

# STATE OF NORTH CAROLINA

North Carolina Office of Recovery and Resiliency (NCORR)

## Assignment of Residential Asbestos Abatement Services

**ASSIGNMENT NUMBER: ASSIGNMENT.ABATEMENT 38**



**ASSIGNMENT ISSUE DATE: 6/14/2024**

**VENDOR RESPONSE DUE DATE/TIME: 6/18/2024 5:00PM**

**TOTAL PROJECT COST: \$ 15,665.88**

**\*\* VENDOR MUST SUBMIT SIGNED CONTRACT, AND INSURANCE DOCUMENTATION WITHIN 48 HOURS OF BEING ISSUED THIS ASSIGNMENT CONTRACT (e.g. INTENT TO AWARD). OTHERWISE, NCORR MAY CONTACT THE NEXT VENDOR ON THE PREQUALIFIED ASBESTOS ABATEMENT LIST.\*\***

This Assignment is per the Program Delivery Office (PDO) and the PDO policies for determining assignment. By executing this Contract, the Vendor agrees to perform the functions set forth herein at the prices indicated.

COMPLETE/FORMAL NAME OF VENDOR: <b>Tracco LLC</b>	SAM UNIQUE ENTITY IDENTIFIER: 
STREET ADDRESS: <b>2320 Spruce Shadows Lane</b>	<b>Raleigh NC 27614</b>
PRINT NAME & TITLE OF PERSON SIGNING ON BEHALF OF VENDOR: <b>James "TJ" Rawley / President</b>	EMAIL: <b>tjrawley@traccollc.com</b>
VENDOR'S AUTHORIZED SIGNATURE: 	DATE: <b>06/17/2024</b>

Return the executed document to [Construction@ReBuild.nc.gov](mailto:Construction@ReBuild.nc.gov).

<p><b>FOR STATE USE ONLY:</b> Assignment awarded this <u>17th</u> day of <u>June</u>, 2024</p> <p>by <u>Taryn Madden</u> (Authorized Representative of NCORR)</p>
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## 1.0 PURPOSE

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NCORR is seeking highly skilled prime construction contractors to perform, or cause to be performed, residential asbestos abatement services of eligible structures through NCORR recovery programs. See rebuild.nc.gov for the State's Action Plan(s) and Program Manual(s) defining these construction activities.

## 2.0 GENERAL INFORMATON

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### 2.1 DEFINITIONS, ACRONYMS, AND ABBREVIATIONS

- a) **APPLICATION:** The Request for Prequalification (RFPQ) and Contractor's Application.
- b) **AUDIT:** The contract(s) awarded pursuant to the Assignment Contract are subject to audits by state and federal agencies and/or their authorized independent auditors. The auditors may conduct contract performance, financial and/or forensic/fraud audits.
- c) **ASSIGNMENT PRICING BOOK:** The State has prepared a Benchmark Assignment Pricing Book that will be used for project assignments. Contractors shall accept the pricing contained in NCORR's Pricing Book.
- d) **CDBG-DR:** The Community Development Block Grant – Disaster Recovery. This is a federal grant award issued to support Hurricane Matthew recovery efforts, and related disaster events in North Carolina authorized and funded by the U.S. Department of Housing and Urban Development and is awarded to the State of North Carolina. For the purposes of this RFPQ/Assignment, CDBG-DR will also include Community Development Block Grant – Mitigation funds.
- e) **CONSTRUCTION MANAGER or CM:** A North Carolina-licensed general GC with construction management experience awarded a contract by NCORR that will provide NCORR construction management services.
- f) **CONTRACTOR(S) or GC(s):** The Contractors prequalified pursuant to a Request for Prequalification.
- g) **DPS:** North Carolina Department of Public Safety.
- h) **ECR:** Estimated Cost of Repair.
- i) **NCORR:** North Carolina Department of Public Safety, Office of Recovery and Resiliency.
- j) **NOTICE TO PROCEED (NTE):** Notice to Vendor to commence work to be performed under this agreement.
- k) **SCOPE OF WORK:** The agreed upon duties and responsibilities of the general contractor for each project site. The Scope of Work may only be altered by a change order.
- l) **STATE:** The State of North Carolina, including any of its sub-units and political subdivisions recognized under North Carolina law.
- m) **STATE AGENCY:** Any of the more than 400 sub-units within the executive branch of the State, including its departments, boards, commissions, institutions of higher education and other institutions.
- n) **THE CONTRACT:** A contract resulting from or arising out of Vendor responses to this document.
- o) **WORK ORDER:** Specific, written authorization to perform the task(s) listed therein.

## 2.2 PREQUALIFICATION CONTENTS

The below items are required to be submitted by the Contractor. Contractor shall populate all attachments that require the Contractor to provide information and include an authorized signature where requested.

- a) Certificate of Insurance shall be returned with the signed Assignment Contract.
- b) All pages of this Assignment Contract shall be returned.
- c) Completed and signed EXECUTION PAGE (page1).

All Scope documents that are located within the designated SharePoint folder included in Attachment A: ASSIGNMENT WORKSHEET are included by reference.

## 3.0 REQUIREMENTS

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### 3.1 APPROVED PRICING CHARGES AND COSTS

GC shall only invoice for amounts specifically allowed for in the Assignment Contract. It is the responsibility of the GC to assess each property prior to accepting the Assignment Contract.

**Asbestos Abatement Costs:** GCs will have to agree to the pricing, which is different depending upon the price of the project awarded, as explained below.

**Projects under \$250,000:** GCs may be awarded based upon an assignment factor applied to the Estimated Cost of Repair ("ECR"). The assignment factor will be set by NCORR which will include overhead, and profit for all prequalified GCs who wish to participate in projects under \$250,000. The GCs will then either accept or reject the assignment factor. GCs that do not accept the assignment factor will not be awarded contracts below \$250,000.

### 3.2 INVOICES

Vendor shall provide an invoice to the NCORR Construction Manager within **15 calendar days** of project completion.

The standard format for invoicing shall be Single Invoices meaning that the Vendor shall provide the NCORR Construction Manager with an invoice for each Work Order. Vendor will submit a separate invoice per application number. Invoices shall include detailed information, supporting documentation and/or deliverables requested in a Work Order to allow NCORR or its designee to verify fees, costs and/or expenses.

At a minimum, the following fields should be included on all invoices: Vendor's Remit Payment to Address, NC Contract Number (this Assignment number), Project Number (Application number; homeowner address), Notice to Proceed Date, Date Project Completed, and invoice amount.

### 3.3 INSURANCE

See ATTACHMENT C: NORTH CAROLINA GENERAL TERMS AND CONDITIONS, Section 15(B). Certificate of Insurance (COI) that conforms to these requirements shall be submitted with the executed Assignment.

**Certificate Holder:**

North Carolina Office of Recovery and Resiliency  
North Carolina Department of Public Safety  
PO Box 110465  
Durham, NC 27709

### 3.4 BONDS; PERFORMANCE AND PAYMENT

All projects will require 100% performance and payment **bonds**, individually or as a whole, **after** issuance of the **Work Order (WO)**, and prior to the **Notice to Proceed (NTP)**. A Notice to Proceed (NTP) will be issued following the review and approval of bonds. Failure to submit bonds **5 calendar days** after the issuance of the Work Order (WO) will result in termination of the contract. NCORR reserves the right to issue a Notice to Proceed (NTP) at any point in time. **Bonds shall be submitted through the NCORR system of record.**

### 3.5 HUB AND SECTION 3

HUB 10% utilization and Section 3 utilization is expected and will be monitored by the Program Delivery Office after award of this contract. Vendor is NOT required to provide HUB and Section 3 *anticipated* utilization with submission of this Assignment response.

### 3.6 AMENDMENT EXECUTION AND RETURN; REVOCATION

To prevent delay in project completion, Vendor must execute/sign and return any amendment within 7 calendar days after issuance. Failure to do so may result in revocation or termination of the contract, in whole or in part, at the sole discretion of the State.

## 4.0 SCOPE OF WORK

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### 4.1 DESCRIPTION OF SERVICES AND REQUIREMENTS

Qualified Vendors shall conduct Asbestos Abatement Activities for friable and/or non-friable materials in single family and/or multi-family residential homes in a manner compliant with all applicable laws and regulations, including but not limited to NC General Statutes [§130A-444](#) et seq. (North Carolina accreditation, permitting, asbestos exposure in public areas, NC General Statutes [§130A-22\(b1\)-\(b2\)](#) (penalties), EPA, [40 CFR Part 61, Subpart M](#) and North Carolina Admin. Code [10A NCAC 41C .0600](#) et seq. (national emission standards and renovation/demolition requirements for asbestos), OSHA, [§1926.1101](#) (federal safety and health regulations regarding asbestos), United States Environmental Protection Agency, United States Department of Labor rules and regulations, and local or county ordinances.

Within **3 Business Days** after completion of authorized abatement/mitigation scope, the Qualified Vendor shall prepare/collect and **submit** a **Final Clearance Report** to the NCORR Construction Manager (CM) with all legally required supporting documentation, including digital photographs, demonstrating performance of asbestos abatement activities in the area identified in the asbestos survey provided by the NCORR CM.

The Abatement Contractor shall request the **Third-Party** Clearance and Testing Firm(s) shall perform all **clearance air monitoring** and **visual inspection** within twenty-four (**24**) **hours** after completion of cleaning work. If non-compliance occurs, the contractor shall repeat cleaning and measure until the work area is in compliance with the Scope of Work.

The Third-Party Clearance firm will conduct **monitoring** and **visual inspection** after completion of environmental remediation activities. All clearances shall meet all required standards as stated and include the following:

Lead Base Paint Clearances:

- Visual assessment,
- Collection and analysis of dust wipe samples,

- Interpretation of dust sampling results from third party laboratory,
- Clearance Report and corresponding photo documentation,
- Hazard Reduction Completion Notice.

#### Asbestos Clearances:

- Visual assessment,
- Air Monitoring,
- Interpretation of monitoring results from laboratory,
- Clearance Report and corresponding photo documentation.

NCORR will only pay for passed Clearance Reports that meet the requirements herein. Any Clearance Report that did not pass or meet these contractual requirements must be redone by the Vendor at its cost.

All costs associated with clearance are to be incurred by the Abatement Contractor.

All participants shall be treated with dignity and respect. The State expects responsiveness to the State and the homeowner, first-class customer service, and interactions and communications *that are easily understood, prompt, and courteous*.

All projects awarded under this contract **shall have** their NTP's issued within **5 calendar days** of verified homeowner move out (if applicable), and/or GC scheduled start date (unless requested earlier by vendor).

It is the intent and goal of NCORR and the State of North Carolina to make every HRP home project successful, so Vendors are encouraged to work proactively with NCORR to identify and resolve all issues and problems immediately to minimize delays in completing HRP projects.

## 4.2 ADDITIONAL REQUIREMENTS

- a) Provide professional labor, equipment, and materials adequate to perform the work in accordance with the scope of work issued for each eligible applicant's residential structure while ensuring that all applicable housing standards and codes are met.
- b) Comply with all applicable local, state, and federal laws, regulations, and guidelines, which may include: HUD Community Development Block Grant disaster laws, regulations, and guidelines; the Davis Bacon Act (for repairs to properties containing eight (8) units or more); and Section 3 of the Housing and Urban Development Act of 1968.
- c) Within forty-eight (**48**) **hours of receipt of this Assignment** from NCORR, the Vendor shall provide copies of its **insurance** to [construction@rebuild.nc.gov](mailto:construction@rebuild.nc.gov).
- d) Within seventy-two (**72**) **hours of receipt of the executed Assignment Contract** from NCORR, the Vendor shall **visit** the designated **work site**, and examine the site of the proposed work to acquire a full understanding of the nature and scope of the abatement work to be accomplished.
- e) Upon approval by NCORR, the Vendor will receive a Notice to Proceed (NTP) from [construction@rebuild.nc.gov](mailto:construction@rebuild.nc.gov) to begin the work. The approval shall incorporate the Vendor's estimate as a "not to exceed" cost and the agreed upon starting and completion dates. **No work shall be undertaken by the Vendor until a NTP has been received.**
- f) Vendor shall not perform work that would result in exceeding the dollar limitation of the estimate without first having obtained written change order approval from NCORR (Program Delivery Office). Any additional costs that arise as a change order shall be paid at the negotiated price agreed upon by NCORR and the Vendor, which will include profit and overhead.

- g) The response times indicated above are applicable to non-emergency requirements. The Vendor shall be expected to **respond to emergency** requirements within a two (2) hour time frame as dictated by the implications of safety and health that apply to the circumstances of the specific situation. The Vendor will be given a maximum of two hours to determine if he can respond to the emergency. In the event the Vendor cannot respond to the requirements, NCORR reserves the right to contract with another Vendor.
- h) Meet all federal, state, and local requirements for the transport and disposal of municipal solid, industrial, hazardous, and other wastes from demolished structures.
- i) Vendor shall comply with all federal EPA and OSHA regulations, as well as all applicable North Carolina Asbestos and lead Rules and Regulations for asbestos and lead abatement projects and/or certificates to ensure jurisdictional compliance and project closeout.
- j) Vendor shall provide **Project Specific Site Health and Safety Plan (HASP)** to the NCORR Construction Manager via [construction@rebuild.nc.gov](mailto:construction@rebuild.nc.gov) within **15 calendar days of NTP** and **prior to any work beginning** for each project.
- k) The parties agree that calculation of actual damages resulting from failure to meet the performance standards is extremely difficult, if not impossible, to calculate accurately, and the parties also agree that the compensation identified for such failures are a reasonable estimate of damages resulting from a failure to meet the performance standard described. Therefore, the parties agree that the Vendor shall be subject to amounts due as liquidated damages but not as a penalty, for each such failure, as follows:

*Should the Vendor fail to complete the work under this contract within the stipulated time as set forth in this Assignment, the Vendor agrees that NCORR may subtract from Vendor payment the sum of \$250 per day for each calendar day that the project is incomplete.*

Notwithstanding any other provision herein, liquidated damages shall not be subject to a limitation or limit of liability for damages that otherwise may be applicable to recoverable damages.

## 5.0 PERIOD OF PERFORMANCE

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Each Work Order (WO) shall have a term of **30 business days** after issuance of the Notice to Proceed.

In the event unforeseen issues arise and the period of performance cannot be completed within 30 business days after issuance of the Notice to Proceed the Vendor must submit a written request to the NCORR Construction Manager (Program Delivery Office) requesting a time extension; along with documentation detailing the rationale for the request. It is the State's sole discretion whether to grant a time extension. PRIOR written approval must be provided by the NCORR Construction Manager (Program Delivery Office) for any period of performance extension. Unless there are extenuating circumstances NCORR expects the work to be completed within 30 business days after issuance of the Notice to Proceed.

## 6.0 SCOPE OF WORK AUTHORIZATION AND COMPENSATION

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NCORR may request GC to perform certain projects as described above, subject to specific work authorization in the form of a General Work Order (Work Order). All Work Orders shall be in writing, signed by both the GC and NCORR (or its designee), and shall include a Scope of Services, a list of tasks to be performed by GC, a time schedule, a list of deliverables, if any, and such other information or special conditions as may be necessary for the work requested.

**Attachments begin on the next page.**

## ATTACHMENT A: ASSIGNMENT WORKSHEET

All information needed (ECR's, Tier 1 and Tier II requirements, ACM/LBP Survey's (if applicable), Assignment Worksheet) is located as attachments to the Intent to Award email.

Scope of work should be based on the **ACM/LBP surveys** provided for each project, and not what has been outlined in the Estimated Cost of Repair (ECR).

**ACM/LBP ECR** document should only be used to reference the pictures of the structure itself, and not the physical line items.

All information needed is located at the below link. **CLICK the below link.**

<https://drive.google.com/drive/folders/1GfT6t8eTQ1fDWQCAMHGckLJXQ6XzFRHw?usp=sharing>

Project: Project Name	Address	City:	County:	Construction Type	Abatement Type	Starting ACM ECR	Starting LBP ECR	Multiplier (w/ 40%)	Assignment Factor	Final Cost
APP-09430-AA	[REDACTED]	Rowland	Robeson	Rehab	LBP	\$0.00	\$1,483.14	\$2,076.39	1.50	\$3,114.59
APP-12174-AA	[REDACTED]	Lumberton	Robeson	MHU Replace	ACM	\$2,278.96	\$0.00	\$3,190.54	1.50	\$4,785.81
APP-12591-AA	[REDACTED]	Fayetteville	Cumberland	Rehab	ACM & LBP	\$3,330.74	\$367.11	\$5,176.99	1.50	\$7,765.49



## ATTACHMENT B: INSTRUCTIONS TO VENDORS

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1. **READ, REVIEW AND COMPLY:** It shall be the Vendor's responsibility to read this entire document, review all enclosures and attachments, and any addenda thereto, and comply with all requirements specified herein, regardless of whether appearing in these Instructions to Vendors or elsewhere in this document.
2. **ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this Assignment or those in any resulting contract documents, the order of precedence shall be (high to low) (1) any special terms and conditions specific to this document, including any negotiated terms; (2) requirements and specifications and administration provisions in Sections 4, 5 and 6 of this document; (3) General Contract Terms and Conditions in ATTACHMENT C: NORTH CAROLINA GENERAL CONTRACT TERMS AND CONDITIONS; (4) ATTACHMENT D: CONSTRUCTION GENERAL CONDITIONS; (5) Instructions in ATTACHMENT B: INSTRUCTIONS TO VENDORS; and (6) ATTACHMENT A: ASSIGNMENT WORKSHEET (PRICING).
3. **INFORMATION AND DESCRIPTIVE LITERATURE:** Vendor shall furnish all information requested and in the spaces provided in this document. Further, if required elsewhere in this bid, each Vendor shall submit any sketches, descriptive literature and/or complete specifications covering the products and Services offered. Reference to literature submitted with a previous contract or available elsewhere will not satisfy this provision.
4. **RECYCLING AND SOURCE REDUCTION:** It is the policy of the State to encourage and promote the purchase of products with recycled content to the extent economically practicable, and to purchase items which are reusable, refillable, repairable, more durable and less toxic to the extent that the purchase or use is practicable and cost-effective. We also encourage and promote using minimal packaging and the use of recycled/recyclable products in the packaging of commodities purchased. However, no sacrifice in quality of packaging will be acceptable. The Vendor remains responsible for providing packaging that will adequately protect the commodity and contain it for its intended use. Companies Vendors are strongly urged to bring to the attention of purchasers those products or packaging they offer which have recycled content and that are recyclable.
5. **CERTIFICATE TO TRANSACT BUSINESS IN NORTH CAROLINA:** As a condition of contract award, each out-of-State Vendor that is a corporation, limited-liability company or limited-liability partnership shall have received, and shall maintain throughout the term of The Contract, a Certificate of Authority to Transact Business in North Carolina from the North Carolina Secretary of State, as required by North Carolina law. A State contract requiring only an isolated transaction completed within a period of six months, and not in the course of a number of repeated transactions of like nature, shall not be considered as transacting business in North Carolina and shall not require a Certificate of Authority to Transact Business.
6. **HISTORICALLY UNDERUTILIZED BUSINESSES:** The State is committed to retaining Vendors from diverse backgrounds, and it invites and encourages participation in the procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. In particular, the State encourages participation by Vendors certified by the State Office of Historically Underutilized Businesses, as well as the use of HUB-certified vendors as subcontractors on State contracts.
7. **INELIGIBLE VENDORS:** As provided in G.S. 147-86.59 and G.S. 147-86.82, the following companies are ineligible to contract with the State of North Carolina or any political subdivision of the State: a) any company identified as engaging in investment activities in Iran, as determined by appearing on the Final Divestment List created by the State Treasurer pursuant to G.S. 147-86.58, and b) any company identified as engaged in a boycott of Israel as determined by appearing on the List of restricted companies created by the State Treasurer pursuant to G.S. 147-86.81. A contract with the State or any of its political subdivisions by any company identified in a) or b) above shall be void *ab initio*.
8. **CONFIDENTIAL INFORMATION:** To the extent permitted by applicable statutes and rules, the State will maintain as confidential trade secrets in its bid that the Vendor does not wish disclosed. As a condition to confidential treatment, the Vendor shall **provide a redacted copy** of the vendor response with all confidential information redacted. **Redacting refers to the blacking out of information, so it is not visible.** Cost information shall not be deemed confidential under any circumstances. Regardless of what a Vendor may label as a trade secret, the determination whether it is or is not entitled to protection will be determined in accordance with G.S. 132-1.2. Any material labeled as confidential constitutes a representation by the Vendor that it has made a reasonable effort in good faith to determine that such material is, in fact, a trade secret under G.S. 132-1.2. Vendors are urged and cautioned to limit the marking of information as a trade secret or as confidential so far as is possible. If a legal action is brought to require the disclosure of any material so marked as confidential, the State will notify Vendor of such action and allow Vendor to defend the confidential status of its information.

The North Carolina Department of Public Safety, in responding to public records requests, will release the contents of the Redacted file provided by the Vendor. If no redacted file is provided the North Carolina Department of Public Safety will release the un-redacted version in response to public records requests.

9. **MISCELLANEOUS:** Any gender-specific pronouns used herein, whether masculine or feminine, shall be read and construed as gender neutral, and the singular of any word or phrase shall be read to include the plural and vice versa.
10. **INFORMAL COMMENTS:** The State shall not be bound by informal explanations, instructions or information given at any time by anyone on behalf of the State during the competitive process or after award. The State is bound only by information provided in writing in this document and in formal Addenda.
11. **INSPECTION AT VENDOR'S SITE:** The State reserves the right to inspect, at a reasonable time, the equipment, item, plant, or other facilities of a prospective Vendor prior to Contract award, and during the Contract term as necessary for the State's determination that such equipment, item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the Contract.

## **ATTACHMENT C: NORTH CAROLINA GENERAL CONTRACT TERMS & CONDITIONS**

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### **1. PERFORMANCE:**

- a) It is anticipated that the tasks and duties undertaken by the Vendor under the contract which results from the State solicitation in this matter (Contract) shall include Services, and/or the manufacturing, furnishing, or development of goods and other tangible features or components, as deliverables.
- b) Except as provided herein, and unless otherwise mutually agreed in writing prior to award, any deliverables not subject to an agreed Vendor license and provided by Vendor in performance of this Contract shall be and remain property of the State. During performance, Vendor may provide proprietary components as part of the deliverables that are identified in this Contract. Vendor grants the State a personal, permanent, non-transferable license to use such proprietary components of the deliverables and other functionalities, as provided under this Contract. Any technical and business information owned by Vendor or its suppliers or licensors made accessible or furnished to the State shall be and remain the property of the Vendor or such other party, respectively. Vendor agrees to perform under the Contract in at least the same or similar manner provided to comparable users and customers. The State shall notify the Vendor of any defects or deficiencies in performance or failure of deliverables to conform to the standards and specifications provided in this Contract. Vendor agrees to timely remedy defective performance or any nonconforming deliverables on its own or upon such notice provided by the State.
- c) Vendor has a limited, non-exclusive license to access and use State Data provided to Vendor, but solely for performing its obligations under and during this Agreement and in confidence as further provided for herein or by law.
- d) Vendor or its suppliers, as specified and agreed in the Contract, shall provide support assistance to the State related to all Services performed or other deliverables procured hereunder during the State's normal business hours. Vendor warrants that its support, customer service, and assistance will be performed at a minimum in accordance with generally accepted and applicable industry standards.
- e) The State may document and take into account in awarding or renewing future procurement contracts the general reputation, performance and performance capabilities of the Vendor under this Contract as provided by G.S. 143-52 and 143-135.9 (a) and (b) (Best Value).

### **2. DEFAULT AND TERMINATION.**

- a) In the event of default by the Vendor, the State may, as provided by NC law, procure goods and services necessary to complete performance hereunder from other sources and hold the Vendor responsible for any excess cost occasioned thereby. *See*, G.S. 25-2-712. In addition, and in the event of default by the Vendor under the Contract, or upon the Vendor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Vendor, the State may immediately cease doing business with the Vendor, terminate the Contract for cause, and take action to recover relevant damages, and if permitted by applicable law, debar the Vendor from doing future business with the State. 01 NCAC 05B.1520.
- b) If, through any cause, Vendor shall fail to fulfill in a timely and proper manner the obligations under the Contract, including, without limitation, in these North Carolina General Terms and Conditions, the State shall have the right to terminate the Contract by giving thirty days written notice to the Vendor and specifying the effective date thereof. In that event, any or all finished or unfinished deliverables that are prepared by the Vendor under the Contract shall, at the option of the State, become the property of the State (and under any applicable Vendor license to the extent necessary for the State to use such property), and the Vendor shall be entitled to receive just and equitable compensation for any acceptable deliverable completed (or partially completed at the State's option) as to which such option is exercised. Notwithstanding, Vendor shall not be relieved of liability to the State for damages sustained by the State by virtue of any breach of the Contract, and the State may withhold any payment due the Vendor for the purpose of setoff until such time as the exact amount of damages due the State from such breach can be determined. The State, if insecure as to receiving proper performance or provision of goods deliverables, or if documented Vendor Services performance issues exist, under this Contract, may require at any time a performance bond or other alternative performance guarantees from a Vendor without expense to the State as provided by applicable law. G.S. 143-52(a); 01 NCAC 05B.1521; G.S. 25-2-609.
- c) If this Contract contemplates deliveries or performance over a period of time, the State may terminate this Contract for convenience, in whole or in part as follows,:
  - a. By failing to comply with the terms and conditions of this award;
  - b. If an award no longer effectuates NCORR goals or priorities;

- c. The consent of the Vendor, in which case the Vendor and NCORR must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
- d. Upon sending written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if NCORR determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the NCORR may terminate the Federal award in its entirety; or
- e. Pursuant to termination provisions included in the HUD Federal award;

Termination must be completed in writing by providing 30 days' notice from the State to the Vendor. In that event, any or all finished or unfinished deliverables prepared by the Vendor under this Contract shall, at the option of the State, become its property, and under any applicable Vendor license to the extent necessary for the State to use such property. If the Contract is terminated by the State for any of the reasons stated in 2 **I**, the State shall pay for those items or Services for which such option is exercised, less any payment or compensation previously made.

**3. INTERPRETATION, CONFLICT OF TERMS.**

- a) The definitions in the Instructions to Vendors in the relevant solicitation for this Contract, and in 01 NCAC 05A.0112 are specifically incorporated herein.
- b) If federal funds are involved in the transactions under this Contract, the Vendor shall comply with all applicable state and federal requirements and laws. See the additional federal requirements included in the "Federal Funds Provisions" section below.
- c) "Purchasing Agency" herein is as defined in 01 NCAC 05A.0112, except that if this Contract has been entered into by the NC Department of Administration, Division of Purchase and Contract (P&C) as indicated in the Contract (e.g., a State Term Contract), then P&C will then be a Purchasing Agency for the purposes herein and in the Federal Funds Provisions, below.
- d) Contracts made in contravention of General Statutes, Chapter 143, Article 3 and the Rules in 05 NCAC Chapter 5, are void. G.S. 143-58.

**4. GOVERNMENTAL RESTRICTIONS:** In the event any Governmental restrictions are imposed which necessitate alteration of the goods, material, quality, workmanship, or performance of the Services offered, prior to acceptance, it shall be the responsibility of the Vendor to notify the State Contract Lead or Administrator indicated in the Contract at once, in writing, indicating the specific regulation which requires such alterations. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.

**5. AVAILABILITY OF FUNDS:** Any and all payments to the Vendor shall be dependent upon and subject to the availability of funds appropriated or allocated to the agency for the purpose set forth in the Contract.

**6. TAXES:** Any applicable taxes shall be invoiced as a separate item.

- a) G.S. 143-59.1 bars the Secretary of Administration from entering into Contracts with Vendors if the Vendor or its affiliates meet one of the conditions of G.S. 105-164.8(b) and refuses to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G.S. 105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the Vendor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the proposal document the Vendor certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.
- b) The agency(ies) participating in the Contract are exempt from Federal Taxes, such as excise and transportation. Exemption forms submitted by the Vendor will be executed and returned by the using agency.
- c) Prices offered are not to include any personal property taxes, nor any sales or use tax (or fees) unless required by the North Carolina Department of Revenue.

**7. SITUS AND GOVERNING LAWS:**

- a) This Contract is made under and shall be governed by and construed in accordance with the laws of the State of North Carolina, including, without limitation, the relevant provisions of G.S. Chapter 143, Article 3, and the Rules in 01 NCAC Chapter 05, and any applicable successor provisions, without regard to its conflict of laws rules, and within which State all matters, whether sounding in Contract, tort or otherwise, relating to its validity, construction, interpretation

and enforcement shall be determined. G.S. 22B-3.

- b) Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and its performance in accordance with the Contract, including those of federal, state, and local agencies having jurisdiction and/or authority, and including, without limitation, the applicable requirements in the Federal Funds Provisions, below.
- c) Non-resident Vendor corporations not formed under NC law must be domesticated in the Office of the NC Secretary of State in order to contract with the State of North Carolina. G.S. 55A-15-01.

#### **8. NON-DISCRIMINATION COMPLIANCE:**

To the extent federal funding is involved in this procurement, in whole or in part, compliance with the following is required:

- a) The Vendor shall comply with all Federal Funds Provisions requirements (below) and not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Vendor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- b) The Vendor shall, in all solicitations or advertisements for employees placed by or on behalf of the Vendor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin:
- c) The Vendor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Vendor's legal duty to furnish information.
- d) The Vendor 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 advising the said labor union or workers' representatives of the Vendor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e) The Vendor shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- f) The Vendor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- g) In the event of the Vendor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Vendor may be declared ineligible for further Government contracts or federally assisted construction Contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- h) The Vendor shall include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Vendor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Vendor (or herein "applicant," as

applicable in context within these Federal Funds Provisions) becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Vendor may request the United States to enter into such litigation to protect the interests of the United States.

- i) The Vendor further agrees that it shall be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the Vendor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Contract.
- j) The Vendor agrees that it shall assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Vendors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it shall furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it shall otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.
- k) The Vendor further agrees that it shall refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Vendor debarred from, or who has not demonstrated eligibility for, Government Contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Vendors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Vendor agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part any relevant grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the Vendor under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such Vendor; and refer the case to the Department of Justice for appropriate legal proceedings.

9. **PAYMENT TERMS:** Payment terms are net not later than 30 days after receipt of a correct invoice or acceptance of goods, whichever is later. The Procuring Agency is responsible for all payments to the Vendor under the Contract. Payment by some agencies may be made by procurement card. If the Vendor accepts Visa, MasterCard, etc., from other customers, it shall accept procurement card payment by the State under the terms provided for the procurement card. 01 NCAC 05B.1523. If payment is made by procurement card, then payment for amounts then due may be processed immediately by the Vendor.

The State does not agree in advance, in contract, pursuant to Constitutional limitations, to pay costs such as interest, late fees, penalties or attorney's fees. This Contract will not be construed as an agreement by the State to pay such costs, and will be paid only as ordered by a court of competent jurisdiction.

10. **CONDITION AND PACKAGING:** Unless otherwise expressly provided by special terms and conditions or specifications in the Contract or by express, specific federal law or rule, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose, is newly manufactured, and shall be in first class condition. All containers/packaging shall be suitable for handling, storage, or shipment.

11. **INTELLECTUAL PROPERTY WARRANTY AND INDEMNITY:** Vendor shall hold and save the State, its officers, agents and employees, harmless from liability of any kind, including costs and expenses, resulting from infringement of the rights of any third party in any Services or copyrighted material, patented or patent-pending invention, article, device or appliance delivered in connection with the Contract.

- a) Vendor warrants to the best of its knowledge that:
  - i) Performance under the Contract does not infringe upon any intellectual property rights of any third party; and
  - ii) There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party;
- b) Should any deliverables supplied by Vendor become the subject of a claim of infringement of a patent, copyright, trademark or a trade secret in the United States, the Vendor, shall at its option and expense, either procure for the State the right to continue using the deliverables, or replace or modify the same to become non-infringing. If neither of these options can reasonably be taken in Vendor's judgment, or if further use shall be prevented by injunction, the Vendor agrees to cease provision of any affected deliverables and refund any sums the State has paid Vendor for such deliverables and make every reasonable effort to assist the State in procuring substitute deliverables. If, in the sole opinion of the State, the cessation of use by the State of any such deliverables due to infringement issues makes

the retention of other items acquired from the Vendor under this Agreement impractical, the State shall then have the option of terminating the Agreement, or applicable portions thereof, without penalty or termination charge; and Vendor agrees to refund any sums the State paid for unused Services or other deliverables.

- c) The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the deliverables supplied by the Vendor, their use or operation, infringe on a patent, copyright, trademark or violate a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded or agreed in a settlement against the State in any such action. Such defense and payment shall be conditioned on the following:
  - i) That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and
  - ii) That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that the State shall have the option to participate in such action at its own expense.
- d) Vendor will not be required to defend or indemnify the State to the extent any claim by a third party against the State for infringement or misappropriation results solely from the State's material alteration of any Vendor-branded deliverables or Services, or from the continued use of the Services or other deliverables after receiving written notice from the Vendor of the claimed infringement.

**12. ADVERTISING:** Vendor agrees not to use the existence of the Contract or the name of the State of North Carolina as part of any commercial advertising or marketing of products or Services except as provided in 01 NCAC 05B.1516. A Vendor may inquire whether the State is willing to be included on a listing of its existing customers.

**13. ACCESS TO PERSONS AND RECORDS:**

- a) During, and after the term hereof during the relevant period required for retention of records by State law (G.S. 121-5, 132-1 *et seq.*, typically five years), the State Auditor and any Purchasing Agency's internal auditors shall have access to persons and records related to the Contract to verify accounts and data affecting fees or performance under the Contract, as provided in G.S. 143-49(9). However, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of such retention of records period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the record retentions period, whichever is later.
- b) The following entities may audit the records of this contract during and after the term of the contract to verify accounts and data affecting fees or performance:
  - 1. The State Auditor.
  - 2. The internal auditors of the affected department, agency or institution.
  - 3. The Joint Legislative Commission on Governmental Operations and legislative employees whose primary responsibility is to provide professional or administrative services to the Commission.
- c) The Joint Legislative Commission on Governmental Operations has the authority to:
  - 1. Study the efficiency, economy and effectiveness of any non-State entity receiving public funds.
  - 2. Evaluate the implementation of public policies, as articulated by enacted law, administrative rule, executive order, policy, or local ordinance, by any non-State entity receiving public funds.
  - 3. Investigate possible instances of misfeasance, malfeasance, nonfeasance, mismanagement, waste, abuse, or illegal conduct by officers and employees of a non-State entity receiving, directly or indirectly, public funds, as it relates to the officer's or employee's responsibilities regarding the receipt of public funds.
  - 4. Receive reports as required by law or as requested by the Commission.
  - 5. Access and review
    - a. Any documents or records related to any contract awarded by a State agency, including the documents and records of the contractor, that the Commission determines will assist in verifying accounts or will contain data affecting fees or performance; and

- b. Any records related to any subcontract of a contract awarded by a State agency that is utilized to fulfill the contract, including, but not limited to (i) records related to the drafting and approval of the subcontract, and (ii) documents and records of the contractor or subcontractor that the Commission determines will assist in verifying accounts or will contain data affecting fees or performance.
- d) The Joint Legislative Commission on Governmental Operations has the power to:
  - 1. Compel access to any document or system of records held by a non-State entity receiving, directly or indirectly, public funds, to the extent the documents relate to the receipt, purpose or implementation of a program or service paid for with public funds.
  - 2. Compel attendance of any officer or employee of any non-State entity receiving public funds, provided the officer or employee is responsible for implementing a program or providing a service paid for with public funds.
- e) Unless prohibited by federal law, the Commission and Commission staff in the discharge of their duties under this Article shall be provided access to any building or facility owned or leased by a non-State entity receiving public funds provided (i) the building or facility is used to implement a program or provide a service paid for with public funds and (ii) the access is reasonably related to the receipt, purpose, or implementation of a program or service paid for with public funds.
- f) Any confidential information obtained by the Commission shall remain confidential and is not a public record as defined in G.S. 132-1.
- g) Any document or information obtained or produced by Commission staff in furtherance of staff's duties to the Commission is confidential and is not a public record as defined in G.S. 132-1.
- h) A person who conceals, falsifies, or refuses to provide to the Commission any document, information, or access to any building or facility as required by this Article with the intent to mislead, impede, or interfere with the Commission's discharge of its duties under this Article shall be guilty of a Class 2 misdemeanor.

#### **14. ASSIGNMENT OR DELEGATION OF DUTIES.**

- a) As a convenience to the Vendor, the State may include any person or entity designated by the Vendor in writing as a joint payee on the Vendor's payment check. In no event shall such approval and action obligate the State to anyone other than the Vendor.
- b) If Vendor requests any assignment, or delegation of duties, the Vendor shall remain responsible for fulfillment of all Contract obligations. Upon written request, the State may, in its unfettered discretion, approve an assignment or delegation to another responsible entity acceptable to the State, such as the surviving entity of a merger, acquisition or a corporate reorganization if made as part of the transfer of all or substantially all of the Vendor's assets. 01 NCAC 05B.1507. Any purported assignment or delegation made in violation of this provision shall be void and a material breach of the Contract. G.S. 143-58.

**15. INSURANCE:** This section provides minimum insurance coverage rates that are applicable to most moderate risk solicitations. Agency Risk Analysis will determine if higher insurance coverage amounts are needed based on the likelihood and severity of exposure to the State. The analysis is documented in writing in the official file and considers the following non-exclusive factors:

- 1. Potential for damage to State property or property of a third party,
- 2. Potential for bodily injury to State employees or third parties,
- 3. Whether Vendor will transport State property, clients, or employees,
- 4. Use of a vehicle to accomplish the work or to travel to or from State locations,
- 5. Anticipated physical contacts of the Vendor with the State,
- 6. Anticipated number and activity of Vendor personnel within the State, and
- 7. Any other unique considerations that could result in harm, bodily injury, or property damage.

The Purchasing Agency has specified elsewhere in this Contract any increase in the minimum insurance coverage requirements below if the risk from the above factors is high.



**a) REQUIREMENTS** – Providing and maintaining adequate insurance coverage is a material obligation of the Vendor and is of the essence of the Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the NC Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or the Contract. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations or the indemnification requirements under the Contract. As provided above, a State agency is authorized, upon written evaluation and substantiation in the official file of the significant risk of bodily injury and/or property or other damage in the contract, to require and enforce higher coverage limits to mitigate the potential risk of liability to the State.

**b) COVERAGE** – During the term of the Contract, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. At a minimum, the Vendor shall provide and maintain the following coverage and limits, subject to higher requirements by an agency after the risk analysis indicated above:

1. **For Small Purchases** as defined under North Carolina Administrative Code 01 NCAC 05A.0112 (35) and 05B.0301 (1), the minimum applicable insurance requirements for Worker's Compensation and Automobile Liability will apply as required by North Carolina law. The Purchasing Agency may require Commercial General Liability coverage consistent with the assessed risks involved in the procurement.
2. **For Contracts valued in excess of the Small Purchase threshold, but up to \$1,000,000.00 the following limits shall apply:**
  - a. **Worker's Compensation** – The Vendor shall provide and maintain Worker's Compensation Insurance, as may be required by the laws of North Carolina, as well as employer's liability coverage, with minimum limits of \$250,000.00, covering all of Vendor's employees who are engaged in any work under the Contract in North Carolina. If any work is sub-Contracted, the Vendor shall require the sub-contractor to provide the same coverage for any of its employees engaged in any work under the Contract within the State.
  - b. **Commercial General Liability** – General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$500,000.00 for Combined Single Limit. Defense costs shall be in excess of the limit of liability.
  - c. **Automobile** – Automobile Liability Insurance, to include liability coverage covering all owned, hired and non-owned vehicles, used within North Carolina in connection with the Contract. The minimum combined single limit shall be \$250,000.00 bodily injury and property damage; \$250,000.00 uninsured/under insured motorist; and \$2,500.00 medical payment.
3. **For Contracts valued in excess of \$1,000,000.00 the following limits shall apply:**
  - a. **Worker's Compensation** – The Vendor shall provide and maintain Worker's Compensation Insurance, as may be required by the laws of North Carolina, as well as employer's liability coverage, with minimum limits of \$500,000.00, covering all of Vendor's employees who are engaged in any work under the Contract in North Carolina. If any work is sub-Contracted, the Vendor shall require the sub-contractor to provide the same coverage for any of its employees engaged in any work under the Contract within the State.
  - b. **Commercial General Liability** – General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$1,000,000.00 for Combined Single Limit. Defense costs shall be in excess of the limit of liability.
  - c. **Automobile** – Automobile Liability Insurance, to include liability coverage covering all owned, hired and non-owned vehicles, used within North Carolina in connection with the Contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$5,000.00 medical payment.

- 16. GENERAL INDEMNITY:** The Vendor shall hold and save the State, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, Services, materials, or supplies in connection with the performance of the Contract, and also from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Vendor in the performance of the Contract that are attributable to the negligence or intentionally tortious acts of the Vendor, provided that the Vendor is notified in writing within 30 days from the date that the State has knowledge of such claims. The Vendor represents and warrants that it shall make no claim of any kind or nature against the State's agents who are involved in the delivery or processing of Vendor deliverables or Services to the State. As part of this provision for indemnity, if federal funds are involved in this procurement, the Vendor warrants that it will comply with all relevant and applicable federal requirements and laws, and will indemnify and hold and save the State harmless from any claims or losses resulting to the State from the Vendor's noncompliance with such federal requirements or law in this Contract. The representations and warranties in the preceding two sentences shall survive the termination or expiration of the Contract. The State does not participate in indemnification due to Constitutional restrictions, or arbitration, which effectively and unacceptably waives jury trial. *See*, G.S. 22B-3, -10.
- 17. SUBCONTRACTING:** Performance under the Contract by the Vendor shall not be subcontracted without prior written approval of the State's assigned Contract Lead. Unless otherwise agreed in writing, acceptance of a Vendor's proposal shall include approval to use the subcontractor(s) that have been specified therein.
- 18. CONFIDENTIALITY:** To the extent permitted by applicable statutes and rules, the State will maintain as confidential trade secrets in its bid that the Vendor does not wish disclosed. As a condition to confidential treatment, the Vendor shall **provide a redacted copy** of the vendor response with all confidential information redacted. **Redacting refers to the blacking out of information, so it is not visible.** Cost information shall not be deemed confidential under any circumstances. Regardless of what a Vendor may label as a trade secret, the determination whether it is or is not entitled to protection will be determined in accordance with G.S. 132-1.2. Any material labeled as confidential constitutes a representation by the Vendor that it has made a reasonable effort in good faith to determine that such material is, in fact, a trade secret under G.S. 132-1.2. Vendors are urged and cautioned to limit the marking of information as a trade secret or as confidential so far as is possible. If a legal action is brought to require the disclosure of any material so marked as confidential, the State will notify Vendor of such action and allow Vendor to defend the confidential status of its information.
- 19. CARE OF STATE DATA AND PROPERTY:** Any State property, information, data, instruments, documents, studies or reports given to or prepared or assembled by or provided to the Vendor under the Contract shall be kept as confidential, used only for the purpose(s) required to perform the Contract and not divulged or made available to any individual or organization without the prior written approval of the State.
- The State's data and property in the hands of the Vendor shall be protected from unauthorized disclosure, loss, damage, destruction by a natural event or another eventuality. The Vendor agrees to reimburse the State for loss or damage of State property while in Vendor's custody. Such State Data shall be returned to the State in a form acceptable to the State upon the termination or expiration of this Agreement.
- The Vendor shall notify the State of any security breaches within 24 hours as required by G.S. 143B-1379. For further information, *see*, G.S. 75-60 *et seq.* **Notice** is given to the Vendor that the NC Department of Information Technology (DIT) has requirements relating to the security of the State network, and rules relating to the use of the State network, IT software and equipment, that the Vendor must comply with, as applicable. *See*, e.g., G.S. 143B-1376.
- 20. OUTSOURCING:** Any Vendor or subcontractor providing call or contact center services to the State of North Carolina or any of its agencies shall disclose to inbound callers the location from which the call or contact center services are being provided.
- If, after award of a Contract, and consistent with any applicable NC DIT security provisions, the Contractor wishes to relocate or outsource any portion of performance to a location outside the United States, or to Contract with a subcontractor for any such performance, which subcontractor and nature of the work has not previously been disclosed to the State in writing, prior written approval must be obtained from the State Purchasing Agency. Vendor shall give notice to the Purchasing Agency of any relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons providing performance under a State Contract to a location outside of the United States. *See*, G.S. 143-59.4.
- 21. ENTIRE AGREEMENT:** The Contract (including any documents mutually incorporated specifically therein) resulting from a relevant solicitation represents the entire agreement between the parties and supersedes all prior oral or written statements or agreements. All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the Contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.

- 22. ELECTRONIC RECORDS:** The State will digitize all Vendor responses to the relevant solicitation, if not received electronically, as well as any awarded Contract together with associated procurement-related documents. These electronic copies shall constitute a preservation record and shall serve as the official record of this procurement with the same force and effect as the original written documents comprising such record. Any official electronic copy, printout or other output readable by sight shown to reflect such record accurately shall constitute an "original."
- 23. AMENDMENTS:** This Contract may be amended only by a written amendment duly executed by the State and the Vendor.
- 24. NO WAIVER:** Notwithstanding any other language or provision in the Contract or in any Vendor-supplied material, nothing herein is intended nor shall be interpreted as a waiver of any right or remedy otherwise available to the State under applicable law. The waiver by the State of any right or remedy on any one occasion or instance shall not constitute or be interpreted as a waiver of that or any other right or remedy on any other occasion or instance.
- 25. FORCE MAJEURE:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including, without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, other catastrophic epidemic or pandemic, natural event or Act of God.
- 26. SOVEREIGN IMMUNITY:** Notwithstanding any other term or provision in the Contract, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign immunity or other State or federal constitutional provision or principle that otherwise would be available to the State under applicable law.
- 27. ELECTRONIC PROCUREMENT: RESERVED**
- 28. FEDERAL PROVISIONS. *Where federal funds are utilized, and to the extent applicable, the following federal provisions may apply consistent with Uniform Guidance in 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, and its Appendix II. Relevant federal authorities may require additional provisions depending on the scope and context of the Contract.*** Failure or unwillingness of the Vendor to continually meet any of these requirements, as applicable, may result in Contract termination.

1. Flood Disaster Protection. This Contract is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234). Nothing included as a part of this Contract is approved for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the National Flood Insurance Program pursuant to Section 201 (d) of said Act; and the use of any assistance provided under this Contract for such acquisition for construction in such identified areas in communities then participating in the National Flood Insurance Program shall be subject to the mandatory purchase of flood insurance requirements or Section 102(a) of said Act.

*Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Contract shall contain, if such land is located in an area identified by the Secretary as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C 4001 et seq., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(a) of Flood Disaster Protection Act of 1973.*

2. Section 503 of the Rehabilitation Act of 1973 (29 U.S.C. 793). Contractor will not discriminate against any employee or applicant for employment because of a physical or mental handicap in regard to any position for which the employee or applicant for employment is otherwise qualified. 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 such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

*Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.*

*In the event of Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.*

*Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by NCCORR, provided by or through the Program Administrator. Such notices shall state Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.*

*Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that Contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973 and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.*

*Contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each Subcontractor or Contractor. Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.*

3. Age Discrimination Act of 1975. Contractor shall comply with the provisions of the Age Discrimination Act of 1975. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.
4. Discrimination Due to Beliefs. No person with responsibilities in the operation of the project to which this grant relates will discriminate with respect to any program participant or any applicant for participation in such program because of political affiliation or beliefs.
5. Certification of Nonsegregated Facilities. By the submission of this Proposal, Contractor certifies that it does not maintain or provide for its establishments, and that it does not permit employees to perform their services at any location, under its control, where segregated facilities are maintained. Contractor certifies further that it will not maintain or provide for employees any segregated facilities at any of its establishments, and it will not permit employees to perform their services at any location under its control where segregated facilities are maintained. Contractor agrees that a breach of this certification is a violation of the equal opportunity clause of this Contract.

*As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local customs or any other reason.*

*Contractor further agrees that (except where he has obtained identical certifications from proposed Subcontractors and material Suppliers for specific time periods), he will obtain identical certifications from proposed Subcontractors or material Suppliers prior to the award of subcontracts or the consummation of material supply agreements exceeding \$10,000, which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain such certification in his files.*

6. Drug Free Workplace. Contractor hereby certifies that it shall provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988, as amended, and with 24 C.F.R. Part 21.
7. Contractor Work Hours, Safety, and Protection of Lives and Health. For construction contracts over \$100,000, Contractor shall comply with all standards and regulations applicable to the working hours of laborers and mechanics required by 40 U.S.C. 3702 and 3704, as supplemented by the Department

of Labor regulations (29 C.F.R. Part 5). In general, these regulations and standards require Contractor to pay a basic rate for the first 40 hours of a standard 40-hour work week, and a rate of not less than one and half times the basic pay rate for hours worked in excess of 40 hours.

*Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the worksite, which occur as a result of his prosecution of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by Chapter XIII, Bureau of Labor Standards, Department of Labor, Part 1518) Safety and Health Regulations for Construction, as outlined in the Federal Register, Volume 36, No. 75, Saturday, April 7, 1971, Title 29 – LABOR, shall be observed and Contractor shall take or cause to be taken, such additional safety and health measures as NCORR may determine to be reasonably necessary.*

8. Danger Signals and Safety Devices. Contractor shall make all necessary precautions to guard against damages to property and injury to persons. Contractor shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades and other devices necessary to protect the public. In case Contractor fails or neglects to take such precautions, NCORR may have such lights and barricades installed and charge the cost of this work to Contractor. Such action by NCORR does not relieve Contractor of any liability incurred under these specifications or contract.
9. Lead Based Paint Hazards. The rehabilitation of residential structures is subject to the HUD Lead-Based Paint regulations, 24 C.F.R. Part 35. Contractor and its Subcontractors shall comply with the provisions for the elimination and reduction of lead-based paint hazards under Subpart B of said regulations.
10. Compliance with Air and Water Acts. For each home rehabilitation Owner-Contractor Agreement over \$100,000, Contractor and all of its Subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 C.F.R. Part 15, as amended.

*In addition to the foregoing requirements, all nonexempt Contractors and Subcontractors shall furnish to NCORR, the following:*

- 10.1. A stipulation by Contractor or its Subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 C.F.R. Part 15, as amended.
  - 10.2. An agreement by Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. 1857 c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
  - 10.3. A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the Contract, is under consideration to be listed on the EPA List of Violating Facilities.
  - 10.4. An agreement by Contractor that he will include, or cause to be included, the criteria and requirements in paragraph (1) through (4) of this section in every nonexempt subcontract and requiring that Contractor will take such action as the government may direct as a means of enforcing such provisions.
11. Energy Efficiency (42 U.S.C. 6201). Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94- 163).

12. Access to Records, Maintenance of Records. NCORR and HUD, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of Contractor which are directly pertinent to this Contract, for the purpose of audits, examinations, and making excerpts and transcriptions.

*All records required by 24 C.F.R. 570.506 that are pertinent to the activities funded under this Contract shall be maintained in a central location by Contractor and will be maintained for a period of five (5) years from closeout of the grant from which this Contract is funded.*

13. Copyright. No State provided materials, including but not limited to reports, maps, documents, home plans and specifications, any public record, or documents submitted with or in response to RFPO, HRP contractor-owner contract form, and related HRP and/or CDBG-DR documents pertaining to procurement, contract administration, contract management/monitoring, CDBG-DR planning and compliance, and/or contract auditing, in whole or in part, shall be available to Contractor for purposes of copyrighting as Contractor's intellectual and/or proprietary property. Subject to North Carolina Public Records laws, any such materials produced resulting from this Agreement that might be subject to copyright shall be the property of State of North Carolina, through NCORR, other State agency, and/or a federal agency of the United States (e.g., HUD and FEMA), and all such rights shall belong to the State of North Carolina and/or the United States.

14. Patents. Contractor shall hold and save NCORR and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract including its use by NCORR, unless otherwise specifically stipulated in the Contract.

*License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by NCORR must be reasonable and paid to the holder of the patent, or his authorized license, direct by NCORR and not by or through Contractor.*

*If Contractor uses any design, device or materials covered by letters, patent or copyright, it shall provide for such use by suitable agreement with Owner of such patented or copyrighted design, device or material. It is mutually agreed and understood that, without exception, the Contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the Work. Contractor and/or his Sureties shall indemnify and save harmless NCORR from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials or any trademark or copyright in connection with work agreed to be performed under this Contract, and shall indemnify NCORR for any cost, expense, or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.*

15. Confidential Findings. Some of the reports, information, data, etc. (e.g., homeowner personally identifying information, including but not limited to: income and/or tax records, social security numbers, birthdates, driver's license numbers, etc.), prepared or assembled by NCORR, HUD, FEMA, counties, other governmental agencies, and/or Contractor under award HRP contracts may be confidential, and Contractor agrees that they shall not be made available to any individual or organization without prior written approval of the appropriate governmental entity that authored the information, requested the information and/or is responsible for the program for which Contractor is performing the work that generated the confidential information. Contractor understands that most documents and billing records will be public records and Contractor will have to consult with the governmental entity to determine whether a proposed document may be submitted to the governmental entity with confidential information and the method used to maintain confidentiality if the document contains confidential information.

16. Conflict of Interest. No member, officer, or employee of NCORR or the local jurisdictions served through this Contract, or agent, consultant, or member of the DPS, or other public official who exercises or has exercised any functions or responsibilities with respect to this Contract during his or

her tenure, or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Contract or in any activity or benefit with regard to the Contract.

*Contractor shall cause to be incorporated in all contracts and/or subcontracts the foregoing provision regarding conflicts of interest.*

*No member of or delegate to Congress, or NCORR employee, shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Contract if made with a corporation.*

*If a person receiving assistance under this Program does in fact have a conflict of interest as discussed herein, such conflict will be fully disclosed in writing to NCORR and addressed under applicable law.*

17. Interest of Contractor. Contractor covenants that he presently has no interest and shall not acquire any interest, direct or indirect, in the above-described project or any parcels therein or any other interest which would conflict in any manner or degree with the performance of services hereunder. Contractor further covenants that in the performance of this Contract, no person having any such interest shall be employed.
18. Political Activity. Contractor will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.
19. Lobbying (31 U.S.C. 1352). Contractor certifies, to the best of its knowledge and belief that:
  - 19.1. No federally appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for purposes of 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.
  - 19.2. If any funds other than federally 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, Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
20. Personnel. Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with NCORR or other governmental entity involved in other State or federal disaster recovery programs.

*All the services required hereunder will be performed by Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services.*

*No person who is serving sentence in a penal or correctional institution shall be employed on work under this Contract.*
21. Hiring of Illegal Aliens. The hiring of illegal aliens is prohibited under Federal Labor Laws. As a condition of Contractor's prequalification under RFPQ, Contractor certifies that it, and each of its sub-contractors for any subcontract awarded, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system.

22. Anti-Kickback Rules. Salaries of personnel performing work under this Contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. 874; and Title 40 U.S.C. 2760). Contractor shall comply with all applicable "Anti- Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this Contract to ensure compliance by the Subcontractors with such regulations and shall be responsible for the submission of affidavits required of Subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.
23. Debarment, Suspension and Ineligibility (2 C.F.R. 200, Appendix II(I)). Contractor represents and warrants that it and its Subcontractors are not debarred, suspended, or placed in ineligibility status under the provisions of 2 C.F.R. 180 and 24 C.F.R. 24.1 (government debarment and suspension regulations).
24. Subcontracts. Contractor shall not enter into any subcontract with any Subcontractor who has been debarred, suspended, declared ineligible, or voluntarily excluded from participating in contacting programs by any agency of the United States Government or the State of North Carolina.

*Contractor shall be as fully responsible to NCORR for the acts and omissions of Contractor's Subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by Contractor.*

*Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind Subcontractor to Contractor by the terms of the Contract Documents insofar as applicable to the work of Subcontractors and to give Contractor the same power in regard to terminating any subcontract that NCORR may exercise over Contractor under any provision of the Contract Documents.*

*Nothing contained in this contract shall create any contractual relationship between any Subcontractor and NCORR.*

25. Assignability. Contractor shall not assign any interest in this Contract and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of NCORR, provided that claims for money due or to become due Contractor from NCORR under this Contract may be assigned to a bank, trust company, or other financial institution, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to NCORR.
26. Termination for Unavailable Funding. The continuation of this Contract is contingent upon the appropriation and release of sufficient funds to NCORR to fulfill the requirements of this Contract. Failure of the appropriate authorities to approve and provide an adequate budget to NCORR for fulfillment of the Contract terms shall constitute reason for termination of the Contract by either Party. Contractor shall be paid for all authorized services properly performed prior to termination.
27. Breach of Contract Terms. Any violation or breach of any of the terms of this Contract on the part of Contractor or Contractor's Subcontractors may result in the suspension or termination of this Contract or such other action that may be necessary to enforce the rights of the parties of this Contract. The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and/or remedies otherwise imposed or available by law.
28. Davis-Bacon Act (Payment of Prevailing Wages). The Davis-Bacon Act, as amended (40 U.S.C. 3141-3148), shall apply to all CDBG-DR Housing Recovery Program construction projects involving eight (8) or more units when the contract awarded by NCORR is in excess of \$2,000. Contractor and subcontractors on such projects shall comply with the Davis-Bacon Act, 40 U.S.C. 3141-3144, and 3146-3148, as supplemented by Department of Labor regulations found in 29 C.F.R. Part 5 ("Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted



Construction"). Contractor must pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor must pay wages not less than once a week. NCORR must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. NCORR (including any NCORR assigned to manage the construction contract between Contractor and Owner) shall facilitate and monitor compliance with the Davis Bacon Act, and report all suspected and/or actual violations of the Davis-Bacon Act to HUD.

29. Section 3 of the Housing and Urban Development Act of 1968.

The Contractor shall comply with the provisions of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u, and implementing its regulations at 24 CFR Part 75, as expressed below:

- 29.1. 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 by the Housing and Community Development Act of 1992 (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.
- 29.2. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 75, 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 75 regulations.
- 29.3. 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.
- 29.4. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75, 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 75. 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 75.
- 29.5. 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 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 75.
- 29.6. Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- 29.7. 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).

30. Procurement of Recovered Materials. Contractor agrees to comply with 2 C.F.R. 200.322, which requires the procurement of items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 to contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
31. Iran Divestment Act Certification. Contractor certifies that, as of the date listed above, it is not on the Final Divestment List as created by the State Treasurer pursuant to N.C.G.S. § 143-6A-4. In compliance with the requirements of the Iran Divestment Act and N.C.G.S. § 143C-6A-5(b), Contractor shall not utilize in the performance of the contract any subcontractor that is identified on the Final Divestment List.
32. Federal Funding Accountability and Transparency Act (FFATA). The Contractor shall comply with the requirements of 2 CFR part 25 Universal Identifier and System for Award Management (SAM). The grantee must have an active registration in SAM in accordance with 2 CFR part 25, appendix A, and must have a Data Universal Numbering System (DUNS) number. The grantee must also comply with provisions of the Federal Funding Accountability and Transparency Act, which includes requirements on executive compensation, and 2 CFR part 170 Reporting Subaward and Executive Compensation Information.
33. Client Data and Other Sensitive Information. The Contractor must comply with 2 CFR §200.303 and take reasonable measures to safeguard protected personally identifiable information, as defined in 2 CFR 200.82, and other information HUD or NCORR designates as sensitive or consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.
34. Equal Employment Opportunity. Contractor agrees to the following Equal Opportunity Certification:
  - 34.1. Contractor will not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

*Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.*
  - 34.2. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
  - 34.3. Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another

employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Contractor's legal duty to furnish information.

- 34.4. Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 34.5. Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 34.6. Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 34.7. In the event of Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 34.8. Contractor will include the portion of the sentence immediately preceding paragraph (32.1) and the provisions of paragraphs (32.1) through (32.7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

*Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, Contractor may request the United States to enter into such litigation to protect the interests of the United States.*

## **ATTACHMENT D: NORTH CAROLINA CONSTRUCTION GENERAL CONDITIONS**

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### **ARTICLE 1 - WORKING DRAWINGS AND SPECIFICATIONS AT THE JOB SITE**

- a. 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 Contractor, designer, and/or NCORR. A copy of the plans and specifications shall be provided to Owner.
- b. 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 Contractor and submitted to the designer and NCORR upon project completion and no later than thirty (30) days after acceptance of the project.
- c. Contractor shall maintain at the job office a record of all required tests or special inspections that have been performed, clearly indicating the scope of work inspected and the date of approval or rejection. Contractor shall make these tests and special inspection reports available to NCORR, the Authority Having Jurisdiction ("AHJ") and Owner upon request.

### **ARTICLE 2 - OWNERSHIP OF DRAWINGS AND SPECIFICATIONS**

- a. Contractor Construction Documents. All drawings and specifications provided by NCORR in the construction of a Project remain intellectual or proprietary property of NCORR. Owner may request drawings and specifications for future renovation or work at the Home. Owner and Contractor use of these plans and specifications on work other than this Contract without permission of NCORR is prohibited. Owner and Contractor are prohibited from selling NCORR's plans and specifications.

### **ARTICLE 3 - MATERIALS, EQUIPMENT, EMPLOYEES**

- a. 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 the 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, Contractor shall furnish evidence as to quality of materials.
- d. Products are generally specified by American Society of Testing and Materials (ASTM) or other reference standard and/or by manufacturer's name and model number or trade name. When specified only by reference standard, Contractor may select any product meeting this standard, by any manufacturer. When several products or manufacturers are specified as being equally acceptable, Contractor has the option of using any product and manufacturer combination listed. However, 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 used only 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 NCORR for approval or disapproval; such approval or disapproval shall be made by NCORR prior to the opening of bids. Alternate materials may be requested after the award if it can clearly be demonstrated that it is an added benefit to Owner and NCORR and Owner approves.
- e. NCORR shall be the judge of equality for proposed substitution of products, materials or equipment and whether they comply with CDBG-DR, HRP and/or grant eligibility rules, requirements and/or standards.

**ARTICLE 4 - 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. Contractor shall protect and save harmless Owner, NCORR, the State of North Carolina and/or HUD against suit on account of alleged or actual infringement. 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 5 - PERMITS, INSPECTIONS, FEES, REGULATIONS**

- a. Contractor shall give all notices and comply with all laws, ordinances, codes, rules and/or regulations bearing on the conduct of the work under this contract. If Contractor observes that the drawings and specifications are at variance therewith, he shall promptly notify NCORR in writing. Any necessary changes required after contract award shall be made by change order in accordance with Article 19. If Contractor performs any work knowing it to be contrary to such laws, ordinances, codes, rules and regulations, and without such notice to NCORR, 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 Contractor and be included within the bid proposal. All water taps, meter barrels, vaults and impact fees shall be paid by Contractor and included within the bid proposal unless otherwise noted.

**ARTICLE 6 - PROTECTION OF WORK, PROPERTY AND THE PUBLIC**

- a. Contractor shall be responsible for the entire site and the building or construction of the same and provide all the necessary protections, as required by NCORR or designer, and by laws or ordinances governing such conditions. Contractor shall be responsible for any damage to Owner's property, or of that of others on the job, by them, their personnel, or their subcontractors, and shall remedy such damages. Contractor shall be responsible for and pay for any damages caused to Owner. Contractor shall have access to the project at all times.
- b. 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 NCORR or Owner.
- c. No fires of any kind will be allowed inside or around the operations during the course of construction without special permission from NCORR.
- d. Contractor shall protect all trees and shrubs designated to remain in the vicinity of the operations by building substantial boxes around the same. Contractor shall barricade all walks, roads, etc., as directed by NCORR 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. 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. Contractor shall clearly mark or post signs warning of existing hazards, and shall barricade excavations, elevator shafts, stairwells and similar hazards. Contractor 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. 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. Contractor shall designate a responsible person of his organization as safety officer/inspector to inspect the project site for unsafe health and safety hazards, to report these hazards to Contractor for correction, and whose duties also include accident prevention on the project, and to provide other safety and health measures on the project site as required by the terms and conditions of the contract. The name of the safety inspector shall be made known to NCORR at the time of the preconstruction meeting and in all cases prior to any work starting on the project.

- h. In the event of an emergency affecting the safety of life, the protection of work, or the safety of adjoining properties, 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 Contractor on account of such action shall be determined as provided for under Article 10(b).
- i. Any and all costs associated with correcting damage caused to adjacent properties of the construction site or staging area shall be borne by Contractor. These costs shall include but not be limited to flooding, mud, sand, stone, debris, and discharging of waste products.

**ARTICLE 7 - SEDIMENTATION POLLUTION CONTROL ACT OF 1973**

- a. Any land-disturbing activity performed by Contractor 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, Contractor shall be responsible for ensuring that all steps or actions necessary to bring the project in compliance with said act are promptly taken.
- c. Contractor shall be responsible for defending any legal actions instituted pursuant to N.C. Gen. Stat. §113A-64 against any party or persons described in this article.
- d. To the fullest extent permitted by law, Contractor shall indemnify and hold harmless NCORR, designer, and the agents, consultants and employees of NCORR, and designer from and against all claims, damages, civil penalties, losses and expenses, including, but not limited to, attorney's 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 reduce any other right or obligation of indemnity which would otherwise exist as to any party or persons described in this article.

**ARTICLE 8 - INSPECTION OF THE WORK**

- a. It is a condition of this contract that the work shall be subject to inspection during normal working hours and during any time work is in preparation and progress by Contractor, designer, designated official representatives AHJ, NCORR and those persons required by state law to test special work for official approval. Contractor shall therefore provide safe access to the work at all times for such inspections. Owner must give advance notice to Contractor and/or NCORR to ensure Owner safety pursuant to OSHA requirements.
- b. Where special inspection or testing is required by virtue of any state laws, instructions of the designer and/or NCORR, specifications or codes, Contractor shall give adequate notice to the designer and NCORR 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 NCORR, or his authorized representative, or designer (if necessary) and it shall be Contractor's responsibility to serve ample notice of such tests.
- c. All laboratory tests shall be paid for by Contractor unless provided otherwise in the contract documents, including 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 procedures.
- d. Should any work be covered up or concealed prior to inspection and approval by AHJ and NCORR (when required by the contract) and/or special inspector, such work shall be uncovered or exposed for inspection, if so requested by AHJ (verbally or in writing) or NCORR (in writing). Inspection of the work will be made upon notice from Contractor. All cost involved in uncovering, repairing, replacing, recovering and/or restoring to design condition the work that has been covered or concealed will be paid by Contractor involved.

**ARTICLE 9 - CONTRACTOR AND SUBCONTRACTOR RELATIONSHIPS**

- a. Contractor agrees that the terms of its contract shall apply equally to each subcontractor as to Contractor, and Contractor agrees to take such action as may be necessary to bind each subcontractor to these terms. 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.

- b. Within seven days of receipt by Contractor of each periodic or final payment, 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 periodic or final payment by Contractor, 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. NCORR shall not be liable for interest resulting from Contractor's failure to pay any subcontractor.
- c. NCORR will retain no more than five (5) percent of progress payments from Contractor, which will be released upon final acceptance of the HRP project. Should Contractor fail to perform work under the contract, substantially delay completion of the work, or fail to correct non-conforming work in a timely manner, NCORR may use retainage to correct non-conforming work and/or complete performance of the contract. The percentage of retainage on payments made by Contractor to the subcontractor shall not exceed the percentage of retainage on payments made by NCORR to Contractor. Any percentage of retainage on payments made by Contractor to the subcontractor that exceeds the percentage of retainage on payments made by NCORR to Contractor shall be subject to interest to be paid by Contractor to the subcontractor at the rate of one percent (1%) per month or fraction thereof.
- d. Nothing in this section shall prevent Contractor, at the time of application and certification to NCORR, from withholding application and certification to NCORR 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 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 NCORR.

#### **ARTICLE 10 - CHANGES IN THE WORK**

- a. NCORR may make changes to the work covered by the contract. These changes will not invalidate any portion of the contract and will not relieve or release Contractor from any guarantee given by it 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 Contractor except upon receipt of an approved change order or written field order from NCORR 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, electronically, or hand delivered, may be used where the change involved impacts the critical path of the work. A formal change order shall be issued as expeditiously as possible.

In the event of an emergency endangering life or property, Contractor may be directed to proceed on a time and materials basis, whereupon Contractor shall proceed and keep accurately on such form as specified by NCORR, a correct account 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, Contract shall be based on the final Bid Pricing Book except for in unusual circumstances.
- d. Should below grade concealed conditions be encountered in the performance of the work, 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. All change orders shall be supported by a unit cost breakdown showing method of arriving at net cost as defined above.
- e. In all change orders, Contractor will provide such proposal and supporting data in suitable written format. NCORR shall verify correctness. Delay in the processing of the change order due to lack of proper submittal by Contractor of all required supporting data shall not constitute grounds for a time extension or basis of a claim. Within fourteen (14) days after receipt of Contractor's accepted proposal, including all supporting documentation required by NCORR, NCORR shall prepare the change order and forward to Contractor for his signature or otherwise respond, in writing, to Contractor's proposal. Within seven (7) days after receipt of the change order executed by Contractor, NCORR's representative shall certify the change order by his or her signature, and forward the change order and all supporting data to NCORR for its review of CDBG-DR, HRP and/or grant eligibility compliance and, if compliant,

NCORR will sign the change order and the revised scope of work may proceed. If the change order is denied, then Contractor shall not proceed with the work. In case of emergency or extenuating circumstances, approval of changes may be obtained verbally by telephone or via field orders approved by all parties, and then shall be substantiated in writing as outlined under normal procedure.

- f. A change order, when issued, shall include 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.
- g. Contractor understands and acknowledges that any and all change orders made subsequent to this Grant Agreement shall be incorporated herein by reference into this original Grant Agreement. Subsequent Change Orders shall then represent the entire Grant Agreement between the parties for the new construction of their damaged home under the Program.

#### **ARTICLE 11 – NCORR PERIOD OF PERFORMANCE STANDARD**

To ensure homeowners are not out of their homes longer than necessary, NCORR has established standards for timely completion of contracted work. Completion standards begin the day NCORR issues the vendor a Notice to Proceed (NTP) and ends when home passes final inspection and the homeowner accepts key turnover. The State will assess liquidated damages for each day that exceeds required timeframes from NTP to construction passing final inspection and homeowner accepting keys. The State assesses liquidated damages of **two hundred fifty dollars (\$250) a day for each day** that exceeds approved contractual timeframe from NTP to construction passing final inspection and homeowner accepting keys. The timeframe from NTP to homeowner accepting keys is colloquially known as the Period of Performance and includes the initial period with the original scope plus any NCORR-approved time extensions. Liquidated damages are assessed for any days beyond that Period of Performance. NCORR reserves the right to issue an NTP, in the absence of a Contractor's request, at a reasonable time during the construction phase to ensure timely completion of contracted work.

#### **ARTICLE 12 - TIME OF COMPLETION, DELAYS, EXTENSION OF TIME**

- a. Contractor shall commence work to be performed under this agreement on a date to be specified in a written Notice to Proceed from NCORR and shall fully complete all work hereunder within the time of completion stated in the Contract. Time is of the essence and Contractor acknowledges NCORR will likely suffer financial damage for failure to complete the work within the time of completion. For each day in excess of the above number of days, the sum of \$250.00 per day shall be deducted from Contractor's next draw request as liquidated damages reasonably estimated in advance to cover the losses incurred by NCORR by reason of failure of said Contractor to complete the work within the time specified, such time being in the essence of this contract and a material consideration thereof. If Contractor disputes the calculation of liquidated damages, then NCORR may recover actual damages.
- b. If Contractor is delayed at any time in the progress of his work solely by: any act or negligence of Owner or NCORR; 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 Contractor's control; or by any other causes which NCORR determine may justify the delay, then the contract time may be extended by change order only for the time which NCORR 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 purposes of determining extent of delay attributable to unusual weather phenomena, a determination shall be made by comparing the weather for the contract period involved with the average of the preceding five (5) year climatic range during the same time interval based on the National Oceanic and Atmospheric Administration National Weather Service statistics for the locality where work is performed and on daily weather logs kept on the job site by Contractor reflecting the effect of the weather on progress of the work and initialed by the NCORR's representative. No weather delays shall be considered after the building is dried-in unless work claimed to be delayed is on the critical path of the baseline schedule or approved updated schedule. Time extensions for weather delays, acts of God, labor disputes, fire, delays in transportation, unavoidable casualties or other delays which are beyond the control of NCORR do not entitle Contractor to compensable damages for delays. Any Contractor claim for compensable damages for delays is limited to delays caused solely by Owner or its agents. Contractor caused delays shall be accounted for before Owner or NCORR caused delays in the case of concurrent delays.

- c. Requests for extensions of time shall be made in writing to NCORR, with copies provided to NCORR, within fifteen (15) days following cause of delay. The request must contain a brief description of: the event or situation that caused the delay; how the event and situation impacted critical work needed to complete the Project on time as such work



is reflected in the schedule or reasonably inferred from the progress of construction; a statement of Contractor's inability to perform other work to mitigate the impact of the event or situation causing delay; a statement that Contractor (including employees, subcontractors, or suppliers) were not the cause of the event or situation; and such other additional work and costs incurred by Contractor resulting from the event or situation delaying Contractor's work. **Contractor understands that the failure to provide a timely request with the requested details and cost information shall result in rejection of the request absent a reasonable and substantiated explanation for the lack of timeliness which was caused by events, situations or persons outside Contractor's control. Contractor further understands that the payments made under this Contract are from a federal grant administered by a State agency and, as a result, Contractor understands that any requests for time extensions are subject to the State and federal False Claims Acts and auditing requirements.**

- d. If a performance or payment bond has been provided by Contractor for this Project, then Contractor shall notify its surety in writing of any extension of time that is granted by NCORR.

#### **ARTICLE 13 – APPLICATIONS FOR PAYMENT**

- a. Contractor shall submit to NCORR a request for payment for work done on a schedule agreed upon by Contractor and NCORR. The request shall be in the form agreed upon between Contractor and NCORR, 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 value of contract including change orders.
  2. Value of work completed to date.
  3. Less five percent (5%) retainage.
  4. Less previous payments.
  5. Current amount due.
- b. Contractor, upon request of NCORR, shall substantiate the request with invoices of vouchers or payrolls or other evidence including compliance with federal prevailing wage laws.
- c. Prior to submitting the first request, Contractor shall prepare for NCORR a schedule of values (SOV) showing a breakdown of the contract price into values of the various parts of the work, so arranged as to facilitate payments to Contractor and subcontractors. Contractor shall list the value of each subcontractor and supplier, identifying each minority business subcontractor and supplier.
- d. NCORR will withhold retainage up to the statutory amount of five percent (5%) to ensure a prequalified contractor's completion of the project and/or to resolve any disputes with NCORR or subcontractors.

#### **ARTICLE 14 - CERTIFICATES OF PAYMENT AND FINAL PAYMENT**

- a. Within five (5) days from receipt of request for payment from Contractor (or other date set by Contractor and NCORR), Contractor shall issue and forward to NCORR a certificate for payment. This certificate shall indicate the amount requested by Contractor. If the certificate is not approved by NCORR, NCORR shall state in writing to Contractor and NCORR his reasons for withholding payment.
- b. No certificate issued or payment made shall constitute an acceptance of the work or any part thereof until issuance of a certificate of occupancy issued by AHJ and NCORR closeout the contract (warranties and guarantees shall remain in effect after contract closeout). The making and acceptance of final payment shall constitute a waiver of all claims by Contractor against Owner or NCORR except:
  1. Claims arising from unsettled liens or claims against Contractor.
  2. Faulty work or materials appearing after final payment.
  3. Failure of Contractor to perform the work in accordance with drawings and specifications, such failure appearing after payment.
  4. As conditioned in any payment bond.
- c. Contractor shall forward to NCORR the final application for payment along with the following documents:

1. List of minority business subcontractors and material suppliers showing breakdown of contract amounts and total actual payments to subs and material suppliers.
2. Affidavit of Release of Liens.
3. Affidavit of Contractor of payment to material suppliers and subcontractors.
4. Consent of Surety to Final Payment.
5. Certificates of state agencies required by state law.
6. If applicable, Asbestos Manifest from a permitted disposal facility.
7. Warranty certification by homeowner.
8. Homeowner Acceptance of Work.

#### **ARTICLE 15 - PAYMENTS WITHHELD**

- a. NCORR 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 and/or NCORR.
  3. To provide for sufficient contract balance to cover liquidated damages that will be assessed.
  4. Payment documentation has not been submitted by the contractor or is unacceptable.
  5. Non-compliance with contractual requirements.
- b. When grounds for withholding payments have been removed, payment will be released.

#### **ARTICLE 16 - MINIMUM INSURANCE REQUIREMENTS**

COVERAGES - During the term of the Contract, Contractor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. At a minimum, Contractor shall provide and maintain contractual coverage and limits and obtain the required performance bond. In addition to requirements found in the North Carolina General Contract Terms and Conditions, the following apply:

- a. Deductible-Any deductible, if applicable to loss covered by insurance provided, is to be borne by Contractor.

REQUIREMENTS - Providing and maintaining adequate insurance coverage is a material obligation of Contractor and is of the essence of this Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. Contractor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Contract. The limits of coverage under each insurance policy maintained by Contractor shall not be interpreted as limiting Contractor's liability and obligations under the Contract.

After NCORR's assignment of the Contract to Contractor and prior to performance of the contract, Contractor shall provide proof of the foregoing insurance coverages by providing NCORR with a certificate of insurance. Contractor shall provide a copy of the certificate of insurance upon request of Owner or Owner's attorney. If any personal injury or property damage or claim of such injury or damage should occur during construction of the Project, Contractor shall provide upon request of NCORR, subcontractor, any employee of an entity inspecting the property or providing architectural, engineering and/or land surveying services (including but not limited to State employees, employees of any authority having jurisdiction), Owner, and/or any attorney representing Owner a complete copy of any insurance policy that may provide coverage for the injury, damages and/or claim.

NOTE: The State Tort Claims Act, N.C. Gen. Stat. §§ 143-291 et seq., may apply to any incident involving any State employees who may be at the Project site during construction for purposes of performing CDBG-DR grant monitoring/compliance work and/or

inspection of construction if he/she allegedly caused property damage or personal injury. However, the State of North Carolina and the U.S. Department of Housing and Urban Development are not liable for any personal injury, property damage, any other tort claim, or breach of this Contract by virtue of funding any portion of the construction via the CDBG-DR award to Owner.

#### ARTICLE 17 - PAYMENT & PERFORMANCE BONDS

- a. NCORR will require Contractor to furnish a payment bond executed by a surety company authorized to do business in North Carolina. The bond shall be in the full contract amount. The bond shall be executed in the form as required by NCORR. Payments bonds will be required for major new construction projects.
- b. All bonds shall be countersigned by an authorized agent of the bonding company who is licensed to do business in North Carolina.
- c. **Performance Bond** – NCORR will require Contractor to furnish a performance bond executed by a surety company authorized to do business in North Carolina. The performance bond shall be in the full contract amount. Contractor shall submit a sample performance bond and sample power of attorney to NCORR for review and approval.

#### ARTICLE 18 - CONTRACTOR'S AFFIDAVIT

The final payment of retained amount due Contractor on account of the contract shall not become due until Contractor has furnished to NCORR 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 Contractor in connection with this contract. In the event that Contractor cannot obtain similar affidavits from subcontractors to protect Contractor and Owner from possible liens or claims against the subcontractor, Contractor shall state in his affidavit that no claims or liens exist against any subcontractor to the best of Contractor's knowledge, and if any appear afterward, Contractor shall hold NCORR and Owner harmless.

#### ARTICLE 19 - USE OF PREMISES

- a. Contractor shall confine its equipment, the storage of materials and the operations of its workmen to limits indicated by law, ordinances, permits or directions of AHJ and NCORR and shall not exceed those established limits in his operations.
- b. Contractor shall not load or permit any part of the structure to be loaded with a weight that will endanger its safety.
- c. Contractor shall enforce NCORR's instructions regarding signs, advertisements, fires 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 20 - CUTTING, PATCHING AND DIGGING

- a. 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 subcontractors shown upon or reasonably implied by the drawings and specifications for the completed structure, as the designer or NCORR may direct.
- b. Any cost brought about by defective or ill-timed work shall be borne by the party responsible therefore.
- c. Contractor should coordinate the work of the subcontractors to avoid unnecessary cutting, fitting or patching so that Contractor avoids damaging the work of its subcontractors, and subcontractors avoid damaging the work of Contractor and/or other subcontractors.

#### ARTICLE 21 - CLEANING UP

- a. Contractor shall keep the building and 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 NCORR. Contractor shall provide an onsite refuse container(s) for the use of all contractors. Contractor shall remove rubbish and debris from the building on a daily basis. Contractor shall broom clean the building as required to minimize dust and dirt accumulation.
- b. Contractor shall provide and maintain suitable all-weather access to the building.

- c. Before final inspection and acceptance of the building, Contractor shall clean the work area, including glass, hardware, fixtures, masonry, tile and marble (using no acid), clean and wax all floors as specified, and completely prepare the building for use by Owner, with no cleaning required by Owner.

#### **ARTICLE 22 - GUARANTEE**

- a. Contractor shall provide a third-party warranty that unconditionally guarantees 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 Owner. Contractor shall provide a two (2) year third party warranty for all electrical, plumbing, and mechanical systems performed under the Contract. The Owner is an intended third-party beneficiary of this contract; the Owner shall hold the warranties. All third-party warranties shall be serviced by a reputable home warranty company. Third party warranty contract and contact number shall be provided to the homeowner and NCORR at the completion of the construction project.
- b. Where items of 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. Contractor shall replace such defective equipment or materials, without cost to Owner, within the manufacturer's warranty period.
- c. Additionally, Owner may bring an action for latent defects caused by the negligence of Contractor which are hidden or not readily apparent to Owner or NCORR at the time of final acceptance, whichever occurred first, in accordance with applicable law.
- d. Guarantees for roof, equipment, materials, and supplies shall be stipulated in the specification's sections governing such roof, equipment, materials, or supplies. Contractor shall also provide all instruction manuals stipulated in the specification sections and/or that were furnished to Contractor from the manufacturer (e.g., hot water heaters, HVAC units, electrical equipment or fixtures, plumbing equipment and fixtures, appliances, etc.).

#### **ARTICLE 23 – WOMEN AND MINORITY BUSINESS PARTICIPATION**

2 C.F.R. § 200.321 requires that all necessary affirmative steps are taken to assure that minority and women's businesses are used when possible, and N.C. Gen. Stat. 143-128.2 establishes a ten percent (10%) goal for participation by minority and women owned businesses in total value of work for the HRP. The document, *Guidelines for Recruitment and Selection of Minority Businesses for Participation in State Construction Contracts*, including Affidavits, is found on the N.C. State Construction Office website.

#### **ARTICLE 24 – CONTRACTOR EVALUATION**

Contractor's overall work performance on each assigned or awarded HRP project/contract shall be fairly evaluated in accordance with the policy and procedures for determining continued prequalification for future work in the HRP. Contractor Evaluation Procedures are hereby incorporated and made a part of Contractor's approval of its application for prequalification. NCORR will evaluate Contractor's performance.

#### **ARTICLE 25 – GIFTS**

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

During the construction of the Project, Contractor and subcontractors are prohibited from making gifts to any employees of NCORR and/or any other State employee from any other State Agency that may have any involvement, influence, responsibilities, oversight, management and/or duties that pertain to and/or relate to the contract administration, financial administration and/or disposition of claims arising from and/or relating to the Contract and/or Project. In addition, Contractors are prohibited from making gifts to the Owner at any time. Contractors in violation of this provision of the agreement will be removed from participation in the program and reported to the HUD Office of Inspector General for investigation.

**ARTICLE 26 – AUDITING-ACCESS TO PERSONS AND RECORDS**

In accordance with 2 C.F.R. § 200.501 and N.C. Gen. Stat. §147-64.7, the Office of the Inspector General (OIG), State Auditor, NCORR or other applicable state agency internal auditors, or HUD shall have access to NCORR's and Contractor's officers, employees, agents and/or other persons in control of and/or responsible for Contractor's records that relate to this Contract for purposes of conducting audits under the referenced statute. HUD and NCORR's internal auditors shall also have the right to access and copy NCORR's and Contractor's records relating to the Contract and Project during the term of the Contract and within five years following the completion of the Project/close-out of the Contract to verify accounts, accuracy, information, calculations and/or data affecting and/or relating to NCORR's and Contractor's requests for payment, requests for change orders, change orders, claims for extra work, requests for time extensions and related claims for delay/extended general conditions costs, claims for lost productivity, claims for loss efficiency, claims for idle equipment or labor, claims for price/cost escalation, pass-through claims of subcontractors and/or suppliers, and/or any other type of claim for payment or damages from NCORR and/or Owner.

**ARTICLE 27 – NORTH CAROLINA FALSE CLAIMS ACT**

The False Claims Act (31 U.S. Code § 3729) and the North Carolina False Claims Act ("NCFCA"), N.C Gen. Stat. § 1-605 through 1-618, apply to this Contract. Contractor should familiarize itself with the False Claims Act and the NCFCA and should seek the assistance of an attorney if it has any questions regarding the NCFCA and its applicability to any requests, demands and/or claims for payment it submits to the State through the contracting state agency, institution, university or community college.

The purpose of the NCFCA "is to deter persons from knowingly causing or assisting in causing the State to pay claims that are false or fraudulent and to provide remedies in the form of treble damages and civil penalties when money is obtained from the State by reason of a false or fraudulent claim." (Section 1-605(b).) Contractor's liability under the NCFCA may arise from, but is not limited to: requests for payment, invoices, billing, claims for extra work, requests for change orders, requests for time extensions, claims for delay damages/extended general conditions costs, claims for loss productivity, claims for loss efficiencies, claims for idle equipment or labor, claims for price/cost escalation, pass-through claims of subcontractors and/or suppliers, documentation used to support any of the foregoing requests or claims, and/or any other request for payment from the State through the contracting state agency, institution, university or community college.