entire communities; and

WHEREAS, certain buildings, facilities, personal items, and equipment owned or rented by residents in the county and city were damaged by floodwaters associated with Hurricane Matthew; and

WHEREAS, on October 9, 2016, an expedited major disaster declaration from the President of the United States was requested and was granted on October 10, 2016 as FEMA-4285-DR-NC, allowing North Carolina to receive federal aid in the form of individual and public assistance for citizens and local governments; and

WHEREAS, the U.S. Department of Housing and Urban Development ("HUD") has allocated Community Development Block Grant -- Disaster Recovery funds ("CDBG-DR") to NCORR under the Further Continuing and Security Assistance Appropriations Act of 2017 (Public Law 114-254) and the Consolidated Appropriations Act of 2017 (Public Law 115-31) for the purpose of assisting recovery in the most impacted and distressed areas declared a major disaster due to Hurricane Matthew; and

WHEREAS, pursuant to 82 Fed. Reg. 5591 (Jan. 18, 2017) and 82 Fed. Reg. 36812 (Aug. 7, 2017), the State has received an allocation of CDBG-DR funds from HUD in the amount of $236,529,000; and

WHEREAS, on November 20, 2017, the North Carolina Department of Public Safety, Division of Emergency Management ("NCEM"), and North Carolina Department of Commerce ("DOC") finalized an award and grant agreement with the Subrecipient to implement the State's Community Development Block Grant for Disaster Recovery ("CDBG-DR") Action Plan that was approved by HUD on August 7, 2017; and

WHEREAS, that agreement included an allocation for a CDBG-DR–funded housing program and infrastructure program that would be administered by the Subrecipient; and

WHEREAS, the Subrecipient now has agreed to allow the State to administer that housing program allocation; and

WHEREAS, on January 2, 2019, NCORR assumed from NCEM the duty of managing the State's CDBG-DR program; and

WHEREAS, on July 1, 2019 NCORR was officially named grantee for the State's CDBG-DR program; and

WHEREAS, NCORR is executing this Agreement with the Subrecipient to implement the infrastructure program within Subrecipient's county according to the State's CDBG-DR Action Plan that was approved by HUD; and

WHEREAS, the Parties desire to enter into this Agreement and intend to be bound by its terms; and

WHEREAS, this Agreement constitutes the entire agreement between the Parties, superseding all prior oral and written statements or agreements for the provision of CDBG-DR funds between the State and the Subrecipient.

NOW, THEREFORE, and in consideration of the Grant, the mutual promises each to the other made, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties mutually agree as follows:

Article I. GENERAL TERMS AND CONDITIONS OF AGREEMENT

1.1 Grant Documents. The documents described below are hereinafter collectively referred to as the "Grant Documents." In the case of conflict between any of these documents, the terms of this Agreement will control. Upon execution and delivery of this Agreement, it and the other Grant Documents and items required hereunder will constitute a valid and binding agreement between the Parties, enforceable in accordance with the terms thereof. The Agreement constitutes the entire agreement between the Parties, superseding all prior oral and written statements or agreements.

The Grant Documents consist of:

(1) This Agreement
(2) Exhibit A – Project Specific Award Letter(s)
(3) Exhibit B – Project Budget & Budgetary Provisions

Upon execution and delivery of this Agreement, and the Subrecipient has received its counterpart original of this Agreement, fully executed and with all dates inserted where indicated, then the Agreement will constitute a valid and binding agreement between the Parties, enforceable with the terms thereof.

Exhibit A and Exhibit B of this document are incorporated by reference and identify project description(s) and project budget(s). Project budgets are based on estimated project costs. Project scope and budget may be revised depending on final project approval and contract award prices. Changes to project scope and budget occurring after contract award shall be memorialized in updated versions of Exhibit A and Exhibit B. Revisions to those documents, should they become necessary, are incorporated herein by reference. Updated versions of Exhibit A and Exhibit B shall become binding on this Agreement when they are signed by NCORR and the Subrecipient.

1.2 Award Identification Information. The following information applies to this Agreement.

Federal Award Identification Number: B-16-DL-37-0001

CFDA Number and Name: 14.228

Federal Award Date: 8/14/2017

Federal award project description: To provide disaster recovery to communities served by the Subrecipient, consistent with the State's HUD-approved CDBG-DR Action Plan.

Is this award for research and development? No

Subrecipient's unique entity identifier: DUNS: 050425677; Federal ID No.: 56-6000323

Subrecipient's Award Period of Performance: July 1, 2019 – August 15, 2023

Amount of Federal funds obligated by this Agreement: $ 455,114

1.3 Purpose. Consistent with 2 C.F.R. § 200, Subpart D § 331, this grant to the Subrecipient will carry out projects as shown in the HUD-approved State CDBG-DR Action Plan, as permitted by this Agreement. To that end, subject to the appropriation, allocation, and availability of funds for the activities described in the State Action Plan, NCORR hereby agrees to reimburse Grant funds to the Subrecipient in accordance with the payment procedures set forth herein. The obligation of NCORR to pay any amounts under this Agreement are contingent upon the availability and continuation of funds for such purpose. NCORR's obligation to pay Grant funds shall not exceed the total amount budgeted for Subrecipient, as shown in Exhibit B.

1.4 Scope of Work. Funds provided by this Agreement will support infrastructure projects identified in Exhibit A consistent with project budget amounts identified in Exhibit B.

1.5 CDBG National Objectives. Activities funded by this Agreement must benefit low-and-moderate-income persons; aid in the prevention or elimination of slum or blight; or meet community development needs having a particular urgency. The criteria for meeting these national objectives are found in 24 C.F.R. § 570.208, as amended by 81 Fed. Reg. 83254 (Nov. 21, 2016) (made applicable to the funds provided by this Agreement through 82 Fed. Reg. 5591 (Jan. 18,

2017)). The State's CDBG-DR Action Plan outlines the ways that the program activities funded by this grant will accomplish the national objectives.

Pursuant to 24 C.F.R. § 570.506, both NCORR and the Subrecipient are required to maintain records sufficient to demonstrate compliance with the criteria for accomplishing the national objectives of CDBG-DR.

1.6 Prohibited Activities. The Subrecipient may be reimbursed with CDBG-DR funds for carrying out the activities described in this Agreement and for no other activities. The Subrecipient is prohibited from charging to this award the costs of ineligible activities under CDBG-DR, including those described at 24 C.F.R. § 570.207, and from using funds provided herein or personnel employed in the administration of activities under this Agreement for political activities, inherently religious activities, or lobbying.

1.7 Contract and Reimbursement Period. The term for this Agreement commences on the effective date of this Agreement and expires on the earlier of: (i) August 15, 2023, or (ii) the date as of which the parties agree in writing that all grant closeout requirements have been satisfied.

1.8 CCR Registration. The Subrecipient shall provide NCORR with documentation of any contractor or subcontractor's registration in the Central Contractor Registration (CCR) system. The CCR system may be accessed online at www.sam.gov.

1.9 Notice; Contract Administrator. All notices, requests or other communications permitted or required to be made by the Subrecipient under this Agreement or other documentation relating to this Agreement shall be given to NCORR's Contract Administrator or his/her designee.

The Contract Administrator is:

Laura Hogshead, Chief Operating Officer
North Carolina Office of Recovery and Resiliency
PO Box 110465
Durham, NC 27709
Phone: (984) 833-5350
Fax: (919) 405-7392

Notice shall be in writing, signed by the Subrecipient. Notice shall be effective upon acknowledged receipt by NCORR.

Article II. PEFORMANCE MONITORING, REPORTING, AND BUDGET

2.1 Monitoring. NCORR shall monitor the performance of the Subrecipient as necessary and in accordance with regulations on Subrecipient Monitoring and Management, 2 C.F.R. §§ 200.330 –200.332, to ensure Subrecipient compliance with all of the requirements of this Agreement, including the timeframes and performance goals associated with the activities. NCORR's protocol for monitoring Subrecipient compliance is derived from Chapter 6 of HUD's *Community Planning*

and Development Monitoring Guidebook, which may be accessed at https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/6509.2.

Substandard performance, as determined solely by NCORR, will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a time period specified by in writing by NCORR, NCORR may impose additional conditions on the Subrecipient and its use of CDBG-DR funds consistent with 2 C.F.R. § 200.207, suspend or terminate this Agreement, or initiate other remedies for noncompliance as appropriate and permitted under 2 C.F.R. § 200.338.

2.2 Reporting. The Subrecipient shall report regular performance metrics to NCORR that are necessary to comply with NCORR's or HUD's CBDG-DR reporting requirements. NCORR will provide reporting templates and schedules to the Subrecipient. NCORR at its discretion, will conduct technical assistance and monitoring of the Subrecipient on topics relating to the CDBG-DR program.

2.3 Project Approval and Implementation Schedule. Within 60 days of execution of this Agreement, the Subrecipient must provide NCORR with a completed Project Scoping Form ("PSF") (Formerly known as an Abbreviated Project Information Form "APIF") for each infrastructure project the Subrecipient proposed to deliver pursuant to this Agreement. Within 90 days of approval of the PSF(s), the Subrecipient must provide NCORR with a completed project information form ("PIF") for each infrastructure project for which a PSF is approved, including a preliminary cost estimate for the project and a preliminary timeline for completion of the project. For cases in which a Subrecipient has previously submitted an Abbreviated Project Information Form (APIF), and NCORR has accepted the form, the Subrecipient must provide NCORR with a completed project information form ("PIF") within 90 days of execution of this Agreement. On a quarterly basis, Subrecipient shall work with NCORR on updated estimates and projections as activities progress.

The Subrecipient shall obligate 100% of non-administrative grant funds and provide all documentation to NCORR no later than August 15, 2020, and all funds must be expended by the Subrecipient by August 15, 2022.

The Subrecipient may request extensions of the deadlines in Section 2.3. Any requests for extensions must be made in writing, must be addressed to NCORR, must explain why an extension is needed and must propose a requested new deadline. NCORR must receive this request at least 60 days before the relevant deadline. NCORR, within its sole discretion, may or may not approve the extension, based on project performance and other contributing factors.

2.4 Budget, Disbursement, and Repayment. The Subrecipient's approved budget under this Agreement is attached as Exhibit B. Exhibit B also governs disbursement procedures, allowed administrative costs, program income, refunds, reversion of unexpended funds, and reduction of grant funds based on lesser actual expenses.

2.5 Termination of Previous Agreements and Reimbursement of Incurred Costs. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral and

written statements or agreements for the provision of CDBG-DR funds between the State and the Subrecipient. NCORR may, at its sole discretion, allow Subrecipient to be reimbursed for costs reasonably incurred prior to July 1, 2019, provided that said costs meet provisions of this Agreement, 2 C.F.R. Part 200, Subpart E, Cost Principles, and any other applicable State or Federal statutes, regulations, or requirements.

NCORR will provide Subrecipient with a guide for reimbursement of costs, the "NCORR Subrecipient Billing Guide." Subrecipient must provide NCORR with documentation of costs previously incurred for which they now seek reimbursement within 90 days of receipt of the NCORR Subrecipient Billing Guide. For guidance on the documentation that Subrecipient must provide for reimbursement of costs incurred prior to this agreement see the NCORR Subrecipient Billing Guide.

Article III. AMENDMENT AND TERMINATION

3.1 Amendment. NCORR, and the Subrecipient may amend this Agreement at any time provided that such amendments are in writing, make specific reference to this Agreement, are approved by all Parties, and are signed by a duly authorized representative of each Party. Such amendments shall not invalidate this Agreement, nor relieve or release NCORR or Subrecipient from their obligations under this Agreement. Amendments will generally be required when any of the following are anticipated: i) revision to the scope or objectives of the Program, including purpose or beneficiaries; ii) need to extend the availability of Grant Funds; iii) revision that would result in the need for additional funding; and iv) expenditures on items for which applicable cost principles require prior approval (see 24 C.F.R. § 570.200(h) for pre-award/pre-agreement costs). Revisions to scope and budget documents as discussed in section 1.1 will be valid upon the signature of both parties and are incorporated herein by reference.

NCORR may, in its sole discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by NCORR and the Subrecipient.

3.2. Termination by Mutual Consent or Convenience. The Parties may terminate this Contract by mutual written consent. NCORR may terminate this Agreement, in whole or in part, for convenience, with 30 days written notice to Subrecipient.

3.3 Termination in the Event of Default. NCORR may suspend, reduce, or terminate their obligations under this Agreement, in whole or in part, upon 30 days' notice, whenever NCORR determines that the Subrecipient has failed to comply with any term, condition, requirement, or provision of this Agreement. Subrecipient shall be afforded a reasonable period of time to cure any noncompliance. Failure to comply with any terms of this Agreement, include (but are not limited to) the following:

(a) Default in Performance. The default by the Subrecipient or a subsequent Recipient in the observance or performance of any of the terms, conditions or covenants of this Agreement, as determined by NCORR.

(b) Misrepresentation. If any representation or warranty made by the Subrecipient in connection with the Grant or any information, certificate, statement or report heretofore or hereafter made shall be untrue or misleading in any material respect at the time made, as determined by NCORR.

(c) Abandonment of the Project. If Subrecipient abandons or otherwise ceases to continue to make reasonable progress towards completion of the Project, as determined by NCORR.

(d) If Subrecipient fails to complete the required Project Scoping Form, Project Information Form and other required project documentation.

If, after notice of default or non-compliance, Subrecipient has not cured such default within a reasonable time or is not diligently pursuing a cure satisfactory to NCORR, then NCORR shall promptly notify the Subrecipient, in writing, of its determination and the reasons for the termination together with the date on which the termination shall take effect, along with other notifications required under 2 C.F.R., Part 200, Subpart D. Upon termination, NCORR retains the right to recover any improper expenditures from the Subrecipient and the Subrecipient shall return to NCORR any improper expenditures no later than 30 days after the date of termination. NCORR may, at its sole discretion, allow Subrecipient to retain or be reimbursed for costs reasonably incurred prior to termination, that were not made in anticipation of termination and cannot be canceled, provided that said costs meet the provisions of this Agreement, 2 C.F.R., Part 200, Subpart E, Cost Principles, and any other applicable state or federal statutes, regulations or requirements.

3.4 Additional Remedies. If Subrecipient defaults, NCORR shall have the power and authority, consistent with their statutory authorities: (a) to prevent any impairment of the Grant activities by any acts which may be unlawful or in violation of this Agreement or any other item or document required hereunder; (b) to compel specific performance of any of Subrecipient's obligations under this Agreement; (c) to obtain return of all Grant Funds, including equipment if applicable; and (d) to seek damages from any appropriate person or entity. NCORR shall be under no obligation to complete the activities funded by this Agreement.

3.5 Unavailability of Funds. If funds for the Grant become unavailable, the Subrecipient agrees that NCORR has the right to terminate this Agreement by giving 60 days' written notice specifying the termination date of the Agreement, which NCORR shall determine in its sole discretion. Upon such termination, the State shall have no responsibility to make additional Grant payments. Further, upon such termination, the Subrecipient shall not expend any Grant funds without NCORR's express written authorization and shall return all unspent Grant funds to NCORR upon demand.

3.6 Nonwaiver. No delay, forbearance, waiver, or omission by NCORR to exercise any right, power or remedy upon any event of default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such event of default or to constitute acquiescence therein.

Article IV. FEDERAL AND STATE LAW COMPLIANCE.

The CDBG-DR funds available to the Subrecipient through this Agreement constitute a subaward of NCORR's federal award under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R., Part 200. This Agreement includes terms and conditions of NCORR's Federal award that are imposed on NCORR and the Subrecipient, and the Subrecipient agrees to carry out its obligations in compliance with all of the obligations described in this Agreement.

4.1 General Compliance. The Subrecipient shall comply with all applicable provisions of the Housing and Community Development Act of 1974, as amended, and the regulations at 24 C.F.R., Part 570, as modified by the Federal Register notices that govern the use of CDBG-DR funds available under this Agreement. These Federal Register notices include, but are not limited to, 81 Fed. Reg. 83254 (Nov. 21, 2016), 82 Fed. Reg. 5591 (Jan. 18, 2017), 82 Fed. Reg. 36812 (Aug. 7, 2017). The Subrecipient shall also comply with all other applicable federal, state and local laws, regulations, and policies that govern the use of the CDBG-DR funds in complying with its obligations under this Agreement, regardless of whether CDBG-DR funds are made available to the Subrecipient on an advance or reimbursement basis.

Notwithstanding the foregoing, (1) the Subrecipient does not assume the designated responsibilities of Grantee's decision-making authority for environmental review described in 24 CFR part 58 and (2) the Subrecipient does not assume any of the Grantee's responsibilities for initiating the review process under the provisions of 24 CFR Part 52.

4.2 Duplication of Benefits. The Subrecipient shall not carry out any of the activities under this Agreement in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5155). In particular, the Subrecipient may not use funds provided by this Agreement to carry out the same activities that were funded by another source, including other federal or state sources or private insurance. The Subrecipient must repay any assistance later received for the same purpose as those awarded or provided by this Agreement.

4.3 Drug-Free Workplace. The Subrecipient must comply with drug-free workplace requirements in Subpart B of 2 C.F.R., Part 2429, which adopts the government-wide implementation (2 C.F.R., Part 182) of sections 5152-5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. §§ 701 – 707).

4.4 Insurance and Bonding. The Subrecipient shall comply with the bonding and insurance requirements of 2 C.F.R. §§ 200.310 and 200.325, as applicable, and must carry sufficient insurance coverage to protect assets acquired with the use of CDBG-DR funds to protect from loss due to theft, fraud, and/or undue physical damage.

4.5 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The Subrecipient shall comply with the applicable provisions in 2 C.F.R., Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, except as modified by 81 Fed. Reg. 83254 (Nov. 21, 2016). These provisions include:

(a) Financial & Program Management. Because Grantee is subject to 24 CFR 570.489(d), Grantee's own fiscal and administrative requirements are incorporated within this Agreement, and Subrecipient will account for all CDBG-DR funds under this Agreement in accordance therewith. Grantee will submit to Subrecipient the NCORR standards of procedure regarding the financial and program management of CDBG-DR funds ("Financial and Program Management Protocol"). Any amendment to the NCORR Financial and Program Management Protocol for fiscal and administrative procedures is automatically incorporated into this Agreement, and notice of the amendment or changes to that Protocol will be provided to Subrecipient.

(b) Cost Principles. Costs incurred, whether charged on a direct or an indirect basis, must be in conformance with 2 C.F.R., Part 200, Subpart E. All items of cost listed in Subpart E that require prior federal agency approval are allowable without prior approval of HUD to the extent they comply with the general policies and principles stated in Subpart E and are otherwise eligible under this Agreement, except for the following:

(i) Depreciation methods for fixed assets shall not be changed without the approval of the Federal cognizant agency;
(ii) Fines penalties, damages, and other settlements are unallowable costs to the CDBG program;
(iii) Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances and personal living expenses (goods or services for personal use) regardless of whether reported as taxable income to the employees (2 C.F.R. § 200.445);
(iv) Organization costs (2 C.F.R. § 200.455); and
(v) Pre-Award Costs, as limited by this Agreement.

4.6 Documentation and Record Keeping.

(a) Records to be Maintained. The Subrecipient shall establish and maintain records sufficient to enable NCORR to (1) determine whether the Subrecipient has complied with this Agreement, applicable federal and state laws and regulations, and the terms and conditions of NCORR's Federal award and (2) satisfy recordkeeping requirements applicable to NCORR. These records include the records described in Section 1.5 of this Agreement.

Because Grantee is subject to 24 CFR 570.490, the Subrecipient must maintain records that would allow Grantee to satisfy the requirements of 24 CFR 570.490 and 81 Fed. Reg. 83254 (Nov. 21, 2016), which waives certain aspects of 24 CFR 570.490. Subrecipient shall maintain records that the Grantee is required to maintain as jointly agreed upon by HUD and the Grantee, maintains records sufficient to enable HUD to make the determinations described at 24 CFR 570.493, and maintain any records necessary for fair housing and equal opportunity purposes.

In order to meet the recordkeeping requirements listed above, the Subrecipient must maintain the following, at a minimum:

(i) Records providing a full description of each activity undertaken;
(ii) Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG–DR program;
(iii) Records required to determine the eligibility of activities;
(iv) Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
(v) Records documenting compliance with the fair housing and equal opportunity requirements of the CDBG program regulations;
(vi) Financial records as required by 24 C.F.R. § 570.502, and 2 C.F.R., Part 200, including records necessary to demonstrate compliance with all applicable procurement requirements; and
(vii) Other records necessary to document compliance with this Agreement, any other applicable federal and state laws and regulations, and the terms and conditions of this federal award.

(b) Access to Records. The Subrecipient shall provide any duly authorized representative of NCORR, The North Carolina State Auditor, the North Carolina Office of State Budget and Management, HUD, and the Comptroller General, the Inspector General and other authorized parties at all reasonable times access to and the right to inspect, copy, monitor, and examine all of the books, papers, records, and other documents relating to the grant during the period of performance of this Agreement and for three years following the completion of all closeout procedures. All original files shall be maintained at the Subrecipient's offices for access purposes. Because Grantee is subject to 24 CFR 570.489(m) and 24 CFR 570.490 (except for waivers as stated in 81 Fed. Reg. 83254 (Nov. 21, 2016)), Subrecipient must provide sufficient access to records in compliance with 2 CFR 200.331(a)(5) and 24 CFR 570.490(c). As required by 2 CFR 200.331(a)(5), the Subrecipient shall permit the Grantee and auditors to have access to the Subrecipient's records and financial statements as necessary for the Grantee to meet is audit requirements under the Federal award.

(c) Record Retention and Transmission of Records to Subrecipient. Prior to closeout of this Agreement, the Subrecipient must transmit to NCORR records sufficient for NCORR to demonstrate that all costs under this Agreement met the requirements of the federal award. Subrecipient shall retain financial records, supporting documents, statistical records, and all other Subrecipient records pertinent to this Agreement and Subrecipient's award for 5 years after the closeout of the grant to ensure that all applicable record retention requirements are met. The preceding requirement is however, subject to the following exceptions:

(i) Records for activities subject to the reversion of assets provisions at 24 C.F.R. § 570.503(b)(7) or change of use provisions at 24 C.F.R. § 570.505 must be maintained for as long as those provisions continue to apply to the activity, otherwise, records for real property and equipment acquired under this Agreement must be retained for 5 years after final disposition;

(ii) Records for individual activities for which there are outstanding loan balances, other receivables, or contingent liabilities must be retained until such receivables or liabilities have been satisfied, or for 5 years after the closeout of the grant, whichever is longer;

(iii) If any litigation, claim, or audit is started before the expiration of the required retention period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken, or for 5 years after the closeout of the grant, whichever is longer;

(iv) When the Subrecipient is notified in writing by HUD, the cognizant agency for audit as defined in 2 C.F.R. § 200.18, the oversight agency for audit as defined in 2 C.F.R. § 200.73, the cognizant agency for indirect costs as defined in 2 C.F.R. § 200.19, or NCORR, the Subrecipient shall extend the retention period consistent with the notification;

(v) When records are transferred to or maintained by HUD or NCORR, the required retention requirement is not applicable to the Subrecipient;

(vi) If the Subrecipient is required to report on program income after the period of performance, the retention period for the records pertaining to the earning of the program income (as defined in this Agreement) starts from the end of the Subrecipient's fiscal year in which the program income is earned; and

(vii) For indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates), and their supporting records:

a. If submitted for negotiation. If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to NCORR) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

b. If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to NCORR) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) Client Data and Other Sensitive Information. If the Subrecipient is required to maintain data demonstrating client eligibility for activities provided under this Agreement, the Subrecipient must comply with 2 C.F.R. § 200.303(e) and take reasonable measures to safeguard protected personally identifiable information, as defined in 2 C.F.R. § 200.82, and other information HUD or NCORR designates as sensitive or the Subrecipient considers sensitive consistent with applicable federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

4.7 Closeout. The Subrecipient shall closeout its use of the CDBG-DR funds and its obligations under this Agreement by complying with the closeout procedures in 2 C.F.R. § 200.343. Activities during this closeout period may include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to NCORR), and

determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Subrecipient has control over CDBG funds, including program income. The rules governing program income acquired after closeout are modified in the Federal Register notice that applies to this Agreement. *See* 81 Fed. Reg. 83254, sec. VI, no. 17 (Nov. 21, 2016).

4.8 Audits, Inspections, and Monitoring

(a) Single Audit. The Subrecipient must be audited as required by 2 C.F.R., Part 200, Subpart F when it is expected that the Subrecipient's federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in § 200.501.

(b) Inspections and Monitoring. The Subrecipient shall permit NCORR and auditors to have access to the Subrecipient's records and financial statements as necessary for NCORR to meet the requirements of 2 C.F.R., Part 200. The Subrecipient must submit to monitoring of its activities by NCORR as necessary to ensure that the award is used for authorized purposes, in compliance with federal statutes, regulations, and the terms and conditions of this Agreement. This review must include: (1) reviewing financial and performance reports required by NCORR; (2) following-up and ensuring that the Subrecipient takes timely and appropriate action on all deficiencies pertaining to the federal award provided to the Subrecipient from NCORR detected through audits, on-site reviews, and other means; and (3) issuing a management decision for audit findings pertaining to this federal award provided to the Subrecipient from NCORR as required by 2 C.F.R. § 200.521.

(c) Corrective Actions. NCORR may issue management decisions and may consider taking enforcement actions if noncompliance is detected during audits. NCORR may require the Subrecipient to take timely and appropriate action on all deficiencies pertaining to the federal award provided to the Subrecipient detected through audits, on-site reviews, and other means. In response to audit deficiencies or other findings of noncompliance with this Agreement, NCORR may impose additional conditions on the use of the CDBG-DR funds to ensure future compliance, or provide training and technical assistance as needed to correct noncompliance.

4.9 Procurement and Contractor Oversight.

Subrecipient shall comply with the procurement standards in 2 C.F.R. Part 200, Subpart D when procuring property and services under this Agreement. The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law.

The Subrecipient shall impose the Subrecipient's obligations under this Agreement on its contractors, where applicable, specifically or by reference, so that such obligations will be binding upon each of its contractors.

The Subrecipient must comply with CDBG regulations regarding debarred or suspended entities, including 2 C.F.R. § 200, Subpart F. The Subrecipient is responsible to ensure that it has checked

the federal System for Awards Management (SAM) (https://www.sam.gov/portal/SAM) and the State Debarred Vendors Listing (http://www.pandc.nc.gov/actions.asp) to verify that contractors or subsequent recipients have not been suspended or debarred from doing business with the Federal or State government.

Subrecipient shall include in all contracts funded under this Agreement all applicable contract provisions required under state law and 2 C.F.R. Part 200, Appendix II.

The Subrecipient shall maintain oversight of all activities under this Agreement and shall ensure that for any procured contract or agreement, its contractors perform according to the terms and conditions of the procured contracts or agreements, and the terms and conditions of this Agreement.

4.10 Property Standards. Real property acquired by the Subrecipient under this Agreement shall be subject to 24 C.F.R. § 570.505, 24 C.F.R. § 570.489(j), and 24 C.F.R. § 570.200(j) (imposing 24 C.F.R. § 5.109 requirements regarding disposition and change in use of real property by a faith-based organization).

The Subrecipient shall also comply with the property standards at 2 C.F.R. §§ 200.310 – 200.316, except to the extent they are inconsistent with 24 C.F.R. §§ 570.200(j) and 570.489(j), in which case Subrecipient shall comply with 24 C.F.R. §§ 570.200(j) and 570.489(j), except to the extent that proceeds from the sale of equipment are program income and subject to the program income requirements under this Agreement, pursuant to 24 C.F.R. § 570.489(e)(1)(ii).

If applicable to the scope of work of this agreement the Subrecipient shall abide by the terms as set forth in notice 81 Fed. Reg. 83254 (Nov. 21, 2016) regarding property standards, which include the following:

1. Green Building. To the extent applicable to projects undertaken pursuant to this Agreement, pursuant to 81 Fed. Reg. 83254, sec. VI, no. 28(a) – (d) (Nov. 21, 2016), all new construction of residential buildings and all replacement of substantially damaged residential buildings funded under this Agreement must meet an industry-recognized standard that has achieved certification under at least one of the following programs: (i) ENERGY STAR (Certified Homes or Multifamily High-Rise), (ii) Enterprise Green Communities; (iii) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development), (iv) ICC–700 National Green Building Standard, (v) EPA Indoor AirPlus (ENERGY STAR a prerequisite), or (vi) any other equivalent comprehensive green building program acceptable to HUD.

2. Rehabilitation. To the extent applicable to projects undertaken pursuant to this Agreement, for rehabilitation work funded by this Agreement, Subrecipients must follow the guidelines specified in the HUD CPD Green Building Retrofit Checklist, available at https:// www.hudexchange.info/resource/3684/ guidance-on-the-cpd-green-buildingchecklist/. When older or obsolete products are replaced as part of the rehabilitation work, rehabilitation is required to use ENERGY STAR-labeled, WaterSense-labeled, or Federal Energy Management Program (FEMP)-designated products and appliances.

4.11 Federal Funding Accountability and Transparency Act (FFATA). The Subrecipient shall comply with the requirements of 2 C.F.R., Part 25 Universal Identifier and System for Award Management (SAM). The Subrecipient must have an active registration in SAM in accordance with 2 C.F.R., Part 25, Appendix A, and must have a Data Universal Numbering System (DUNS) number. The Subrecipient must also comply with provisions of the Federal Funding Accountability and Transparency Act, which includes requirements on executive compensation, and 2 C.F.R., Part 170 Reporting Subaward and Executive Compensation Information.

4.12 Relocation and Real Property Acquisition. To the extent applicable to projects undertaken pursuant to this Agreement, the Subrecipient shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), 42 U.S.C. §§ 4601 – 4655, 49 C.F.R., part 24, 24 C.F.R., part 42, and 24 C.F.R. § 570.606. In addition to other URA requirements, these regulations implement Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5181, which provides that "Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the [URA] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act." Portions of these regulations have been waived for the funds provided under this Agreement, pursuant to 81 Fed. Reg. 83254, sec. VI, no. 19 (Nov. 21, 2016).

4.13 Nondiscrimination.

(a) 24 C.F.R., Part 6. The Subrecipient will comply with 24 C.F.R., Part 6, which implements the provisions of section 109 of title I of the Housing and Community Development Act of 1974 (Title I) (42 U.S.C. § 5309). Section 109 provides that no person in the United States shall, on the ground of race, color, national origin, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Federal financial assistance. The Subrecipient will adhere to the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101 – 6107) (Age Discrimination Act) and the prohibitions against discrimination on the basis of disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) (Section 504). Section 109 of the HCDA makes these requirements applicable to programs or activities funded in whole or in part with CDBG-DR funds. Thus, the Subrecipient shall comply with regulations of 24 C.F.R., Part 8, which implement Section 504 for HUD programs, and the regulations of 24 C.F.R., Part 146, which implement the Age Discrimination Act for HUD programs.

(b) Architectural Barriers Act and the Americans with Disabilities Act. The Subrecipient shall ensure that its activities funded under this Agreement are consistent with requirements of Architectural Barriers Act and the Americans with Disabilities Act. The Architectural Barriers Act of 1968 (42 U.S.C. §§ 4151 – 4156) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed, or altered with funds allocated or reallocated under this part after December 11, 1995, and that meets the definition of "residential structure" as defined in 24 C.F.R. § 40.2 or the definition of "building" as defined in 41

C.F.R. § 101-19.602(a) is subject to the requirements of the Architectural Barriers Act and shall comply with the Uniform Federal Accessibility Standards (appendix A to 24 C.F.R., Part 40 for residential structures, and appendix A to 41 C.F.R., Part 101-19, subpart 101-19.6, for general type buildings).

The Americans with Disabilities Act (42 U.S.C. § 12131; 47 U.S.C. §§ 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993, that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable—that is, easily accomplishable and able to be carried out without much difficulty or expense.

Additionally, for projects funded under this Agreement, the Subrecipient must comply with the North Carolina Building Code's standards for constructing or altering building and facilities to make them accessible to and useable by the physically handicapped.

(c) State and Local Nondiscrimination Provisions. Subrecipient agrees to comply with state nondiscrimination provisions found at N.C. Gen. Stat. §§ 143-422.1 – 422.3 (Equal Employment Practices); and § 41A-1–10 (NC Fair Housing Act).

(d) Title VI of the Civil Rights Act of 1964 (24 CFR part 1).

(i) *General Compliance*: The Subrecipient shall comply with the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352), as amended and 24 C.F.R. §§ 570.601 and 570.602. No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity funded by this Agreement. The specific nondiscrimination provisions at 24 C.F.R. § 1.4 apply to the use of these funds. The Subrecipient shall not intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege secured by Title VI of the Civil Rights Act of 1964 or 24 C.F.R., Part 1, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under 24 C.F.R., Part 1. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of 2 C.F.R., Part 1, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

(ii) *Assurances and Real Property Covenants*: As a condition to the approval of this Agreement and the extension of any Federal financial assistance, the Subrecipient assures that the program or activities described in this Agreement will be conducted and the housing, accommodations, facilities, services, financial aid, or other benefits to be provided will be operated and administered in compliance with all requirements imposed by or pursuant to this Part 1.

If the Federal financial assistance under this Agreement is to provide or is in the form of personal property or real property or interest therein or structures thereon, the Subrecipient's assurance herein shall obligate the Subrecipient or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the Subrecipient for the period during which Federal financial assistance is extended pursuant to the contract or application. This assurance gives the State and the United States a right to seek judicial enforcement of the assurance and the requirements on real property.

In the case of real property, structures or improvements thereon, or interests therein, acquired with Federal financial assistance under this Agreement or acquired with CDBG-DR funds and provided to the Subrecipient under this Agreement, the instrument effecting any disposition by the Subrecipient of such real property, structures or improvements thereon, or interests therein, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

If the Subrecipient receives real property interests or funds or for the acquisition of real property interests under this Agreement, to the extent that rights to space on, over, or under any such property are included as part of the program receiving such assistance, the nondiscrimination requirements of Part 1 shall extend to any facility located wholly or in part in such space.

(e) Equal Opportunity and Nondiscrimination.

(i) *Compliance*. The Subrecipient agrees that it shall comply with the provisions of this subsection and shall ensure that its contractors comply with all application provisions of this subsection, including Executive Order 11246 of September 24, 1966, as amended, and implementing regulations at 41 C.F.R., Part 60.

(ii) *Women- and Minority-Owned Businesses (W/MBE)*. Subrecipient shall comply with N.C. Gen. Stat. § 143-128.2 and 2 C.F.R. § 200.321(b)(1) – (6) to ensure minority businesses, women's business enterprises, and labor surplus area firms are afforded opportunities as required by law to compete for contracts funded pursuant to this Agreement.

(iii) *Notifications*. The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Subrecipient's commitments

hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(iv) *Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement.* The Subrecipient shall, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

4.14 Labor Standards. The Subrecipient shall comply with the labor standards in 04 N.C.A.C. 19L.1006, which incorporate the requirements of the Davis-Bacon Act (40 U.S.C. § 276a), the Contract Work Hours and Safety Standards Act (40 U.S.C. § 327 through 333), the Fair Labor Standards Act (29 U.S.C. § 201 *et seq.*), and federal anti-kickback laws (18 U.S.C. § 874 and 40 U.S.C. § 276a). The Davis-Bacon Act requirements (prevailing wages) apply to residential construction where the property has eight or more units, or to nonresidential construction projects that exceed $2,000. The Subrecipient shall maintain documentation that demonstrates compliance with applicable hour and wage requirements. Such documentation shall be made available to NCORR for review upon request.

4.15 Section 3 of the Housing and Urban Development Act Notice. The Subrecipient agrees to comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. § 1701). Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to low-and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located. The Subrecipient agrees to impose these requirements on all contractors and subcontractors funded by this Agreement.

All covered contracts under this Agreement shall include the following clause (referred to as the "Section 3 Clause"):

a) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

c) The contractor agrees to send to each labor organization or representative or workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous

places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

d) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

4.16 Conduct.

(a) Hatch Act. The Subrecipient shall comply with the Hatch Act, 5 U.S.C. §§ 1501 – 1508, ensuring that no funds provided, nor personnel employed under this Agreement, shall be in any way engaged in the conduct of political activities in violation of Chapter 15 of Title V of the United States Code.

(b) Conflict of Interest. In the procurement of supplies, equipment, construction, and services pursuant to this agreement, the Subrecipient shall comply with all applicable conflict of interest laws and regulations, including the provisions in 2 C.F.R. §§ 200.317 and 200.318, N.C. Gen. Stat. § 14-234, N.C. Gen. Stat. § 133-32, and 04 N.C.A.C. 19L.0914. In all cases not governed by 2 C.F.R. §§ 200.317 and 200.318, the Subrecipient shall comply with the conflict of interest provisions in 24 C.F.R. § 570.611. Certain limited exceptions to the conflict of interest rules listed in 24 C.F.R. § 570.489 may be granted in writing by Department of Housing and Urban Development ("HUD") and/or NCORR upon written request and the provision of information specified in 24 C.F.R. § 570.489(h)(4).

(c) Lobbying Certification. The Subrecipient hereby certifies that:

(i) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, 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 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;

(ii) 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, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(iii) It shall require that the language of paragraph (i) through (iv) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly; and

(iv) 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 required by section 1352, title 31, U.S.C. 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

4.17 Religious Activities. The Subrecipient shall comply with all applicable regulations set forth under 24 C.F.R. § 5.109 concerning the participation of faith-based organizations in HUD programs, including subsection (j) regarding the acquisition, construction, and rehabilitation of structures that may involve religious purposes. Funds provided under this agreement shall not be utilized for inherently religious activities, such as worship, religious instruction, or proselytization.

4.18 Environmental Conditions. Recipients of CDBG-DR funds are required to comply with the requirements of the National Environmental Policy Act of 1969 (NEPA) found at 24 C.F.R., Part 58 and complete an Environmental Review Record (ERR). NCORR may also require additional environmental reviews for projects that receive these funds. Technical Assistance is available from NCORR to help with HUD Part 58 Environmental compliance coordination. No funds may be obligated or expended by Subrecipient until the environmental review procedures outlined in Part 58 have been complied with.

If the Subrecipient conducts environmental reviews, the Subrecipient must comply with the limitations in 24 C.F.R. § 58.22, which imposes limitations on activities pending environmental clearance, and specifically limits commitments of HUD funds or non-HUD funds by any participant in the development process before completion of the environmental review. A Request for Release of Funds may be processed after all conditions and compliance requirements have been met. A violation of this requirement may result in a prohibition on the use of Federal funds for the activity. A Certifying Officer for the Responsible Entity will need to be designated for units of

general local government (e.g. County Judge or City Mayor/Manager), per §58.13. In the event that a unit of general local government is unable to serve as Responsible Entity, NCORR will function in that capacity and will identify the Certifying Officer.

The Subrecipient shall also comply with the following environmental compliance requirements, insofar as they apply to the performance of this Agreement: (1) The Clean Air Act (42 U.S.C. § 7401 et seq.) as amended, particularly sections 176(c) and (d) (42 U.S.C. §§ 7506(c) and (d)); (2) Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency—40 C.F.R., Parts 6, 51, and 93); and (3) the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq., as amended, including the requirements specified in Sections 114 and 308 of the Federal Water Pollution Control Act, as amended, and all regulations and guidelines issued thereunder.

4.19 Lead-Based Paint. The Subrecipient agrees that any construction or rehabilitation of residential housing with assistance provided under this Agreement shall be subject to HUD's Lead-Based Paint Regulations at 24 C.F.R. § 570.608, 24 C.F.R. § 35, Subpart B, and Chapter 130A of the North Carolina General Statutes, Article 19A (Lead-Based Paint Hazard Management Program). Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

4.20 Flood Hazards and Flood Insurance. To the extent applicable to projects funded pursuant to this agreement, the Subrecipient shall comply with the mandatory flood insurance purchase requirements of Section 102 of the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994, 42 U.S.C. § 4012a. Additionally, the Subrecipient shall comply with Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. § 5154a), which includes a prohibition on the provision of flood disaster assistance, including loan assistance, to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person at any time has received Federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. Section 582 also includes a responsibility to notify property owners of their responsibility to notify transferees about mandatory flood purchase requirements. More information about these requirements is available in the Federal Register notices governing the CDBG-DR award.

In addition, the following requirements apply to projects in floodplain zones:

(a) If the project occurs in a Coastal High Hazard Area (V Zone) or a floodway, federal assistance may not be used at this location if the project is a critical action pursuant to 24

C.F.R. §§ 55.1(c) and 55 Subpart B, except as provided therein. For projects allowed under 24 C.F.R. §§ 55.1(c) and 55 Subpart B, the eight-step process shall be followed pursuant to 24 C.F.R. § 55.20.

(b) If the project occurs in a 100-year floodplain (A Zone), the 8-Step Process is required as provided for in 24 C.F.R. § 55.20 or as reduced to the 5-Step Process pursuant to 24 C.F.R. § 55.12(a), unless an exception is applicable pursuant to 24 C.F.R. § 55.12(b).

(c) If the project occurs in a 500-year floodplain (B Zone or shaded X Zone), the 8-Step Process is required for critical actions as provided for in 24 C.F.R. § 55.20 or as reduced to the 5-Step Process pursuant to 24 C.F.R. § 55.12(a), unless an exception is applicable pursuant to 24 C.F.R. § 55.12(b).

Additional elevation standards, as set forth in 81 Fed. Reg. 83254, sec. VI, no. 28(e) (Nov. 21, 2016), apply to projects funded by this Agreement. All structures, defined at 44 C.F.R. § 59.1, designed principally for residential use and located in the 1 percent annual (or 100-year) floodplain that receive assistance for new construction, repair of substantial damage, or substantial improvement, as defined at 24 C.F.R. § 55.2(b)(10), must be elevated with the lowest floor, including the basement, at least two feet above the 1 percent annual floodplain elevation. Residential structures with no dwelling units and no residents below two feet above the 1 percent annual floodplain, must be elevated or floodproofed, in accordance with FEMA floodproofing standards at 44 C.F.R. § 60.3(c)(3) or successor standard, up to at least two feet above the 1 percent annual floodplain. All Critical Actions, as defined at 24 C.F.R. § 55.2(b)(3), within the 0.2 percent annual floodplain (or 500-year) floodplain must be elevated or floodproofed (in accordance with the FEMA standards) to the higher of the 0.2 percent annual floodplain flood elevation or three feet above the 1 percent annual floodplain. If the 0.2 percent annual floodplain or elevation is unavailable for Critical Actions, and the structure is in the 1 percent annual floodplain, then the structure must be elevated or floodproofed at least three feet above the 1 percent annual floodplain level. Applicable State, local, and tribal codes and standards for floodplain management that exceed these requirements, including elevation, setbacks, and cumulative substantial damage requirements, must be followed.

4.21 Historic Preservation. To the extent that environmental review is carried out by the Subrecipient through funds provided under this Agreement, the Subrecipient shall follow the state historic preservation programmatic agreement, which can be found on the RebuildNC website at https://www.rebuild.nc.gov/reporting-and-compliance/environmental-review. The programmatic agreement implements the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended, codified in title 54 of the United States Code, and the procedures set forth in 36 C.F.R., Part 800, insofar as they apply to the performance of this agreement. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a federal, state, or local historic property list.

4.22 Policies Concerning Nonviolent Demonstrations. Pursuant to 81 Fed. Reg. 83254, sec. VI, no. 47.k (Nov. 21, 2016), Subrecipient certifies that it has adopted and is enforcing: (1) a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and (2) a policy of enforcing

applicable State and local laws against physically barring entrance to or exit from a facility or location that is the subject of such nonviolent civil rights demonstrations within its jurisdiction.

4.23 Housing Counseling. To the extent that any housing counseling is carried out by the Subrecipient through funds provided under this Agreement, such activities must be carried out in accordance with 24 C.F.R. § 5.111.

4.24 No Funding to Private Utilities. Pursuant to 81 Fed. Reg. 83254, sec. VI, no. 46 (Nov. 21, 2016), no funds provided under this Agreement may be used to assist a privately owned utility for any purpose.

4.25 Broadband Infrastructure in Housing. Pursuant to 81 Fed. Reg. 83254, sec. VI, no. 28(f) (Nov. 21, 2016), if funds under Agreement are used for any new construction or substantial rehabilitation (as defined by 24 C.F.R. § 5.100) of a building with more than four rental units, those structures must include installation of broadband infrastructure, except where the Subrecipient documents that: (a) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible; (b) the cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or (c) the structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

4.26 Iran Divestment Act. All parties executing this Agreement thereby affirm they shall not utilize any contractor or subcontractor in the performance of the Agreement that is identified upon the Final Divestment List created by the State Treasurer pursuant to NCGS 147-86.60.

4.27 Companies Boycotting the State of Israel. All parties executing this Agreement thereby affirm they shall not utilize any contractor or subcontractor in the performance of the Agreement that is identified upon the Final Divestment List created by the State Treasurer pursuant to NCGS 147-86.82.

Article V. OTHER MISCELLANEOUS PROVISIONS

5.1 Deobligation of Unused Funds. When project costs are less than the grant award amount, excess award funds shall be deobligated back to NCORR. Administration and project delivery funds shall be deobligated in proportion to the amount of program funds being deobligated to NCORR.

5.2 Complaints and Grievance procedures for Compliance Plans. Subrecipient must address complaints to NCORR and/or the Rebuild NC website (https://www.rebuild.nc.gov/). Citizen complaints can be filed to NCORR and/or the Rebuild NC website (https://www.rebuild.nc.gov/).

5.3 Benefit. This Agreement is made and entered into for the sole protection and benefit of NCORR, the State and the Subrecipient, and their respective successors and assigns, subject always to the provisions of the Agreement. Except as herein specifically provided otherwise, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective

successors and assigns. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to NCORR, the State and the Subrecipient and their respective successors and assigns. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person, other than as expressly provided in this Agreement. It is the express intention of the Parties and their respective successors and assigns that any such person or entity, other than the State, NCORR, and the Subrecipient, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

5.4 Further Assurance. In connection with and after the disbursement of Grant funds under this Agreement, upon the reasonable request of NCORR, the Subrecipient shall execute, acknowledge and deliver or cause to be delivered all such further documents and assurances, and comply with any other requests as may be reasonably required by NCORR or otherwise appropriate to carry out and effectuate the Grant as contemplated by this Agreement. NCORR may require the delivery of documents in hard copy or electronic media.

5.5 Independent Status of the Parties. The Parties are independent entities and neither this Agreement nor any provision of it or any of the Grant Documents shall be deemed to create a partnership or joint venture between the Parties. Further, neither the Agreement nor any of the Grant Documents shall in any way be interpreted or construed as making the Subrecipient, its agents or employees, agents or representatives of NCORR. The Subrecipient is and shall be an independent contractor in the performance of this Agreement and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. In no event shall NCORR be liable for debts or claims accruing or arising against the Subrecipient. The Subrecipient represents that it has, or shall secure at its own expense, all personnel required in the performance of this Contract. Such employees shall not be employees of, nor have any individual contractual relationship with NCORR.

5.6 Indemnity. The Subrecipient agrees, to the fullest extent permitted by law, to release, defend, protect, indemnify and hold harmless the State and NCORR and its employees and agents against claims, losses, liabilities, damages, and costs, including reasonable attorney fees, which result from or arise out of: (a) damages or injuries to persons or property caused by the negligent acts or omissions of Subrecipient, its employees, or agents in use or management of the Grant; and (b) for any claims, whether brought in contract, tort, or otherwise, arising out of this Agreement, if related to the Subrecipient's actions or omissions. The obligations under this paragraph are independent of all other rights or obligations set forth herein. This indemnity shall survive the disbursement of the Grant funds, as well as any termination of this Agreement.

5.7 Binding Effect, Contract Not Assignable by Subrecipient. The terms hereof shall be binding upon and inure to the benefit of the successors, assigns, and personal representatives of the parties hereto; provided, however, that the Subrecipient may not assign this Agreement or any of its rights, interests, duties or obligations hereunder or any Grant proceeds or other moneys to be advanced hereunder in whole or in part unless expressly allowed under this Agreement, without the prior written consent of NCORR, which may be withheld for any reason and that any such assignment (whether voluntary or by operation of law) without said consent shall be void.

5.8 Successor in Interest and Assignment by Grantee. This Agreement shall be transferred from NCORR to any successor in interest designated by the US Department of Housing and Urban Development as Grantee for the CDBG-DR program for the State of North Carolina immediately upon that designation.

5.9 Savings Clause. Invalidation of any one or more of the provisions of this Agreement, or portion thereof, shall in no way affect any of the other provisions hereof and portions thereof which shall remain in full force and effect.

5.10 Additional Remedies. Except as otherwise specifically set forth herein, the rights and remedies provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available in connection with this Agreement.

5.11 Survival. Where any representations, warranties, covenants, indemnities or other provisions contained in this Agreement by its context or otherwise, evidences the intent of the parties that such provisions should survive the termination of this Agreement or any Closing, the provisions shall survive any termination or Closing.

5.12 Incorporation of Exhibits. All exhibits attached to this Agreement are fully incorporated as if set forth herein.

5.13 Entire Contract. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. All recitals, exhibits, schedules and other attachments hereto are incorporated herein by reference.

5.14 Headings. The headings of the various sections of this Agreement have been inserted for convenience only and shall not modify, define, limit or expand the express provisions of this Agreement.

IN WITNESS WHEREOF, the Subrecipient and NCORR have executed this Agreement on the dates written below.

[Signature page follows.]

AGREED:

Zee Lamb, County Manager
Nash County, NC

9-25-19
Date

Laura H. Hogshead

Laura H. Hogshead, Chief Operating Officer
NC Office of Recovery and Resiliency

9-25-19
Date

EXHIBIT B

PROJECT BUDGET, DISTRIBUTION OF FUNDS, AND REFUNDS

NASH COUNTY

1. **Subrecipient Budget**

   a. To obtain payment, the Subrecipient must submit itemized documentation substantiating direct costs incurred in implementing the CDBG-DR program. The Subrecipient's budget for the CDBG-DR program is as follows:

2019 CRI SRA Budget

	2019 SRA Allocation
Infrastructure Program	$ 433,442
Project Delivery	$ 21,672
Total Hurricane Matthew CDBG-DR Funds	$ 455,114

2. **Disbursement of Grant Funds.**

   a. No federal funds may be obligated until the Authority to Use Grant Funds (AUGF) has been issued for this undertaking (24 C.F.R., Part 58).

   b. No funds may be obligated or expended in any project activity except the administrative activity until the Subrecipient has submitted supporting documentation as specified in the NCORR Subrecipient Billing Guide to be provided to Subrecipient by NCORR.

   c. Requests for Reimbursement.

      i. Other than administrative costs, any reimbursement request for reimbursement, must be accompanied by a request and any supporting materials as requested by NCORR. NCORR may, in its sole discretion, request additional documentation before approving any release of funds. NCORR will approve each request individually. The Subrecipient must receive the written approval of NCORR before entering into any contract for which they are seeking reimbursement through CDBG-DR.

      ii. Upon satisfactory documentary support for a reimbursement request, as determined by NCORR, a schedule for disbursement of grant funds will be

provided to Subrecipient by NCORR. To obtain reimbursement, the Subrecipient shall submit to NCORR the following documentation:

A. A completed and signed Payment Request form, as designated by NCORR, accompanied by appropriate itemized documentation supporting all expenses claimed and that clearly identifies each expenditure of grant funds for which reimbursement is claimed, along with verification of matching Subrecipient funds, if any are required. The supporting documentation must be organized in a manner that clearly relates the expenses shown in the supporting documentation to the line items shown in the Payment Request.

B. Any request for reimbursement that does not clearly identify each expenditure and relate each expenditure to the line items shown on the request will not be processed, and will be returned to the Subrecipient for correction and re-submittal.

d. Reimbursement Based on Progress. The Subrecipient agrees to proceed with diligence to accomplish the Project according to the schedule set out in the Agreement and shall show appropriate progress prior to each reimbursement. Reimbursement may be withheld or delayed if the Subrecipient fails to make progress on the Project satisfactory to NCORR. Amounts withheld shall be reimbursed with subsequent reimbursements in the event that the Subrecipient is able to demonstrate an ability to resume satisfactory progress toward completion of the Project.

e. No Excess Costs. NCORR agrees to pay or reimburse the Subrecipient only for costs actually incurred by the Subrecipient that do not exceed the funds budgeted for the Project shown in Exhibit B.

3. More information on the classification of CDBG-DR costs can be found at https://www.hudexchange.info/trainings/courses/2016-cdbg-dr-program-planning-administration--activity-delivery-webinar/994/.

4. Period for Incurring Reimbursable Expenditures. NCORR will reimburse the Subrecipient only for allowable Project expenditures that are incurred by the Subrecipient or the Subrecipient's consultants, contractors, or vendors during the period between the Award Date and the Expiration Date of the Agreement. NCORR will not reimburse the Subrecipient for Project expenditures that are not incurred during this period, except those covered under Section 2.5 of the subrecipient agreement.

5. Program Income, Refunds, Reversion of Unexpended Funds, and Reduction of the Grant based on Qualified Made less than Budgeted Cost.

a. Program Income. The Subrecipient shall report monthly on forms created by NCORR all program income (as defined at 24 CFR 570.500(a)) generated by activities carried out with CDBG funds made available under this Agreement. The use of program income by the Subrecipient shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, during the term of this

Agreement, the Subrecipient may use such income only for activities permitted under this Agreement and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unexpended program income shall be returned to NCORR at the completion of the Agreement. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to the Grantee. All unexpended program income shall revert to the Grantee upon termination of this contract.

b. Refunds. The Subrecipient shall repay to NCORR or its designee any compensation it has received that exceeds the payment to which it is entitled herein, including any interest earned on funds reimbursed pursuant to the Agreement.

c. Unexpended Funds. Any unexpended Grant monies shall revert to NCORR or its designee upon termination of the Agreement. If the Subrecipient has any CDBG-DR funds on hand or accounts receivable attributable to the use of CDBG-DR funds at the time of termination, the Subrecipient shall transfer such funds and accounts receivable to NCORR or its designee.

d. Reduction of the Grant made less than projected budget amounts. NCORR may reduce the Grant amount if the Subrecipient expects that actual expenses will be less than budgeted. A copy of the budget amendment will be kept by NCORR.

e. Reimbursement for Improper Expenditures. In the sole discretion of NCORR, NCORR may recapture from the Subrecipient any amount of Grant assistance improperly expended, either deliberately or non-deliberately, by any person or entity. Additionally, a contract for administrative services should include a clause holding the administrating organization responsible for reimbursement to the Subrecipient for any improperly expended grant funds, due to the actions or omissions of the administrating organization, which had to be returned to NCORR.

f. Use of Real Property. Any real property under the Subrecipient's control that is acquired or improved in whole or in part with CDBG-DR funds in excess of $25,000 must be used to meet one of the national objectives in 24 C.F.R. § 570.208 until five years after expiration of this Agreement. For any real property which is not used to meet one of the national objectives of CDBG-DR, the Subrecipient shall pay to NCORR or its designee an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property. No payment is required if the property no longer meets one of the national objectives after five years following the expiration of this Agreement. The regulations concerning any change in the use or planned use of real property acquired with CDBG-DR funds, found in 24 C.F.R. § 570.505, apply to this Agreement.

"General Decision Number: NC20200080 01/03/2020

Superseded General Decision Number: NC20190080

State: North Carolina

Construction Type: Heavy

Counties: Chatham, Durham, Edgecombe, Greene, Nash, Orange, Person, Pitt and Wayne Counties in North Carolina.

HEAVY CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of $10.80 for calendar year 2020 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least $10.80 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2020. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/03/2020

SUNC2011-061 08/26/2011

	Rates	Fringes
CARPENTER, Includes Form Work	$ 13.98	0.69
ELECTRICIAN	$ 15.41	3.13
LABORER: Common or General	$ 10.35	2.84
LABORER: Pipelayer	$ 12.70	2.04
OPERATOR: Backhoe/Excavator/Trackhoe	$ 16.16	3.18
OPERATOR: Bulldozer	$ 14.63	0.00

OPERATOR: Loader	$ 15.13	2.79
TRUCK DRIVER	$ 13.12	1.89

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing

this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION
"

Date of Notice to Accept Bid: December 7, 2020

AGREEMENT

This Agreement made and entered into this 18 day of January in the year 2021 by and between Barnhill Contracting Co. of Rocky Mount, NC hereinafter called the Contractor, and

Nash County, NC

WITNESSETH, that the Contractor and the Owner for the consideration hereinafter named, do hereby promise, covenant and agree for themselves, their successors, and assigns, as follows:

Art. 1 - Scope of the Work. The Contractor shall furnish all of the materials and perform all of the work shown on the Plans and described in the Specifications.

Art. 2 - Time of Completion. The work to be performed under this Contract shall be commenced within ten (10) days after the issuance of the Notice to Proceed, and shall be completed in **150** calendar days of issuance of Notice to Proceed.

In the event work is delayed through no fault of the Contractor, he shall request in writing an extension of time from the Owner and Engineers.

Art. 3 - The Contract Sum. The Contractor shall receive and accept the compensation for the performance of the Contract (subject to additions and deductions contemplated therein) in accordance with the prices stipulated in the Proposal and in the manner provided in Art. 4.

Art. 4 - Progress Payment. The Owner shall make payments on account of the Contract as provided therein as follows:

On or about the twenty-fifth day of each month, subject to the requirements of Article 31 of the General Conditions, ninety (90) percent of the value up to the first day of the month, based on the Contract Price of labor and materials incorporated in the work, all as estimated by the Engineers, less the aggregate of previous payments, but such payments shall only become due upon the presentation of certificates from the Engineers to the Owner.

Art. 5 - Acceptance and Final Payment. The final payment shall be made upon acceptance of the work by the Owner, which acceptance shall take place no more than thirty (30) days after certification by the Owner's Engineer of the satisfactory completion of the work by the Contractor.

Art 6. - The Contract Documents. The General and Supplementary Conditions for this Contract, the Notice to Contractors, Instructions to Bidders, Proposal, CD, Bond Forms and the Drawings, together with this Agreement, form the Contract, and they are as fully a part of the Contract as if hereto attached or herein repeated.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, the day and year first above written.

_____
Proprietorship or Partnership

Attest: Gwendolyn P Hinnant

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

BARNHILL CONTRACTING COMPANY CORPORATE SEAL 1949 N.C.

Barnhill Contracting Company
(Name of Firm or Corp. Making Bid)

By: _____

Title: Vice President
(~~Owner, Partner or Corp. Pres.~~ or Vice Pres. only)

Address: P.O. Box 7948
Rocky Mount NC 27804

License No: 3194

Owner/Developer:

Attest: _____

Title: Clerk to the Board

By: _____

Title: Zee Lamb, County Manager

Nash County
(Name of Firm, Corporation, Municipality)

Address: 120 W Washington St

Nashville, NC 27856

agree.doc

NOTICE TO PROCEED

To: Barnhill Contracting Co. Date: January 5, 2021
Project: Elm Street Drainage

This document hereby notifies you to commence WORK in accordance with the Agreement dated January 18, 2021. The WORK is to be complete within **150** consecutive calendar days thereafter. The date of completion of all WORK is therefore June 17, 2021.

Owner: Nash County

By: Zee Lamb

Title: County Manager

ACCEPTANCE OF NOTICE TO PROCEED

Receipt of the above NOTICE TO PROCEED is hereby acknowledged by

Barnhill Contracting Company

this 27 day of JANUARY, 2021.

By:

Title: Vice President

STOCKS ENGINEERING

ADDENDUM NO. 1
Dated: November 4, 2020

Project: Elm Street Drainage Project
Nashville, North Carolina

From: Stocks Engineering, P.A.
801 East Washington Street
P.O. Box 1108
Nashville, NC

To: **All Bidders on Bid List**

This information SHALL be incorporated into the official Bid Documents.

CHANGES TO BID DOCUMENTS:

BID TIME

The Bid Time has been changed from 10:00 AM to 2:00 PM. Therefore, the revised Bid Date is **November 24, 2020 at 2:00 PM** in the Nash County Commissioners Board Room, 3rd Floor, 120 West Washington Street, Nashville, NC 27856. Bids can be delivered to the office of Stocks Engineering until 1:45 PM on November 24, 2020.

ADDITIONAL PRE-BID MEETING

As a result of multiple scheduling conflicts, we will be holding another optional **Pre-Bid Meeting**. This meeting will be held through the Zoom online platform on **Thursday, November 12, 2020 at 2:00 PM**. The Zoom Meeting can be accessed through the following link:

Zoom Meeting
https://us02web.zoom.us/j/83747238880?pwd=TGJ5QkphSnFTS1psei9GbGVwTC9FZz09

Meeting ID: 837 4723 8880
Passcode: ElmStreet

END OF ADDENDUM