

Attachment C

MULTI-JURISDICTIONAL DISASTER DEBRIS PLANNING AND SUPPORT MANAGEMENT AGREEMENT FOR PRIMARY PROVIDER

NORTH CAROLINA

BRUNSWICK COUNTY

SERVICES AGREEMENT
[with FEMA clauses]

THIS SERVICES AGREEMENT (hereinafter referred to as the “Agreement”) is made and entered into by and among Brunswick County, a body politic and corporate of the State of North Carolina, (hereinafter referred to as “County” or an “Activating Entity”) and the municipalities of Bolivia, Carolina Shores, Caswell Beach, Holden Beach, Navassa, Northwest, Oak Island, Ocean Isle Beach, Sandy Creek, Shallotte, St. James, Sunset Beach, and Varnamtown (each hereinafter referred to individually as an “Activating Entity”), and Tetra Tech, Inc., a Delaware corporation, (hereinafter referred to as “Provider”), party of the second part.

WITNESSETH:

1. SERVICES; FEES

The services to be performed under this Agreement (hereinafter referred to collectively as the “Services”) are set forth in the Request for Proposals entitled “Multi-Jurisdictional Disaster Debris Planning and Support Management,” as published by Brunswick County on July 23, 2024, and any addenda thereto, and on an excerpt from Provider’s submitted Proposal attached hereto as Exhibit “A,” all of which are incorporated herein by reference. The agreed upon fees for said Services are also set forth on Exhibit “A.” A price modification shall be allowed should the Agreement be activated after the initial term, as defined below. Any price modification shall be based on the change in CPI-U for All Items in March of 2025 and each subsequent calendar year.

Provider shall notify the Activating Entity within twenty-four (24) hours of an event that it will be able to provide Services pursuant to this Agreement. Failure to notify the Activating Entity within twenty-four (24) hours may result in the activation of the secondary agreement. The Activating Entity shall provide a Notice to Proceed to Provider when the Agreement is to be activated; however, assessments and debris quantity estimates will be required prior to activation of the Agreement. Provider is expected to be available to the Activating Entity prior to an event and to assist in obtaining information needed to determine if activation of the Agreement is necessary.

Any exhibits or attachments referenced herein are hereby incorporated by reference and made a part of this Agreement. Any conflict between the language in an exhibit or attachment and the main body of this Agreement shall be resolved in favor of the main body of this Agreement.

2. TERM OF AGREEMENT; TERMINATION

- (1) *Term.* The initial term of this Agreement begins on October 7, 2024 (the "Effective Date") and continues in effect for one (1) year until October 6, 2025, unless sooner terminated as provided herein (the "Initial Term"). The Initial Term shall be followed by four (4) successive options to renew for one (1) year each (each a "Renewal Term"). The Initial Term and any Renewal Term are referred to collectively herein as the "Term." Each Renewal Term is to be exercised automatically unless either party gives notice of its intent not to renew at least ninety (90) days prior to the expiration of the then-current Term. **No work may commence under this Agreement until the Agreement has been fully executed by all parties, and the Agreement is activated by an Activating Entity by the issuance of a Notice to Proceed.**
- (2) *Termination.* The Activating Entity may terminate this Agreement at any time without cause by giving sixty (60) days' written notice to Provider. As soon as practicable after receipt of a written notice of termination without cause, Provider shall submit a statement to the Activating Entity showing in detail the Services performed under this Agreement through the effective date of termination. Activating Entity may terminate this Agreement for cause by giving written notice of a breach of the Agreement. Provider shall have fifteen (15) days to cure the breach following receipt of the notification. Failure to cure the breach within the fifteen (15) days shall result in the immediate termination of the Agreement. Notwithstanding the foregoing, Activating Entity may terminate this Agreement immediately and without notice to Provider if Provider becomes insolvent, makes or has made an assignment for the benefit of creditors, is the subject of proceedings in voluntary or involuntary bankruptcy instituted on behalf of or against Provider, or has a receiver or trustee appointed for substantially all of its property, or if Provider allows any final judgment to stand against it unsatisfied for a period of forty-eight (48) hours.

3. NONAPPROPRIATION

If the Board of County Commissioners of County or the governing body of any Activating Entity does not appropriate the funding needed by County and/or the respective Activating Entity to make payments under this Agreement for a given fiscal year, County and/or the respective Activating Entity will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, County and/or the respective Activating Entity will promptly notify Provider of the non-appropriation and this Agreement will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by County and/or the respective Activating Entity which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.

4. COMPENSATION

The Activating Entity agrees to pay fees as specified in Exhibit "A" or as set out above for the Services satisfactorily performed in accordance with this Agreement. Unless otherwise

specified, Provider shall submit monthly invoices to Activating Entity and include detail of all Services delivered or performed under the terms of this Agreement. the Activating Entity shall pay all undisputed and properly completed invoices within thirty (30) days of receipt. Notwithstanding the foregoing, the Activating Entity will not pay late fees on any charges under this Agreement. If the Activating Entity disputes any portion of the charges on any invoice received from Provider, the Activating Entity shall inform Provider in writing of the disputed charges. Once the dispute has been resolved, Provider shall re-invoice the Activating Entity for the previously disputed charges, and, per any resolution between the Activating Entity and Provider, the Activating Entity shall pay those charges in full at that time. No advance payment shall be made for the Services to be performed by Provider under this Agreement.

5. INDEPENDENT CONTRACTOR

Both the Activating Entity and Provider agree that Provider shall act as an independent contractor and shall not represent itself as an agent or employee of the Activating Entity for any purpose in the performance of its duties under this Agreement. Provider represents that it has or will secure, at its own expense, all personnel required in performing the Services under this Agreement. Accordingly, Provider shall be responsible for payment of all federal, state and local taxes arising out of its activities in accordance with this Agreement, including, without limitation, federal and state income tax, social security tax, unemployment insurance taxes and any other taxes or business license fees as required. Provider shall not be entitled to participate in any plans, arrangements or distributions by the Activating Entity pertaining to or in connection with any pension, stock, bonus, profit sharing or other benefit extended to the Activating Entity employees.

In the event the Internal Revenue Service should determine that Provider is, according to Internal Revenue Service guidelines, an employee subject to withholding and social security contributions, then Provider hereby acknowledges that all payments hereunder are gross payments, and the Provider is responsible for all income taxes and social security payments thereon.

6. PROVIDER REPRESENTATIONS

- (1) Provider is a duly organized entity or corporation qualified to do business and in good standing under the laws of the State of North Carolina;
- (2) Provider has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
- (3) No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for Provider to enter into and perform its obligations under this Agreement;
- (4) Provider shall not violate any agreement with any third party by entering into or performing the Services under this Agreement;

- (5) Provider will perform all Services in conformity with the specifications and requirements of this Agreement;
- (6) The Services provided by Provider under this Agreement will not violate, infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party, or any other third-party rights (including without limitation non-compete agreements);
- (7) Provider shall exercise reasonable care and diligence when performing the Services hereunder and will ensure that it adheres to the highest generally accepted standards in the industry when performing said Services;
- (8) Provider acknowledges that if any specific licenses, certifications or related credentials are required in its performance of the Services, it will ensure that such credentials remain current and active and not in a state of suspension or revocation; and
- (9) Provider shall ensure that whenever its employees or agents are on the Activating Entity's property, they will strictly abide by all instructions and directions issued by the Activating Entity with respect to rules, regulations, policies and security procedures applicable to work on the Activating Entity's premises. Such rules, regulations, policies and security procedures shall include, but not be limited to: (i) not possessing any controlled substances; (ii) smoking only in designated smoking areas, if any; and (iii) not possessing weapons, except for weapons possessed by law enforcement officials.

7. COMPLIANCE WITH FEDERAL LAWS, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgment that FEMA financial assistance will be used to fund all or a portion of the Agreement. Provider will comply with all applicable federal laws, regulations, executive orders, FEMA policies, procedures, and directives.

8. DAMAGE TO EQUIPMENT, FACILITIES, PROPERTY OR DATA

Provider shall be solely responsible for any damage to or loss of the Activating Entity's equipment, facilities, property and/or data arising out of the negligent or willful act or omission of Provider or its subcontractors. In the event that Provider causes damage to the Activating Entity's equipment or facilities, Provider shall, at its own expense, promptly repair or replace such damaged items to restore them to the same level of functionality that they possessed prior to such damage.

9. NON-ENDORSEMENT AND PUBLICITY

The Activating Entity is not endorsing Provider or its Services, and Provider is not permitted to reference this Agreement or the Activating Entity in any manner without the prior written consent of the Activating Entity. Notwithstanding the foregoing, the parties agree that

Provider may list the Activating Entity as a reference in response to requests for proposals and may identify the Activating Entity as a customer in presentations to potential customers.

10. NON-EXCLUSIVITY

Provider acknowledges that the Activating Entity is not obligated to contract solely with Provider for the Services covered under this Agreement.

11. DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL

Provider hereby certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. § 147-86.80 *et seq.*

12. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (AS AMENDED)

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

13. PROCUREMENT OF RECOVERED MATERIALS

- (1) In the performance of this Agreement, Provider shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired –
 - i. Competitively within a timeframe providing for compliance with the Agreement performance schedule;
 - ii. Meeting Agreement performance requirements; or
 - iii. At a reasonable price.
- (2) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (3) Provider also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

14. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES

(1) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause –

(2) *Prohibitions.*

- i. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after August 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
- ii. Unless an exception in paragraph (3) of this clause applies, Provider and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
 - a. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - b. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - c. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
 - d. Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(3) *Exceptions.*

- i. This clause does not prohibit contractors from providing –
 - a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

- b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- ii. By necessary implication and regulation, the prohibitions also do not apply to:
 - a. Covered telecommunications equipment or services that:
 - 1. *Are not used* as a substantial or essential component of any system;
and
 - 2. *Are not used* as critical technology of any system.
 - b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(4) Reporting requirement.

- i. In the event Provider identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or Provider is notified of such by a subcontractor at any tier or by any other source, Provider shall report the information in paragraph (4)ii. of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
- ii. Provider shall report the following information pursuant to paragraph (4)i. of this clause:
 - a. Within one (1) business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
 - b. Within ten (10) business days of submitting the information in paragraph (4)ii.a. of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, Provider shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(5) *Subcontracts*. Provider shall insert the substance of this clause, including this paragraph (5), in all subcontracts and other contractual instruments.

15. DOMESTIC PREFERENCE FOR PROCUREMENTS

As appropriate, and to the extent consistent with law, Provider should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

16. ACCESS TO RECORDS

The following access to records requirements apply to this Agreement:

- (1) Provider agrees to provide the Activating Entity, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of Provider which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) Provider agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) Provider agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the Agreement.
- (4) In compliance with Section 1225 of the Disaster Recovery Act of 2018, the Activating Entity and Provider acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

17. DHS SEAL, LOGO, AND FLAGS

Provider shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. Provider shall include this provision in any subcontracts.

18. SUSPENSION AND DEBARMENT

- (1) This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such Provider is required to verify that none of Provider's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) Provider must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by the Activating Entity. If it is later determined that Provider did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to FEMA and the Activating Entity, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

19. INDEMNIFICATION

Provider shall defend, indemnify and hold harmless the Activating Entity, its officers, officials, agents and employees from and against all actions, liability, claims, suits, damages, costs or expenses of any kind which may be brought or made against the Activating Entity or which the Activating Entity must pay and incur arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind in connection with or arising out of this Agreement and/or the performance hereof that are due in part or in the entirety of Provider, its employees or agents. Provider further agrees to investigate, handle, respond to, defend and dispose of same at its sole cost and expense. Provider shall be fully responsible to the Activating Entity for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by it. This Section shall survive any expiration or termination of this Agreement.

20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

Provider acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Provider's actions pertaining to this Agreement.

21. NO OBLIGATION BY FEDERAL GOVERNMENT

The federal government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-federal entity, Provider, or any other party pertaining to any matter resulting from the Agreement.

22. MINORITY BUSINESS ENTERPRISES

If subcontracts are to be let, Provider is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

23. INSURANCE

Provider shall procure and maintain in full force and effect at all times and at its sole cost and expense Commercial General Liability, Commercial Automobile Liability, Professional Liability and Workers' Compensation insurance, if applicable, and any additional insurance as may be required by the Activating Entity with limits acceptable to the Activating Entity. All insurance policies (with the exception of Workers' Compensation, if applicable, and Professional Liability) shall be endorsed, specifically or generally, to include the Activating Entity as an additional insured and as a certificate holder. Provider shall furnish a Certificate of Insurance from a licensed insurance agent in North Carolina with a rating of A-VII or better by A.M. Best verifying the existence of any insurance coverage required by the Activating Entity. The Certificate will provide for thirty (30) days' advance notice in the event of termination or cancellation of coverage. Provider shall have no right of recovery or subrogation against the Activating Entity (including its officers, agents and employees), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the aforementioned insurance.

24. WORKERS' COMPENSATION

To the extent required by law, Provider shall comply with the North Carolina Workers' Compensation Act and shall provide for the payment of workers' compensation to its employees in the manner and to the extent required by such Act. In the event Provider is excluded from the requirements of such Act and does not voluntarily carry workers' compensation coverage, Provider shall carry or cause its employees to carry adequate medical/accident insurance to cover any injuries sustained by its employees or agents while fulfilling Provider's obligations under this Agreement.

Provider agrees to furnish the Activating Entity proof of compliance with said Act or adequate medical/ accident insurance coverage upon request.

25. REMEDIES

- (1) *Right to Cover.* If Provider fails to meet any completion date or resolution time set forth, due to no fault of the Activating Entity, the Activating Entity may take any of the following actions with or without terminating this Agreement, and in addition to, and without limiting, any other remedies it may have:
 - i. Employ such means as it may deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and Provider is again able to resume performance under this Agreement; and
 - ii. Deduct any and all expenses incurred by the Activating Entity in obtaining or performing the Services from any money then due or to become due Provider and, should the Activating Entity's cost of obtaining or performing the Services exceed the amount due Provider, collect the amount due from Provider.
- (2) *Right to Withhold Payment.* The Activating Entity reserves the right to withhold any portion, or all, of a scheduled payment if Provider fails to perform under this Agreement until such breach has been fully cured.
- (3) *Setoff.* Each party shall be entitled to set off and deduct from any amounts owed to the other party pursuant to this Agreement all damages and expenses incurred or reasonably anticipated as a result of the other party's breach of this Agreement.
- (4) *Other Remedies.* Upon breach of this Agreement, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently in addition to any other available remedy.
- (5) *No Suspension.* In the event that the Activating Entity disputes in good faith an allegation of breach by Provider, notwithstanding anything to the contrary in this Agreement, Provider agrees that it will not terminate this Agreement or suspend or limit any Services or warranties, unless: (i) the parties agree in writing; or (ii) an order of a court of competent jurisdiction determines otherwise; provided, however, this dispute period shall be limited to ninety (90) days.

26. TAXES

Provider shall be responsible for paying all taxes, fees, assessments and premiums of any kind payable on its employees and operations. Provider shall substantiate, on demand by the Activating Entity, that all taxes and other charges are being properly paid.

27. HEALTH AND SAFETY

Provider shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with performing the Services. Provider shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees in connection with performing the Services and other persons who may be affected thereby.

28. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Agreement, Provider agrees as follows:

- (1) Provider will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Provider 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. Provider agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) Provider will, in all solicitations or advertisements for employees placed by or on behalf of Provider, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) Provider 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 Provider's legal duty to furnish information.
- (4) Provider 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 Provider's

commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (5) Provider 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.
- (6) Provider 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.
- (7) In the event of Provider's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and Provider 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.
- (8) Provider will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) 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. Provider 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 Provider becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, Provider may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will 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 applicant 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.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant

orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor 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 contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant 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 this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

29. COMPLIANCE WITH THE COPELAND "ANTI-KICKBACK" ACT

- (1) *Provider.* If applicable, Provider shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this Agreement.
- (2) *Subcontracts.* If applicable, Provider or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (3) *Breach.* A breach of the Agreement clauses above may be grounds for termination of the Agreement, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

30. COMPLIANCE WITH THE DAVIS-BACON ACT (AS AMENDED)

- (1) If applicable, all transactions regarding this Agreement shall be done in compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) and the requirements of 29 C.F.R. Part 5, as may be applicable. Provider shall comply with 40 U.S.C. §§ 3141-3144 and 3146-3148 and the requirements of 29 C.F.R. Part 5, as applicable.

- (2) Providers are required to 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.
- (3) Additionally, Providers are required to pay wages not less than once a week.

31. CLEAN AIR ACT

- (1) Provider agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) Provider agrees to report each violation to the Activating Entity and understands and agrees that the Activating Entity will, in turn, report each violation as required to assure notification to the Activating Entity, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) Provider agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

32. FEDERAL WATER POLLUTION CONTROL ACT

- (1) Provider agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) Provider agrees to report each violation to the Activating Entity and understands and agrees that the Activating Entity will, in turn, report each violation as required to assure notification to the Activating Entity, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) Provider agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

33. COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Compliance with the Contract Work Hours and Safety Standards Act:

- (1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

- (2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (1) of this section Provider and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Provider and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$32 or the current amount statutorily required by 29 C.F.R. § 5.5(b)(2) as may be amended from time to time, for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) *Withholding for unpaid wages and liquidated damages.* The Activating Entity shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Provider or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) *Subcontracts.* Provider or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

Further Compliance with the Contract Work Hours and Safety Standards Act, as applicable:

- (1) Provider or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
- (2) Records to be maintained under this provision shall be made available by Provider or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency,

and the Department of Labor, and Provider or subcontractor will permit such representatives to interview employees during working hours on the job.

34. COMPLIANCE WITH E-VERIFY PROGRAM

Pursuant to N.C.G.S. § 143-133.3, Provider understands that it is a requirement of this Agreement that Provider and its subcontractors must comply with the provisions of Article 2 of Chapter 64 of the North Carolina General Statutes. In doing so, Provider agrees that, unless it is exempt by law, it shall verify the work authorization of its employees utilizing the federal E-Verify program and standards as promulgated and operated by the United States Department of Homeland Security, and Provider shall require its subcontractors to do the same. Upon request, Provider agrees to provide the Activating Entity with an affidavit of compliance or exemption.

35. CONFIDENTIAL INFORMATION

For purposes of this Agreement, the party disclosing Confidential Information is the “Discloser,” and the party receiving Confidential Information is the “Recipient.” “Confidential Information” shall mean any nonpublic information concerning the parties’ respective businesses including, but not limited to, all tangible, intangible, visual, electronic, present or future information such as: (a) trade secrets; (b) financial information, including pricing; (c) technical information, including research, development, procedures, algorithms, data, designs and know-how; (d) business information, including operations, planning, marketing interests and products; and (e) the terms of any agreement between the parties and the discussions, negotiations and proposals related thereto. Confidential Information disclosed to the other party must be clearly identified. Written Confidential Information must be clearly marked in a conspicuous place with an appropriate legend identifying the information as “Confidential.” Confidential Information that is not written must be identified as confidential at the time of disclosure and confirmed in writing delivered to Recipient within fifteen (15) days of disclosure.

The restrictions regarding the use and disclosure of Confidential Information do not apply to information that is:

- (1) in the public domain through no fault of the Recipient;
- (2) within the legitimate possession of the Recipient, with no confidentiality obligations to a third party;
- (3) lawfully received from a third party having rights in the information without restriction, and without notice of any restriction against its further disclosure;
- (4) independently developed by the Recipient without breaching this Agreement or by parties who have not had, either directly or indirectly, access to or knowledge of the Confidential Information;
- (5) disclosed with the prior written consent of the Discloser; or

- (6) required to be disclosed by law, regulation or court or governmental order, specifically including requests pursuant to the Public Records Laws of North Carolina contained in Chapter 132 of the North Carolina General Statutes. In the event Recipient receives such a request, it shall notify Discloser and Discloser shall have the opportunity to defend against production of such records at Discloser's sole expense.

36. OWNERSHIP OF WORK PRODUCT

Should Provider's performance under this Agreement generate documents or other work product that are specific to the Services hereunder, such documents or work product shall become the property of the Activating Entity and may be used by the Activating Entity on other projects without additional compensation to Provider.

37. NO ASSIGNMENT WITHOUT CONSENT

Neither party shall assign this Agreement (or assign any right or delegate any obligation contained herein whether such assignment is of service, of payment or otherwise) without the prior written consent of the other party hereto. Any such assignment without the prior written consent of the other party hereto shall be void. An assignee shall acquire no rights, and the Activating Entity shall not recognize any assignment in violation of this provision.

38. GOVERNING LAW AND VENUE

This Agreement shall be governed by applicable federal law and by the laws of the State of North Carolina without regard for its choice of law provisions. All actions relating in any way to this Agreement shall be brought in the General Court of Justice of the State of North Carolina in Brunswick County or in the Federal District Court for the Eastern District of North Carolina, Wilmington division.

39. DISPUTE RESOLUTION

Should a dispute arise as to the terms of this Agreement, both parties agree that neither may initiate binding arbitration. The parties may agree to non-binding mediation of any dispute prior to the bringing of any suit or action.

40. GOVERNMENTAL IMMUNITY

The Activating Entity, to the extent applicable, does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

41. NON-WAIVER

Failure by the Activating Entity at any time to require the performance by Provider of any of the provisions of this Agreement shall in no way affect the Activating Entity's right hereunder

to enforce the same, nor shall any waiver by the Activating Entity of any breach be held to be a waiver of any succeeding breach or a waiver of this Section.

42. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties with respect to the subject matter herein. There are no other representations, understandings or agreements between the parties with respect to such subject matter. This Agreement supersedes all prior agreements, negotiations, representations and proposals, written or oral.

43. HEADINGS

The headings in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

44. SEVERABILITY

The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of this Agreement can be determined and effectuated. If a provision of this Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

45. AMENDMENTS

Amendments or changes to this Agreement, or additional Proposals or Statements of Work, shall not be valid unless in writing and signed by authorized agents of both Provider and the Activating Entity.

46. NOTICES

- (1) *Delivery of Notices.* Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by facsimile to the intended recipient at the address set forth below.
- (2) *Effective Date of Notices.* Any notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by facsimile or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier.

(3) *Notice Address.* Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment or waiver of any provision of this Agreement shall be sent to:

i. For the Activating Entity: To the address shown on the signature page attached hereto for the respective Activating Entity

ii. For the Provider: Tetra Tech, Inc.
2301 Lucien Way, Suite 120
Maitland, FL 32751

With a copy to: Tetra Tech, Inc.
c/o CT Corporation System, Registered Agent
160 Mine Lake Court, Suite 200
Raleigh, NC 27615

(4) *Activating Entity Notices.* In addition to the foregoing, any communications to an Activating Entity shall be sent to the respective Activating Entity at the address set forth on the applicable signature page attached hereto.

47. SIGNATURES

This Agreement, together with any amendments or modifications, may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be considered one and the same agreement. This Agreement may also be executed electronically. By signing electronically, the parties indicate their intent to comply with the Electronic Commerce in Government Act (N.C.G.S. § 66-58.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S. § 66-311 et seq.). Delivery of an executed counterpart of this Agreement by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

Brunswick County
P.O. Box 249
Bolivia, NC 28422

ATTEST:

BRUNSWICK COUNTY

Clerk to the Board /
Deputy Clerk to the Board

By: _____
Chairman, Board of Commissioners

[SEAL]

TETRA TECH, INC.

By: _____

Printed Name: _____

Title: _____

Date: _____

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

Aaron C. Smith, Director of Fiscal Operations
Brunswick County, North Carolina

APPROVED AS TO FORM

Bryan W. Batton, County Attorney /
Ryan S. King, Assistant County Attorney

Town of Bolivia
P.O. Box 93
Bolivia, NC 28422

Town of Bolivia

Date

Tetra Tech, Inc.

Date

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

Director of Fiscal Operations

Date

Town of Carolina Shores
200 Persimmon Road
Carolina Shores, NC 28467

Town of Carolina Shores

Date

Tetra Tech, Inc.

Date

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

Director of Fiscal Operations

Date

Town of Caswell Beach
1100 Caswell Beach Road
Caswell Beach, NC 28465

Town of Caswell Beach

Date

Tetra Tech, Inc.

Date

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

Director of Fiscal Operations

Date

Town of Holden Beach
110 Rothschild
Holden Beach, NC 28452

Town of Holden Beach

Date

Tetra Tech, Inc.

Date

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

Director of Fiscal Operations

Date

Town of Navassa
334 Main Street
Navassa, NC 28451

Town of Navassa

Date

Tetra Tech, Inc.

Date

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

Director of Fiscal Operations

Date

Town of Northwest
P.O. Box 1509
Leland, NC 28451

Town of Northwest

Date

Tetra Tech, Inc.

Date

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

Director of Fiscal Operations

Date

Town of Oak Island
4601 E. Oak Island Drive
Oak Island, NC 28465

Town of Oak Island

Date

Tetra Tech, Inc.

Date

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

Director of Fiscal Operations

Date

Town of Ocean Isle Beach
111 Causeway Drive
Ocean Isle Beach, NC 28469

Town of Ocean Isle Beach

Date

Tetra Tech, Inc.

Date

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

Director of Fiscal Operations

Date

Town of Sandy Creek
114 Sandy Creek Drive
Leland, NC 28451

Town of Sandy Creek

Date

Tetra Tech, Inc.

Date

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

Director of Fiscal Operations

Date

Town of Shallotte
P.O. Box 2287
Shallotte, NC 28459

Town of Shallotte

Date

Tetra Tech, Inc.

Date

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

Director of Fiscal Operations

Date

Town of St. James
4140A Southport-Supply Road
St. James, NC 28461

Town of St. James

Date

Tetra Tech, Inc.

Date

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

Director of Fiscal Operations

Date

Town of Sunset Beach
700 Sunset Boulevard North
Sunset Beach, NC 28468

Town of Sunset Beach

Date

Tetra Tech, Inc.

Date

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

Director of Fiscal Operations

Date

Town of Varmantown
100 Varmantown Road
Supply, NC 28462

Town of Varmantown

Date

Tetra Tech, Inc.

Date

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

Director of Fiscal Operations

Date

Exhibit "A"

FORM OF PROPOSAL

Note to contractors: All costs proposed are to be inclusive of labor, materials, equipment, incidentals, etc. necessary to fulfill the Scope of Work outlined in this RFP. Any price modification shall be based on the change in CPI-U for All Items in March of 2025 and each subsequent calendar year. ADMS pricing must be included in hourly rates.

COST PROPOSAL FORM

PERSONNEL	HOURLY RATES
Project Manager	\$70.00
Operations Manager	\$53.00
Scheduler/Expeditors*	--
Site or Area Supervisor	\$43.00
Tower Monitors	\$34.00
Field Monitors	\$34.00
Administrative Assistant/Data Entry*	--
FEMA Public Assistance Coordinator	\$95.00
Operations Coordinator	\$35.00
Any Additional Positions and Rates:	
<u>Data Manager</u>	\$55.00
<u>Senior Debris Management Planner</u>	\$135.00

*Due to advancements in Tetra Tech's proprietary ADMS technology, position will not be needed to complete debris monitoring operations for Brunswick County.

Attachment D

**MULTI-JURISDICTIONAL DISASTER DEBRIS PLANNING AND SUPPORT
MANAGEMENT AGREEMENT FOR SECONDARY PROVIDER**

NORTH CAROLINA

BRUNSWICK COUNTY

**SERVICES AGREEMENT
[with FEMA clauses]**

THIS SERVICES AGREEMENT (hereinafter referred to as the “Agreement”) is made and entered into by and among Brunswick County, a body politic and corporate of the State of North Carolina, (hereinafter referred to as “County” or an “Activating Entity”) and the municipalities of Bolivia, Carolina Shores, Caswell Beach, Holden Beach, Navassa, Northwest, Oak Island, Ocean Isle Beach, Sandy Creek, Shallotte, St. James, Sunset Beach, and Varnamtown (each hereinafter referred to individually as an “Activating Entity”), and Metric Consulting LLC, a Florida limited liability company, (hereinafter referred to as “Provider”), party of the second part.

WITNESSETH:

1. SERVICES; FEES

The services to be performed under this Agreement (hereinafter referred to collectively as the “Services”) are set forth in the Request for Proposals entitled “Multi-Jurisdictional Disaster Debris Planning and Support Management,” as published by Brunswick County on July 23, 2024, and any addenda thereto, and on an excerpt from Provider’s submitted Proposal attached hereto as Exhibit “A,” all of which are incorporated herein by reference. The agreed upon fees for said Services are also set forth on Exhibit “A.” A price modification shall be allowed should the Agreement be activated after the initial term, as defined below. Any price modification shall be based on the change in CPI-U for All Items in March of 2025 and each subsequent calendar year.

Provider shall notify the Activating Entity within twenty-four (24) hours of an event that it will be able to provide Services pursuant to this Agreement. Failure to notify the Activating Entity within twenty-four (24) hours may result in the activation of the secondary agreement. The Activating Entity shall provide a Notice to Proceed to Provider when the Agreement is to be activated; however, assessments and debris quantity estimates will be required prior to activation of the Agreement. Provider is expected to be available to the Activating Entity prior to an event and to assist in obtaining information needed to determine if activation of the Agreement is necessary.

Any exhibits or attachments referenced herein are hereby incorporated by reference and made a part of this Agreement. Any conflict between the language in an exhibit or attachment and the main body of this Agreement shall be resolved in favor of the main body of this Agreement.

2. TERM OF AGREEMENT; TERMINATION

- (1) *Term.* The initial term of this Agreement begins on October 7, 2024 (the “Effective Date”) and continues in effect for one (1) year until October 6, 2025, unless sooner terminated as provided herein (the “Initial Term”). The Initial Term shall be followed by four (4) successive options to renew for one (1) year each (each a “Renewal Term”). The Initial Term and any Renewal Term are referred to collectively herein as the “Term.” Each Renewal Term is to be exercised automatically unless either party gives notice of its intent not to renew at least ninety (90) days prior to the expiration of the then-current Term. **No work may commence under this Agreement until the Agreement has been fully executed by all parties, and the Agreement is activated by an Activating Entity by the issuance of a Notice to Proceed.**
- (2) *Termination.* The Activating Entity may terminate this Agreement at any time without cause by giving sixty (60) days’ written notice to Provider. As soon as practicable after receipt of a written notice of termination without cause, Provider shall submit a statement to the Activating Entity showing in detail the Services performed under this Agreement through the effective date of termination. Activating Entity may terminate this Agreement for cause by giving written notice of a breach of the Agreement. Provider shall have fifteen (15) days to cure the breach following receipt of the notification. Failure to cure the breach within the fifteen (15) days shall result in the immediate termination of the Agreement. Notwithstanding the foregoing, Activating Entity may terminate this Agreement immediately and without notice to Provider if Provider becomes insolvent, makes or has made an assignment for the benefit of creditors, is the subject of proceedings in voluntary or involuntary bankruptcy instituted on behalf of or against Provider, or has a receiver or trustee appointed for substantially all of its property, or if Provider allows any final judgment to stand against it unsatisfied for a period of forty-eight (48) hours.

3. NONAPPROPRIATION

If the Board of County Commissioners of County or the governing body of any Activating Entity does not appropriate the funding needed by County and/or the respective Activating Entity to make payments under this Agreement for a given fiscal year, County and/or the respective Activating Entity will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, County and/or the respective Activating Entity will promptly notify Provider of the non-appropriation and this Agreement will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by County and/or the respective Activating Entity which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.

4. COMPENSATION

The Activating Entity agrees to pay fees as specified in Exhibit “A” or as set out above for the Services satisfactorily performed in accordance with this Agreement. Unless otherwise

specified, Provider shall submit monthly invoices to Activating Entity and include detail of all Services delivered or performed under the terms of this Agreement. the Activating Entity shall pay all undisputed and properly completed invoices within thirty (30) days of receipt. Notwithstanding the foregoing, the Activating Entity will not pay late fees on any charges under this Agreement. If the Activating Entity disputes any portion of the charges on any invoice received from Provider, the Activating Entity shall inform Provider in writing of the disputed charges. Once the dispute has been resolved, Provider shall re-invoice the Activating Entity for the previously disputed charges, and, per any resolution between the Activating Entity and Provider, the Activating Entity shall pay those charges in full at that time. No advance payment shall be made for the Services to be performed by Provider under this Agreement.

5. INDEPENDENT CONTRACTOR

Both the Activating Entity and Provider agree that Provider shall act as an independent contractor and shall not represent itself as an agent or employee of the Activating Entity for any purpose in the performance of its duties under this Agreement. Provider represents that it has or will secure, at its own expense, all personnel required in performing the Services under this Agreement. Accordingly, Provider shall be responsible for payment of all federal, state and local taxes arising out of its activities in accordance with this Agreement, including, without limitation, federal and state income tax, social security tax, unemployment insurance taxes and any other taxes or business license fees as required. Provider shall not be entitled to participate in any plans, arrangements or distributions by the Activating Entity pertaining to or in connection with any pension, stock, bonus, profit sharing or other benefit extended to the Activating Entity employees.

In the event the Internal Revenue Service should determine that Provider is, according to Internal Revenue Service guidelines, an employee subject to withholding and social security contributions, then Provider hereby acknowledges that all payments hereunder are gross payments, and Provider is responsible for all income taxes and social security payments thereon.

6. PROVIDER REPRESENTATIONS

- (1) Provider is a duly organized entity or corporation qualified to do business and in good standing under the laws of the State of North Carolina;
- (2) Provider has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
- (3) No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for Provider to enter into and perform its obligations under this Agreement;
- (4) Provider shall not violate any agreement with any third party by entering into or performing the Services under this Agreement;

- (5) Provider will perform all Services in conformity with the specifications and requirements of this Agreement;
- (6) The Services provided by Provider under this Agreement will not violate, infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party, or any other third-party rights (including without limitation non-compete agreements);
- (7) Provider shall exercise reasonable care and diligence when performing the Services hereunder and will ensure that it adheres to the highest generally accepted standards in the industry when performing said Services;
- (8) Provider acknowledges that if any specific licenses, certifications or related credentials are required in its performance of the Services, it will ensure that such credentials remain current and active and not in a state of suspension or revocation; and
- (9) Provider shall ensure that whenever its employees or agents are on the Activating Entity's property, they will strictly abide by all instructions and directions issued by the Activating Entity with respect to rules, regulations, policies and security procedures applicable to work on the Activating Entity's premises. Such rules, regulations, policies and security procedures shall include, but not be limited to: (i) not possessing any controlled substances; (ii) smoking only in designated smoking areas, if any; and (iii) not possessing weapons, except for weapons possessed by law enforcement officials.

7. COMPLIANCE WITH FEDERAL LAWS, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgment that FEMA financial assistance will be used to fund all or a portion of the Agreement. Provider will comply with all applicable federal laws, regulations, executive orders, FEMA policies, procedures, and directives.

8. DAMAGE TO EQUIPMENT, FACILITIES, PROPERTY OR DATA

Provider shall be solely responsible for any damage to or loss of the Activating Entity's equipment, facilities, property and/or data arising out of the negligent or willful act or omission of Provider or its subcontractors. In the event that Provider causes damage to the Activating Entity's equipment or facilities, Provider shall, at its own expense, promptly repair or replace such damaged items to restore them to the same level of functionality that they possessed prior to such damage.

9. NON-ENDORSEMENT AND PUBLICITY

The Activating Entity is not endorsing Provider or its Services, and Provider is not permitted to reference this Agreement or the Activating Entity in any manner without the prior written consent of the Activating Entity. Notwithstanding the foregoing, the parties agree that

Provider may list the Activating Entity as a reference in response to requests for proposals and may identify the Activating Entity as a customer in presentations to potential customers.

10. NON-EXCLUSIVITY

Provider acknowledges that the Activating Entity is not obligated to contract solely with Provider for the Services covered under this Agreement.

11. DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL

Provider hereby certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. § 147-86.80 *et seq.*

12. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (AS AMENDED)

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

13. PROCUREMENT OF RECOVERED MATERIALS

- (1) In the performance of this Agreement, Provider shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired –
 - i. Competitively within a timeframe providing for compliance with the Agreement performance schedule;
 - ii. Meeting Agreement performance requirements; or
 - iii. At a reasonable price.
- (2) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (3) Provider also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

14. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES

(1) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause –

(2) *Prohibitions.*

- i. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after August 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
- ii. Unless an exception in paragraph (3) of this clause applies, Provider and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
 - a. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - b. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - c. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
 - d. Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(3) *Exceptions.*

- i. This clause does not prohibit contractors from providing –
 - a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

- b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- ii. By necessary implication and regulation, the prohibitions also do not apply to:
 - a. Covered telecommunications equipment or services that:
 - 1. Are *not used* as a substantial or essential component of any system;
and
 - 2. Are *not used* as critical technology of any system.
 - b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(4) *Reporting requirement.*

- i. In the event Provider identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or Provider is notified of such by a subcontractor at any tier or by any other source, Provider shall report the information in paragraph (4)ii. of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
- ii. Provider shall report the following information pursuant to paragraph (4)i. of this clause:
 - a. Within one (1) business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
 - b. Within ten (10) business days of submitting the information in paragraph (4)ii.a. of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, Provider shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(5) *Subcontracts*. Provider shall insert the substance of this clause, including this paragraph (5), in all subcontracts and other contractual instruments.

15. DOMESTIC PREFERENCE FOR PROCUREMENTS

As appropriate, and to the extent consistent with law, Provider should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

16. ACCESS TO RECORDS

The following access to records requirements apply to this Agreement:

- (1) Provider agrees to provide the Activating Entity, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of Provider which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) Provider agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) Provider agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the Agreement.
- (4) In compliance with Section 1225 of the Disaster Recovery Act of 2018, the Activating Entity and Provider acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

17. DHS SEAL, LOGO, AND FLAGS

Provider shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. Provider shall include this provision in any subcontracts.

18. SUSPENSION AND DEBARMENT

- (1) This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such Provider is required to verify that none of Provider's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) Provider must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by the Activating Entity. If it is later determined that Provider did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to FEMA and the Activating Entity, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

19. INDEMNIFICATION

Provider shall defend, indemnify and hold harmless the Activating Entity, its officers, officials, agents and employees from and against all actions, liability, claims, suits, damages, costs or expenses of any kind which may be brought or made against the Activating Entity or which the Activating Entity must pay and incur arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind in connection with or arising out of this Agreement and/or the performance hereof that are due in part or in the entirety of Provider, its employees or agents. Provider further agrees to investigate, handle, respond to, defend and dispose of same at its sole cost and expense. Provider shall be fully responsible to the Activating Entity for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by it. This Section shall survive any expiration or termination of this Agreement.

20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

Provider acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Provider's actions pertaining to this Agreement.

21. NO OBLIGATION BY FEDERAL GOVERNMENT

The federal government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-federal entity, Provider, or any other party pertaining to any matter resulting from the Agreement.

22. MINORITY BUSINESS ENTERPRISES

If subcontracts are to be let, Provider is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

23. INSURANCE

Provider shall procure and maintain in full force and effect at all times and at its sole cost and expense Commercial General Liability, Commercial Automobile Liability, Professional Liability and Workers' Compensation insurance, if applicable, and any additional insurance as may be required by the Activating Entity with limits acceptable to the Activating Entity. All insurance policies (with the exception of Workers' Compensation, if applicable, and Professional Liability) shall be endorsed, specifically or generally, to include the Activating Entity as an additional insured and as a certificate holder. Provider shall furnish a Certificate of Insurance from a licensed insurance agent in North Carolina with a rating of A-VII or better by A.M. Best verifying the existence of any insurance coverage required by the Activating Entity. The Certificate will provide for thirty (30) days' advance notice in the event of termination or cancellation of coverage. Provider shall have no right of recovery or subrogation against the Activating Entity (including its officers, agents and employees), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the aforementioned insurance.

24. WORKERS' COMPENSATION

To the extent required by law, Provider shall comply with the North Carolina Workers' Compensation Act and shall provide for the payment of workers' compensation to its employees in the manner and to the extent required by such Act. In the event Provider is excluded from the requirements of such Act and does not voluntarily carry workers' compensation coverage, Provider shall carry or cause its employees to carry adequate medical/accident insurance to cover any injuries sustained by its employees or agents while fulfilling Provider's obligations under this Agreement.

Provider agrees to furnish the Activating Entity proof of compliance with said Act or adequate medical/ accident insurance coverage upon request.

25. REMEDIES

- (1) *Right to Cover.* If Provider fails to meet any completion date or resolution time set forth, due to no fault of the Activating Entity, the Activating Entity may take any of the following actions with or without terminating this Agreement, and in addition to, and without limiting, any other remedies it may have:
 - i. Employ such means as it may deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and Provider is again able to resume performance under this Agreement; and
 - ii. Deduct any and all expenses incurred by the Activating Entity in obtaining or performing the Services from any money then due or to become due Provider and, should the Activating Entity's cost of obtaining or performing the Services exceed the amount due Provider, collect the amount due from Provider.
- (2) *Right to Withhold Payment.* The Activating Entity reserves the right to withhold any portion, or all, of a scheduled payment if Provider fails to perform under this Agreement until such breach has been fully cured.
- (3) *Setoff.* Each party shall be entitled to set off and deduct from any amounts owed to the other party pursuant to this Agreement all damages and expenses incurred or reasonably anticipated as a result of the other party's breach of this Agreement.
- (4) *Other Remedies.* Upon breach of this Agreement, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently in addition to any other available remedy.
- (5) *No Suspension.* In the event that the Activating Entity disputes in good faith an allegation of breach by Provider, notwithstanding anything to the contrary in this Agreement, Provider agrees that it will not terminate this Agreement or suspend or limit any Services or warranties, unless: (i) the parties agree in writing; or (ii) an order of a court of competent jurisdiction determines otherwise; provided, however, this dispute period shall be limited to ninety (90) days.

26. TAXES

Provider shall be responsible for paying all taxes, fees, assessments and premiums of any kind payable on its employees and operations. Provider shall substantiate, on demand by the Activating Entity, that all taxes and other charges are being properly paid.

27. HEALTH AND SAFETY

Provider shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with performing the Services. Provider shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees in connection with performing the Services and other persons who may be affected thereby.

28. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Agreement, Provider agrees as follows:

- (1) Provider will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Provider 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. Provider agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) Provider will, in all solicitations or advertisements for employees placed by or on behalf of Provider, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) Provider 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 Provider's legal duty to furnish information.
- (4) Provider 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 Provider's

commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (5) Provider 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.
- (6) Provider 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.
- (7) In the event of Provider's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and Provider 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.
- (8) Provider will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) 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. Provider 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 Provider becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, Provider may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will 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 applicant 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.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant

orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor 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 contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant 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 this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

29. COMPLIANCE WITH THE COPELAND "ANTI-KICKBACK" ACT

- (1) *Provider.* If applicable, Provider shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this Agreement.
- (2) *Subcontracts.* If applicable, Provider or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (3) *Breach.* A breach of the Agreement clauses above may be grounds for termination of the Agreement, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

30. COMPLIANCE WITH THE DAVIS-BACON ACT (AS AMENDED)

- (1) If applicable, all transactions regarding this Agreement shall be done in compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) and the requirements of 29 C.F.R. Part 5, as may be applicable. Provider shall comply with 40 U.S.C. §§ 3141-3144 and 3146-3148 and the requirements of 29 C.F.R. Part 5, as applicable.

- (2) Providers are required to 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.
- (3) Additionally, Providers are required to pay wages not less than once a week.

31. CLEAN AIR ACT

- (1) Provider agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) Provider agrees to report each violation to the Activating Entity and understands and agrees that the Activating Entity will, in turn, report each violation as required to assure notification to the Activating Entity, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) Provider agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

32. FEDERAL WATER POLLUTION CONTROL ACT

- (1) Provider agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) Provider agrees to report each violation to the Activating Entity and understands and agrees that the Activating Entity will, in turn, report each violation as required to assure notification to the Activating Entity, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) Provider agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

33. COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Compliance with the Contract Work Hours and Safety Standards Act:

- (1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

- (2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (1) of this section Provider and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Provider and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$32 or the current amount statutorily required by 29 C.F.R. § 5.5(b)(2) as may be amended from time to time, for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) *Withholding for unpaid wages and liquidated damages.* The Activating Entity shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Provider or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) *Subcontracts.* Provider or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

Further Compliance with the Contract Work Hours and Safety Standards Act, as applicable:

- (1) Provider or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
- (2) Records to be maintained under this provision shall be made available by Provider or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency,

and the Department of Labor, and Provider or subcontractor will permit such representatives to interview employees during working hours on the job.

34. COMPLIANCE WITH E-VERIFY PROGRAM

Pursuant to N.C.G.S. § 143-133.3, Provider understands that it is a requirement of this Agreement that Provider and its subcontractors must comply with the provisions of Article 2 of Chapter 64 of the North Carolina General Statutes. In doing so, Provider agrees that, unless it is exempt by law, it shall verify the work authorization of its employees utilizing the federal E-Verify program and standards as promulgated and operated by the United States Department of Homeland Security, and Provider shall require its subcontractors to do the same. Upon request, Provider agrees to provide the Activating Entity with an affidavit of compliance or exemption.

35. CONFIDENTIAL INFORMATION

For purposes of this Agreement, the party disclosing Confidential Information is the "Discloser," and the party receiving Confidential Information is the "Recipient." "Confidential Information" shall mean any nonpublic information concerning the parties' respective businesses including, but not limited to, all tangible, intangible, visual, electronic, present or future information such as: (a) trade secrets; (b) financial information, including pricing; (c) technical information, including research, development, procedures, algorithms, data, designs and know-how; (d) business information, including operations, planning, marketing interests and products; and (e) the terms of any agreement between the parties and the discussions, negotiations and proposals related thereto. Confidential Information disclosed to the other party must be clearly identified. Written Confidential Information must be clearly marked in a conspicuous place with an appropriate legend identifying the information as "Confidential." Confidential Information that is not written must be identified as confidential at the time of disclosure and confirmed in writing delivered to Recipient within fifteen (15) days of disclosure.

The restrictions regarding the use and disclosure of Confidential Information do not apply to information that is:

- (1) in the public domain through no fault of the Recipient;
- (2) within the legitimate possession of the Recipient, with no confidentiality obligations to a third party;
- (3) lawfully received from a third party having rights in the information without restriction, and without notice of any restriction against its further disclosure;
- (4) independently developed by the Recipient without breaching this Agreement or by parties who have not had, either directly or indirectly, access to or knowledge of the Confidential Information;
- (5) disclosed with the prior written consent of the Discloser; or

- (6) required to be disclosed by law, regulation or court or governmental order, specifically including requests pursuant to the Public Records Laws of North Carolina contained in Chapter 132 of the North Carolina General Statutes. In the event Recipient receives such a request, it shall notify Discloser and Discloser shall have the opportunity to defend against production of such records at Discloser's sole expense.

36. OWNERSHIP OF WORK PRODUCT

Should Provider's performance under this Agreement generate documents or other work product that are specific to the Services hereunder, such documents or work product shall become the property of the Activating Entity and may be used by the Activating Entity on other projects without additional compensation to Provider.

37. NO ASSIGNMENT WITHOUT CONSENT

Neither party shall assign this Agreement (or assign any right or delegate any obligation contained herein whether such assignment is of service, of payment or otherwise) without the prior written consent of the other party hereto. Any such assignment without the prior written consent of the other party hereto shall be void. An assignee shall acquire no rights, and the Activating Entity shall not recognize any assignment in violation of this provision.

38. GOVERNING LAW AND VENUE

This Agreement shall be governed by applicable federal law and by the laws of the State of North Carolina without regard for its choice of law provisions. All actions relating in any way to this Agreement shall be brought in the General Court of Justice of the State of North Carolina in Brunswick County or in the Federal District Court for the Eastern District of North Carolina, Wilmington division.

39. DISPUTE RESOLUTION

Should a dispute arise as to the terms of this Agreement, both parties agree that neither may initiate binding arbitration. The parties may agree to non-binding mediation of any dispute prior to the bringing of any suit or action.

40. GOVERNMENTAL IMMUNITY

The Activating Entity, to the extent applicable, does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

41. NON-WAIVER

Failure by the Activating Entity at any time to require the performance by Provider of any of the provisions of this Agreement shall in no way affect the Activating Entity's right hereunder

to enforce the same, nor shall any waiver by the Activating Entity of any breach be held to be a waiver of any succeeding breach or a waiver of this Section.

42. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties with respect to the subject matter herein. There are no other representations, understandings or agreements between the parties with respect to such subject matter. This Agreement supersedes all prior agreements, negotiations, representations and proposals, written or oral.

43. HEADINGS

The headings in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

44. SEVERABILITY

The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of this Agreement can be determined and effectuated. If a provision of this Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

45. AMENDMENTS

Amendments or changes to this Agreement, or additional Proposals or Statements of Work, shall not be valid unless in writing and signed by authorized agents of both Provider and the Activating Entity.

46. NOTICES

- (1) *Delivery of Notices.* Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by facsimile to the intended recipient at the address set forth below.
- (2) *Effective Date of Notices.* Any notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by facsimile or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier.

(3) *Notice Address.* Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment or waiver of any provision of this Agreement shall be sent to:

i. For the Activating Entity: To the address shown on the signature page attached hereto for the respective Activating Entity

ii. For the Provider: Metric Consulting LLC
13940 SW 136th Street, Suite 100
Miami, FL 33186

With a copy to: Metric Consulting LLC
c/o CT Corporation System, Registered Agent
160 Mine Lake Court, Suite 200
Raleigh, NC 27615

(4) *Activating Entity Notices.* In addition to the foregoing, any communications to an Activating Entity shall be sent to the respective Activating Entity at the address set forth on the applicable signature page attached hereto.

47. SIGNATURES

This Agreement, together with any amendments or modifications, may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be considered one and the same agreement. This Agreement may also be executed electronically. By signing electronically, the parties indicate their intent to comply with the Electronic Commerce in Government Act (N.C.G.S. § 66-58.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S. § 66-311 et seq.). Delivery of an executed counterpart of this Agreement by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

Brunswick County
P.O. Box 249
Bolivia, NC 28422

ATTEST:

BRUNSWICK COUNTY

Clerk to the Board /
Deputy Clerk to the Board

By: _____
Chairman, Board of Commissioners

[SEAL]

METRIC CONSULTING LLC

By: _____

Printed Name: _____

Title: _____

Date: _____

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

Aaron C. Smith, Director of Fiscal Operations
Brunswick County, North Carolina

APPROVED AS TO FORM

Bryan W. Batton, County Attorney /
Ryan S. King, Assistant County Attorney

Town of Bolivia
P.O. Box 93
Bolivia, NC 28422

Town of Bolivia

Date

Metric Consulting LLC

Date

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

Director of Fiscal Operations

Date

Town of Carolina Shores
200 Persimmon Road
Carolina Shores, NC 28467

Town of Carolina Shores

Date

Metric Consulting LLC

Date

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

Director of Fiscal Operations

Date

Town of Caswell Beach
1100 Caswell Beach Road
Caswell Beach, NC 28465

Town of Caswell Beach

Date

Metric Consulting LLC

Date

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

Director of Fiscal Operations

Date

Town of Holden Beach
110 Rothschild
Holden Beach, NC 28452

Town of Holden Beach

Date

Metric Consulting LLC

Date

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

Director of Fiscal Operations

Date

Town of Navassa
334 Main Street
Navassa, NC 28451

Town of Navassa

Date

Metric Consulting LLC

Date

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

Director of Fiscal Operations

Date

Town of Northwest
P.O. Box 1509
Leland, NC 28451

Town of Northwest

Date

Metric Consulting LLC

Date

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

Director of Fiscal Operations

Date

Town of Oak Island
4601 E. Oak Island Drive
Oak Island, NC 28465

Town of Oak Island

Date

Metric Consulting LLC

Date

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

Director of Fiscal Operations

Date

Town of Ocean Isle Beach
111 Causeway Drive
Ocean Isle Beach, NC 28469

Town of Ocean Isle Beach

Date

Metric Consulting LLC

Date

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

Director of Fiscal Operations

Date

Town of Sandy Creek
114 Sandy Creek Drive
Leland, NC 28451

Town of Sandy Creek

Date

Metric Consulting LLC

Date

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

Director of Fiscal Operations

Date

Town of Shallotte
P.O. Box 2287
Shallotte, NC 28459

Town of Shallotte

Date

Metric Consulting LLC

Date

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

Director of Fiscal Operations

Date

Town of St. James
4140A Southport-Supply Road
St. James, NC 28461

Town of St. James

Date

Metric Consulting LLC

Date

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

Director of Fiscal Operations

Date

Town of Sunset Beach
700 Sunset Boulevard North
Sunset Beach, NC 28468

Town of Sunset Beach

Date

Metric Consulting LLC

Date

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

Director of Fiscal Operations

Date

Town of Varmantown
100 Varmantown Road
Supply, NC 28462

Town of Varmantown

Date

Metric Consulting LLC

Date

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

Director of Fiscal Operations

Date

Exhibit "A"

Cost Proposal



FORM OF PROPOSAL

Note to contractors: All costs proposed are to be inclusive of labor, materials, equipment, incidentals, etc. necessary to fulfill the Scope of Work outlined in this RFP. Any price modification shall be based on the change in CPI-U for All Items in March of 2025 and each subsequent calendar year. ADMS pricing must be included in hourly rates.

COST PROPOSAL FORM

PERSONNEL		HOURLY RATES
Project Manager		\$85.00
Operations Manager		\$70.00
Scheduler/Expeditors		\$1.00
Site or Area Supervisor		\$60.00
Tower Monitors		\$38.00
Field Monitors		\$38.00
Administrative Assistant/Data Entry		\$1.00
FEMA Public Assistance Coordinator		\$85.00
Operations Coordinator		\$38.00
Any Additional Positions and Rates: _____	Data Manager	\$60.00
	Safety Specialist	\$75.00