



Request for Proposal

21-21-CD

for

**EMERGENCY RENTAL ASSISTANCE PROGRAM
ADMINISTRATION SERVICES**

for

**Fayetteville Economic and Community Development Department
433 Hay Street
Fayetteville, NC 28301**

and

**Cumberland County Community Development Department
707 Executive Place
Fayetteville, NC 28305**

Date of Issue: February 10, 2021

Proposal Due Date: February 22, 2021 (by 5:00 pm)

Direct all inquiries concerning this RFP to:

707 Executive Place

Fayetteville, NC 28305

Phone: (910) 323-6112

cccdapplications@co.cumberland.nc.us

Proposals shall be submitted in accordance with the terms and conditions of this RFP and any addenda issued hereto.

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1.0 PURPOSE AND BACKGROUND

The City of Fayetteville (City) and County of Cumberland (County), North Carolina is accepting Request for Proposals (RFP) from qualified firms to provide Emergency Rental Assistance Program administration services. In January 2021, the U.S. Department of Treasury awarded the City and the County \$6,383,864 and \$3,735,545, respectively, to implement the Emergency Rental Assistance Program established by section 501 of Division N of the consolidated Appropriations Act, 2021, Pub. L. No 116-260 (December 27, 2020).

The City of Fayetteville is an entitlement jurisdiction which covers those areas annexed within its municipal limits, whereas the County of Cumberland is an entitlement jurisdiction which consists of eight incorporated municipalities (Eastover, Falcon, Godwin, Hope Mills, Linden, Spring Lake, Stedman, and Wade) as well as the unincorporated areas of the County. The two military installations are not included in Cumberland County’s entitlement jurisdiction. Each entitlement jurisdiction is responsible for conducting its own activities within its respective boundaries as well as the administration of the entitlement grants and preparation of all plans and reports. Cumberland County covers 652.4 square miles with a population of 335,509 (2019 Census).

Applicants can be any individual or firm that has the qualifications and experience to perform the work outlined in the Scope of Work.

2.0 PROPOSAL INSTRUCTIONS, REQUIREMENTS, & TIMELINE

2.1 REQUEST FOR PROPOSAL DOCUMENT

The RFP is comprised of the base RFP document, any attachments, and any addenda released before contract award. All attachments and addenda released for this RFP in advance of any contract award are incorporated herein by reference. By submitting a proposal, the vendor agrees to meet all stated requirements in this section as well as any other specifications, requirements and terms and conditions stated in this RFP. If a vendor is unclear about a requirement or specification or believes a change to a requirement would allow for the City and County to receive a better proposal, the vendor is urged and cautioned to submit these items in the form of a question during the question-and-answer period in accordance with Section 2.3.

Vendors shall populate all attachments of this RFP that require the vendor to provide information and include an authorized signature where requested. Failure to include required documents and/or signatures, where requested, will result in rejection of submitted proposals.

2.2 PROPOSAL SUBMITTAL

Proposals, subject to the conditions made a part hereof and the receipt requirements described below, shall be received at the address indicated in the table below.

Mailing address for delivery of proposal via US Postal Service	Office Address of delivery by any other method (special delivery, overnight, or any other carrier)
<p><i>PROPOSAL TITLE: 21-21-CD Emergency Rental Assistance Program Administration Services</i> 707 Executive Place Fayetteville, NC 28305</p>	<p><i>PROPOSAL TITLE: 21-21-CD Emergency Rental Assistance Program Administration Services</i> 707 Executive Place Fayetteville, NC 28305</p>
Email address for delivery of proposal electronically	
<p>SUBJECT LINE: Emergency Rental Assistance Program Administration Services cccdapplications@co.cumberland.nc.us</p>	

IMPORTANT NOTE: All proposals shall be physically delivered to the office address listed above or if submitting electronically received by the email address listed above on or before the proposal deadline regardless of the method of

delivery. All risk of late arrival due to unanticipated delay—whether delivered by email, hand, U.S. Postal Service, courier or other delivery service is entirely on the vendor. It is the sole responsibility of the vendor to have the proposal to the County department specified by the specified time and date of opening. Any proposal received after the proposal submission deadline will be rejected.

If submitting by Mail:

- a) Submit **one (1) signed, original executed** proposal responses, [1] electronic copies on CD or flash drive.
- b) Submit your proposal in a sealed package. Clearly mark each package with: (1) Vendor name; (2) the RFP name or number; and (3) the due date. Address the package(s) for delivery as shown in the table above.
- c) The electronic copies of your proposal must be provided on separate read-only CD's, DVD's or flash drives. The files on the discs **shall NOT** be password protected, shall be in .PDF or .XLS format, and shall be capable of being copied to other media including readable in Microsoft Word and/or Microsoft Excel.

All proposal addendums and/or corrections will be posted on the Cumberland County Vendor Self Service site <https://ccmunis.co.cumberland.nc.us/MSS/Vendors/VProposals/SearchResults.aspx>. Vendors who submit a notice of intent to bid to email cccdapplications@co.cumberland.nc.us will receive addendums by email.

2.3 PROPOSAL QUESTIONS

Written questions shall be emailed to cccdapplications@co.cumberland.nc.us by **February 15, 2021 (5:00 pm)**. Vendors should enter “21-21-CD Emergency Rental Assistance Program Questions” as the subject for the email. Questions will not be answered by phone. Questions submittals should include a reference to the applicable RFP section.

Questions received prior to the submission deadline date, the County's response, and any additional terms deemed necessary by the County will be posted in the form of an addendum to the Cumberland County Vendor Self Service Site, <https://ccmunis.co.cumberland.nc.us/MSS/Vendors/default.aspx> and shall become an Addendum to this RFP.

Vendors who submit an intent to bid will receive addendums by email. Vendors shall rely *only* on written material contained in an Addendum to this RFP. **Vendors should not contact any other City or County employees, besides those listed above, during the bid process. Vendors who contact any other City or County employees may be disqualified.**

Any questions considered minute in nature or that point to an error in the RFP or that the County determines will produce information required in order for all vendors to submit a responsible proposal, may be answered at the County's discretion after the specified date and time. Such questions that are received after the deadline are not guaranteed to be answered and if the questions qualify as “minute in nature” shall be determined at the sole discretion of the County.

All proposals will remain in effect for at least 90 days from the date submitted to the County for review.

2.4 RFP TERMS & CONDITIONS

It shall be the vendor's responsibility to read the instructions, the City's and County's terms and conditions, all relevant exhibits and attachments, and any other components made a part of this RFP and comply with all requirements and specifications herein. Vendors also are responsible for obtaining and complying with all Addenda and other changes that may be issued in connection with this RFP.

Questions, issues, or exceptions regarding any term, condition, or other component within this RFP, those must be submitted as questions in accordance with the instructions in Section 2.3 PROPOSAL QUESTIONS. Vendor's proposal shall constitute a firm offer.

If a vendor desires modification of the terms and conditions of this solicitation, it is urged and cautioned to inquire during the question period, in accordance with the instructions in this RFP, about whether specific language proposed as a modification is acceptable to or will be considered by the City and County. It is the City's and County's sole discretion

to accept or reject requested modifications and/or exceptions.

2.5 TIMELINE

Date	Activity
Wednesday, February 10, 2021	RFP Release
Monday, February 15, 2021 (by 5:00 pm)	Final date for submission of questions
Monday, February 22, 2021 (by 5:00 pm)	Proposal submission deadline
Tuesday, February 23 – Monday, March 1, 2021	Proposal evaluation, selection, and award complete.
March – April 2021	Contract executed

3.0 NOTICES TO VENDOR

3.1 PROHIBITED COMMUNICATIONS AND CONFIDENTIALITY

PROHIBITED COMMUNICATION: Each vendor submitting a proposal (including its representatives, sub-contractors and/or suppliers) is prohibited from having any communications with any person outside of the City or County departments issuing this RFP. A vendor not in compliance with this provision may be disqualified from contract award.

!IMPORTANT INFORMATION! CONFIDENTIAL INFORMATION: The proposal must not contain any information marked as “confidential” or as a “trade secret” or in any other manner as to indicate that it is information protected by the Trade Secrets Protection Act (the “Act”) as set out in Article 24 of Chapter 66 of the North Carolina General Statutes, unless the vendor has noticed the County Finance Department of its intent to designate any information in the proposal as such and received permission from the County Finance Department to do so in writing. Vendor’s notice to the County Finance Department must be in writing and must describe the information for which confidentiality is requested and explain how the information is a “trade secret” as defined in G.S. § 66-152(3). If the County Finance Department determines the information for which confidentiality is requested is a “trade secret” covered by the Act, it will notify the vendor how to mark the information in the proposal and will identify the measures that County will take to protect the confidentiality of the information. Vendor’s submission of a proposal after receipt of this notice from the County Finance Departments shall be deemed to be acceptance of the County Finance Department’s statement of how it will maintain confidentiality. If the County Finance Department determines the information for which confidentiality is requested is not a “trade secret” covered by the Act, it will notify vendor of that determination. Any proposal marked with any information as “confidential” or as a “trade secret” or in any other manner as to indicate that it is information protected by the Act in violation of this section shall be regarded as not responsive to the request for proposals and shall not be considered.

3.2 PROPOSAL COMPLIANCE

It is in the best interest of vendors to submit proposals that are clear, concise, and easily understood. Proposals should provide information essential for a straightforward and concise description of vendor capabilities to satisfy the requirements of the RFP specifications.

Vendor may include any optional data not provided for elsewhere and considered to be pertinent to this bid as an addendum.

Vendors are urged and cautioned to read the RFP completely through as noncompliance with requirements may result in proposal rejection. Section 4.0 requirements and request for information must be in the same order with the same titles as listed in Section 4.0. Vendor proposals should be easy to follow and all sections should be easily identified.

The specifications included in this package describe the services that the City and County feels are necessary to meet the performance requirements of this RFP and shall be considered the minimum standards expected of the Vendor. However, the specifications are not intended to exclude potential vendors.

If the vendor is unable to meet any of the specifications as outlined therein, vendors are advised to submit questions and concerns regarding the specifications during the question and answer period described in Section 2.3.

If the vendor does not submit questions or concerns regarding the specifications, the City and County shall assume it is able to fully comply with these specifications. The City and County shall be the sole and final judge of compliance with all specifications.

The City and County further reserves the right to determine the acceptability or unacceptability of any and all alternatives or deviations.

3.3 PROPOSAL EVALUATION PROCESS

The City and County shall review all responses to this RFP to confirm that they meet the specifications and requirements of the RFP. The City and County shall not be required to hold interviews; however, depending on the number of responses and the information contained in the responses, the City and County may decide to conduct interviews with firms of its choice. The City and County reserves the right to request clarification of information submitted.

The City and County reserves the right to reject all proposals.

3.4 EVALUATION CRITERIA

All qualified proposals will be evaluated, and award made based on considering the following criteria to result in an award most advantageous to the City/County:

The selection of the best proposal will be made on the basis of the criteria set forth in this RFP:

1. Qualifications, experience, and capability of the firm to perform the Scope of Work.
2. Experience of personnel assigned to the project.
3. Completeness and clarity of the project approach to each item in Scope of Work.
4. Time schedule proposed to accomplish tasks in the Scope of Work.
5. Estimated cost of services.

Certified minority contractors/vendors are encouraged to apply.

3.5 METHOD OF AWARD

The City and County reserves the right to make separate awards to different vendors for one or more-line items, to not award one or more line items or to cancel this RFP in its entirety without awarding a contract, if it is considered to be most advantageous to the City and County to do so.

The City and County reserves the right to reject all original offers and request one or more of the vendors submitting proposals within a competitive range to submit a best and final offer (BAFO), based on discussions and negotiations with the City and County, if the initial responses to the RFP have been evaluated and determined to be unsatisfactory.

4.0 SCOPE OF WORK & VENDOR'S PROPOSAL CONTENT REQUIREMENTS

4.1 SCOPE OF WORK

The local community has been negatively impacted by the COVID-19 pandemic causing economic disruption. The City of Fayetteville and County of Cumberland is seeking proposals from qualified, licensed, and insured entities to administer the Emergency Rental Assistance Program in accordance with the statutes, program policies and procedures, and the Scope of Work outlined in this section. The selected firm must demonstrate it has the capacity to manage a high volume of applications submitted from local residents. The selected firm must also have the capacity to perform required task that will involve application intake, eligibility determination, assessments of need for assistance, counseling and case management, payment processing, record-keeping and reporting, and provide training to staff to complete these tasks.

The selected firm will be expected to:

A. Implement the Program

- Set up a call center and have the ability to train staff;
- Create an online and mail-in application process using a template that captures all required information needed to determine eligibility;
- Implement an effective outreach and marketing plan to ensure residents throughout the geographic service area are able to access assistance;
- Conduct initial briefings;
- Conduct intake appointments (remote and in-person) for prospective applicants seeking assistance, including application eligibility screening, income calculation and document verification;
- Assist applicants with submission of documentation;
- Work closely with landlords, utility companies, and other partnering agencies and referral agencies;
- Process reexaminations, including collection and review of required documentation, income calculation, calculation of tenant;
- Respond to client questions according to applicable regulation and local policies;
- Assist landlords and other entities with the process when submitting applications on behalf of the household;
- Accurately documenting all processes and communications in the appropriate electronic file;
- Have adequate financial system to process payments expeditiously, track and monitor transactions and meet reporting and auditing requirements;
- Maintain records of transactions and program participants assisted;
- Create and maintain a City and County funding stream, tracking expenditures, and payment progress;
- Generate and submit weekly progress reports to the City and County staff that includes, but not limited to: household demographic information, services rendered, cost of services rendered, and number of households served in the City and County;
- Apply program guidelines when making payments to the landlords, owners, and utility companies on behalf of the eligible household; and
- Submit to routine audits to ensure that all program guidelines are being followed as outlined by federal and local government agencies.

B. Determine Household Eligibility

Program funds must be used for rent, rental arrears, utilities and home energy costs, utilities and home energy arrears, and other expenses related to housing incurred directly or indirectly due to the pandemic. A portion (10%) of the funds may be used for housing stability services, including case management or other services related to the COVID-19 pandemic, and the administration of the program. Program funds must benefit eligible households that meet the following criteria:

- Household income must be at or below 80% of the Area Median Income (AMI) established by the U.S. Department of Housing and Urban Development;
- At least one individual in each household qualifies for unemployment benefits, or experienced a reduction in income, or has incurred significant costs, or experienced other financial hardship due directly or indirectly to the COVID-19 pandemic;
- Can demonstrate a risk of experiencing homelessness or housing instability which may include:
 - A past due utility/rent notice or an eviction notice;
 - Unsafe or unhealthy living conditions;
 - Any other evidence of such risk as determined by the grantee;
- Households whose income is at or below 50 percent of the AMI or where persons have been unemployed for the 90 days prior to application will be given priority; and
- Households must be checked for duplication of benefits to ensure there is an unmet need.

C. Use an Application Process and Grant Management System

The selected firm must develop and utilize an application process that meets statutes and program requirements. In addition, the firm will be expected to:

- Utilize a software system that specializes in application processing and grant management and that will be able to generate the required reports;
- Collect household and other data to include, but not be limited to:
 - Number of applications received for the City and County;
 - Household demographics such as gender, race, and ethnicity;
 - Address of the rental unit;
 - Name, address, social security number, tax identification number or DUNS number, as applicable, for landlord and utility provider;
 - Amount and percentage of monthly rent covered by the program;
 - Amount and percentage of separately-stated utility and home energy costs covered by the program;
 - Total amount of each type of assistance (e.g. rent, rental arrears, utilities, etc.) provided to each household;
 - Amount of outstanding rental arrears for each household;
 - Number of months of rental payments and number of months of utility payments for which assistance is provided; and
 - Household income and number of individuals in the household.

All services shall be provided in accordance with all applicable laws and in a manner consistent with industry best practices.

4.2 VENDOR'S PROPOSAL REQUIREMENTS

The vendor's proposal must include the required information below. Proposals shall be tabbed, using the titles identified in this section, to identify the required information. Tabs must be in the same order as listed below. Failure to submit this information may render its proposal non-responsive. **Vendors are urged and cautioned to read the notices in Section 3.1. Noncompliance with the confidentiality requirements will result in a proposal being considered nonresponsive.**

1. Firm's Information:

Provide specific information concerning the firm, including the legal name, address, and telephone number of the company and the type of entity (sole proprietorship, partnership, or corporation and whether public or private). Include the name and telephone number of the person(s) in your company authorized to execute

the proposed contract. If two or more firms are involved in a joint venture or association, the proposal must clearly delineate the respective areas of authority and responsibility of each party. All parties signing the Agreement with the City and County must be individually liable for the completion of the entire project even when the areas of responsibility under the terms of the joint venture or association are limited.

2. Brief History, Qualifications, and Experience:

Provide specific information in this section concerning the firm's experience in the services specified in this RFP, preferably with working in similar programs.

3. Personnel:

List of personnel, outside associates, or sub-vendors that will perform services under the contract with the City and County.

4. Project Approach:

Provide a description of the methodology developed to perform all required services, with an aggressive schedule that will contain specific milestones which will allow work to commence at the earliest possible date. Be sure to include the type of software system that will be used for grant management. Include your response to the Scope of Work as referenced above.

5. Time schedule proposed to accomplish tasks:

Indicate the time required to complete each task indicated in the Scope of Work. Also identify the extent of City / County personnel involvement deemed necessary, including key decision points at each stage of the project.

6. Estimated cost of services:

The proposal shall clearly state ALL of the costs associated with the project, broken down by category of products and services, and all on-going costs for recommended or required products and services.

The project costs must be broken out and include all expenses that will be charged to the City and County, including but not limited to hourly rates for labor, overhead and profit, subcontractor costs, on-site general conditions, software costs, implementation fees, shipping, insurance, communications, documentation reproduction, and all expenses, including travel, meal reimbursement, hotel per diems, taxes, etc. Failure to clearly identify all costs associated with the proposal may be cause for rejection of the Consultant's proposal.

7. Identification of Subcontractors:

Proposers shall identify all subcontractors they intend to use for the proposed scope of work. For each subcontractor listed, proposers shall indicate (1) what products and/or services are to be supplied by that subcontractor and, (2) what percentage of the overall scope of work that subcontractor will perform.

8. References:

Please provide names, addresses, and telephone numbers of contact persons within three (3) client agencies for whom similar services have been provided.

5.0 CONTRACT TERMS AND CONDITIONS

5.1 IRAN DIVESTMENT ACT

As provided in N.C.G.S. 147-86.55-69, any person identified as engaging in investment activities in Iran, determined by appearing on the Final Divestment List created by the County Treasurer pursuant to G.S. 147-86.57(6) c, is ineligible to contract with the County of North Carolina or any political subdivision of the COUNTY.

5.2 E-VERIFY

CONTRACTOR shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Further, if Contractor utilizes a subcontractor, CONTRACTOR shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes.”

5.3 DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL

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

5.4 CONTRACT CHANGES

Contract changes, if any, over the life of the contract shall be implemented by contract amendments agreed to in writing by the CITY and COUNTY and CONTRACTOR.

5.5 CONTRACT TERM

The Contract shall have an initial term through December 31, 2021, beginning on the date of contract award (the “Effective Date”).

5.6 PRICING

Proposal price shall constitute the total cost for complete performance in accordance with the requirements and specifications herein, including all applicable charges handling, administrative and other similar fees. CONTRACTOR shall not invoice for any amounts not specifically allowed for in this RFP.

5.7 INVOICES

a) Invoices must be submitted to the following addresses:

City: Economic and Community Development, 433 Hay Street, Fayetteville, NC 28301

County: Cumberland County Community Development, 707 Executive Place, Fayetteville, NC 28305

b) Any applicable taxes shall be invoiced as a separate item.

5.8 PAYMENT TERMS

The CONTRACTOR will be paid net thirty (30) calendar days after the CONTRACTOR’S invoice is approved by the CITY and COUNTY.

5.9 APPROPRIATION OF FUNDS

The parties intend that contractual performances by either party beyond the first fiscal year after the execution of this agreement be contingent upon the continued funding and appropriation by the City Council and County Board of Commissioners. Therefore, the parties agree that services provided and payment due under this agreement will be provided upon a year-to- year basis contingent upon continued funding and appropriation. The fiscal year for the City and County begins on July 1 and ends June 30th.

5.10 FINANCIAL STABILITY

CONTRACTOR warrants that it has the financial capacity to perform and to continue perform its obligations under the contract; that CONTRACTOR has no constructive or actual knowledge of an actual or potential legal proceeding being brought against CONTRACTOR that could materially adversely affect performance of this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.

5.11 INSURANCE

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

During the term of the Contract, the CONTRACTOR at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. As a minimum, the CONTRACTOR shall provide and maintain the following coverage and limits (**CONTRACTORS may propose alternative insurance requirements. Acceptance of any insurance requirement changes will be at the discretion of the CITY and COUNTY and must be pre-authorized by Risk Management**):

Professional Liability Insurance: CONTRACTOR shall maintain in force for the duration of this contract professional liability or errors and omissions liability insurance appropriate to the CONTRACTOR'S profession. Coverage as required in this paragraph shall apply to liability for a professional error, act, or omission arising out of the scope of the CONTRACTOR's services as defined in this contract. Coverage shall be written subject to limits of not less than \$1,000,000 per loss.

Commercial General Liability: CONTRACTOR shall maintain Commercial General Liability and if necessary Commercial Umbrella Liability insurance with a total limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location or the general aggregate shall be twice the required limit.

City and County, its officers, officials, agents, and employees are to be covered as additional insureds under the CGL by endorsement providing equivalent coverage as respects to liability arising out of activities performed by or on behalf of the CONTRACTOR; products and completed operations of the CONTRACTOR, premises owned, leased or used by the CONTRACTOR; and under the commercial umbrella, if any. The coverage shall contain no special limitations on the scope of protection afforded to the City and County, its officers, officials, agents and employees.

Workers' Compensation and Employer's Liability: CONTRACTOR shall maintain Workers' Compensation as required by the general statutes of the State of North Carolina and Employer's Liability Insurance. The Employer's Liability shall not be less than \$500,000 each accident for bodily injury by accident, \$500,000 each employee for bodily injury by disease and \$500,000 policy limit.

Business Auto Liability: CONTRACTOR shall maintain Business Auto Liability and if necessary, Commercial Umbrella Liability insurance with a limit of not less than \$500,000 each accident.

The CONTRACTOR shall furnish the City and County with a certificate of insurance, executed by a duly authorized representative of each insurer showing compliance with the insurance requirements prior to commencing the work and upon renewal or replacement of each certified coverage throughout the term of this contract. Evidence of additional insured status shall be noted on the certificate of insurance.

Copies or originals of correspondence, certificates, endorsements, or other items pertaining to insurance shall be sent to: Cumberland County Risk Management, 117 Dick Street, Fayetteville, NC 28301.

5.12 GENERAL INDEMNITY

The CONTRACTOR shall hold and save the CITY and COUNTY, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the CONTRACTOR in the performance of this Contract and that are attributable to the negligence or intentionally tortious acts of the CONTRACTOR provided that the CONTRACTOR is notified in writing within 30 days that the CITY and COUNTY has knowledge of such claims. The CONTRACTOR represents and warrants that it shall make no claim of any kind or nature against the CITY's and COUNTY's agents who are involved in the delivery or processing of CONTRACTOR goods or services to the CITY and COUNTY. The representation and warranty in the preceding sentence shall survive the termination or expiration of this Contract.

5.13 ENTIRE CONTRACT

This contract constitutes the entire understanding of the parties. In the event of a conflict between the CITY and COUNTY'S contract terms and the CONTRACTOR'S contract terms, the CITY's and COUNTY'S terms shall be the overriding determining factor.

5.14 CONTRACT CANCELLATION

The CITY and COUNTY may terminate this contract at any time by providing 30 days' notice in writing from the CITY and COUNTY to the CONTRACTOR. If the contract is terminated by the CITY and COUNTY as provided in this section, the CITY and COUNTY shall pay for services satisfactorily completed by the CONTRACTOR, less any payment or compensation previously made.

5.15 LAWS AND ORDINANCES

The contract will be governed by North Carolina law.

5.16 COMPLIANCE WITH LAWS

CONTRACTOR shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and its performance in accordance with this contract, including those of federal, state, and local agencies having jurisdiction and/or authority. Whether specified explicitly or not, this contract shall incorporate inhere all applicable clauses established in 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II, Required Contract Clauses, attached and incorporated herein as **Attachment G. To ensure compliance with all federal contract requirements, additional contract terms and conditions may be added to the final executed contract by the City and County.** If any applicable federal terms are modified during the contract period, such requirements shall be incorporated herein.

5.17 CONTRACTOR REPRESENTATIONS

CONTRACTOR warrants that qualified personnel shall provide services under this Contract in a professional manner. "Professional manner" means that the personnel performing the services will possess the skill and competence consistent with the prevailing business standards in the industry. CONTRACTOR agrees that it will not enter any agreement with a third party that may abridge any rights of the CITY and COUNTY under this Contract.

If any services, deliverables, functions, or responsibilities not specifically described in this Contract are required for CONTRACTOR'S proper performance, provision and delivery of the service and deliverables under this Contract or are an inherent part of or necessary sub-task included within such service, they will be deemed to be implied by and included within the scope of the contract to the same extent and in the same manner as if specifically described in the contract. Unless otherwise expressly provided herein, CONTRACTOR will furnish all of its own necessary management,

supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the CONTRACTOR to provide and deliver the Services and Deliverables.

CONTRACTOR certifies that it has not previously or currently:

- a. Had any criminal felony conviction, or conviction of any crime involving moral turpitude, including, but not limited to fraud, misappropriation or deception, of CONTRACTOR, its officers or directors, or any of its employees or other personnel to provide services on this project, of which CONTRACTOR has knowledge.
- b. Had any regulatory sanctions levied against CONTRACTOR or any of its officers, directors or its professional employees expected to provide services on this project by any governmental regulatory agencies within the past three years. As used herein, the term “regulatory sanctions” includes the revocation or suspension of any license or certification, the levying of any monetary penalties or fines, and the issuance of any written warnings.
- c. Had any civil judgments against CONTRACTOR during the three (3) years preceding submission of its proposal herein.

Any personnel or agent of the CONTRACTOR performing services under any contract arising from this RFP may be required to undergo a background check at the expense of the CONTRACTOR, if so requested by the CITY or COUNTY.

The CITY and COUNTY may, in its sole discretion, terminate the services of any person providing services under this Contract. Upon such termination, the CITY and COUNTY may request acceptable substitute personnel or terminate the contract services provided by such personnel.

Attachments to this RFP begin on the next page.

ATTACHMENT A: INSTRUCTIONS TO VENDORS

1. **READ, REVIEW AND COMPLY:** It shall be the vendor's responsibility to read this entire document, review all enclosures and attachments, and any addenda thereto, and comply with all requirements specified herein, regardless of whether appearing in these Instructions to vendors or elsewhere in this RFP document.
2. **LATE PROPOSALS:** Late proposals, regardless of cause, will not be opened or considered, and will automatically be disqualified from further consideration. It shall be the vendor's sole responsibility to ensure delivery at the designated office by the designated time.
3. **ACCEPTANCE AND REJECTION:** The City and County reserves the right to reject any and all proposals, to waive minor informality in proposals and to reject proposal with non-minor informalities, based on the sole discretion of the City and County.
4. **EXECUTION:** Failure to sign EXECUTION PAGE in the indicated space will render proposal non-responsive, and it shall be rejected.
5. **GIFTS:** Gifts and favors to the City and County of any kind in any amount are prohibited.
6. **SUSTAINABILITY:** To support the sustainability efforts of the City and County we solicit your cooperation in this effort. All copies of the proposal are printed double sided.
7. **HISTORICALLY UNDERUTILIZED BUSINESSES:** Pursuant to General Statute 143-48 and Executive Order #150 (1999), the City and County invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled.
8. **INFORMAL COMMENTS:** The City and County shall not be bound by informal explanations, instructions or information given at any time by anyone on behalf of the City and County during the competitive process or after award. The City and County is bound only by information provided in this RFP and in formal Addenda issued through the State's IPS and the County's Vendor Self Service website.
9. **COST FOR PROPOSAL PREPARATION:** Any costs incurred by vendor in preparing or submitting offers are the Vendor's sole responsibility; the City and County will not reimburse any vendor for any costs incurred.
10. **VENDOR'S REPRESENTATIVE:** Each vendor shall submit with its proposal the name, address, and telephone number of the person(s) with authority to bind the firm and answer questions or provide clarification concerning the firm's proposal.
11. **SUBCONTRACTING:** The Contractor shall not assign or subcontract the work, or any part thereof, without the previous consent of the City and County, nor shall it assign, by power of attorney, operation of law, or otherwise, any moneys payable under the Contract without prior written consent of the City and County.

If the vendor proposes to subcontract work in this project, the subcontractor and the activity in this project are to be identified in the proposal.

All subcontractors must be approved by the City and County and must conform to and comply with the same terms, standards and specifications applicable to the contracting firm.

The vendor shall be fully responsible and accountable to the City and County for the acts and omissions of its subcontractors, and of persons directly or indirectly employed by him.

12. **INSPECTION AT VENDOR'S SITE**: The City and County reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective vendor prior to Contract award, and during the Contract term as necessary for the City and County determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the Contract.
13. **AFFIRMATIVE ACTION**: The vendor will take affirmative action in complying with all Federal, City, and County requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or disability.
14. **VENDOR REGISTRATION**: Vendor's are not required to register as a vendor in our system in order to submit a bid; however, registration is recommended so that vendor information is available for future opportunities. New vendors can register by visiting the following URL:
<https://ccmunis.co.cumberland.nc.us/MSS/Vendors/Registration/Default.aspx>.

This Space is Intentionally Left Blank

ATTACHMENT B: EXECUTION OF PROPOSAL

EXECUTION

In compliance with this Request for Proposals (RFP), and subject to all the conditions herein, the undersigned vendor offers and agrees to furnish and deliver any or all items/services upon which prices are proposed. By executing this proposal, the undersigned vendor certifies that this proposal is submitted competitively and without collusion, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible from covered transactions by any Federal or State department or agency. Furthermore, the undersigned vendor certifies that it and its principals are not presently listed on the Department of State Treasurer’s Final Divestment List as per N.C.G.S 147-86.55-69.

The potential Contractor certifies and/or understands the following by placing an "X" in all blank spaces:

- _____ The City and County has the right to reject any and all proposals or reject specific proposals with deviated/omitted information, based on the City’s and County’s discretion if the omitted information is considered a minor deviation or omission. The City and County will not contact vendors to request required information/documentation that is missing from a proposal packet. Additionally, if the City and County determines it is in its best interest to do so, the City and County reserves the right to award to one or more vendors and/or to award only a part of the services specified in the RFP.
- _____ This proposal was signed by an authorized representative of the Contractor.
- _____ The potential Contractor has determined the cost and availability of all materials and supplies associated with performing the services outlined herein.
- _____ All labor costs associated with this project have been determined, including all direct and indirect costs.
- _____ The potential Contractor agrees to the conditions as set forth in this RFP with no exceptions.
- _____ Selection of a contract represents a preliminary determination as to the qualifications of the vendor. Vendor understands and agrees that no legally binding acceptance offer occurs until the Fayetteville City Council and Cumberland County Board of Commissioners, or its designee, executes a formal contract and/or purchase order.

Therefore, in compliance with the foregoing RFP, and subject to all terms and conditions thereof, the undersigned offers and agrees to furnish the services for the prices quoted within the timeframe required. Vendor agrees to hold firm offer through contract execution.

Failure to execute/sign proposal prior to submittal shall render the proposal invalid and it WILL BE REJECTED.

VENDOR:		
STREET ADDRESS:	P.O. BOX:	ZIP:
CITY & COUNTY & ZIP:	TELEPHONE NUMBER:	TOLL FREE TEL. NO:
PRINCIPAL PLACE OF BUSINESS ADDRESS IF DIFFERENT FROM ABOVE (SEE INSTRUCTIONS TO VENDORS ITEM #10):		
PRINT NAME & TITLE OF PERSON SIGNING ON BEHALF OF VENDOR:	FAX NUMBER:	
VENDOR’S AUTHORIZED SIGNATURE:	DATE:	EMAIL:

ATTACHMENT C: CERTIFICATION OF FINANCIAL CONDITION

Name of Vendor: _____

The undersigned hereby certifies that: [check all applicable boxes]

The vendor is in sound financial condition and, if applicable, has received an unqualified audit opinion for the latest audit of its financial statements.

Date of latest audit: _____

The vendor has no outstanding liabilities, including tax and judgment liens, to the Internal Revenue Service or any other government entity.

The vendor is current in all amounts due for payments of federal and County taxes and required employment-related contributions and withholdings.

The vendor is not the subject of any current litigation or findings of noncompliance under federal or County law.

The vendor has no findings in any past litigation, or findings of noncompliance under federal or County law that may impact in any way its ability to fulfill the requirements of this Contract.

He or she is authorized to make the foregoing statements on behalf of the vendor.

Note: This is a continuing certification and vendor shall notify the Contract Lead within 15 days of any material change to any of the representations made herein.

If any one or more of the foregoing boxes is NOT checked, vendor shall explain the reason in the space below:



Signature Date

Printed Name Title

[This Certification must be signed by an individual authorized to speak for the vendor]

ATTACHMENT D: CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

ATTACHMENT E: NONCOLLUSION AFFIDAVIT

NON-COLLUSION AFFIDAVIT

State of North Carolina County of Cumberland

_____, being first duly sworn, deposes and says that:

1. He/She is the _____ of _____, the proposer that has submitted the attached proposal.
2. He/She is fully informed respecting the preparation and contents of the attached proposal and of all pertinent circumstances respecting such proposal.
3. Such proposal is genuine and is not a collusive or sham proposal.
4. Neither the said proposer nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other proposer firm or person to submit a collusive or sham proposal in connection with the contract for which the attached proposal has been submitted or to refrain from proposing in connection with such contract, or has in any manner, directly or indirectly sought by agreement or collusion of communication or conference with any other proposer, firm or person to fix the price or prices in the attached proposal or of any other proposers, or to fix any overhead, profit or cost element of the proposal price of the proposal of any other proposer or to secure through collusion, conspiracy, connivance or unlawful agreement any advantage against the County of Cumberland or any person interested in the proposed contract; and
5. The price or prices quoted in the attached proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the proposer or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

Signature _____

Printed Name: _____

Title: _____

Date: _____

Subscribed and Sworn to Before Me,

This _____ day of _____, _____

Notary Public _____

My Commission Expires: _____

ATTACHMENT F: FEDERAL REQUIRED CONTRACT CLAUSES

!IMPORTANT NOTE! The clauses below may not be modified or deleted under any circumstance. These are required contract clauses mandated by the Federal Government.

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

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

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

1. Drug Free Workplace Requirements

Drug-free workplace requirements in accordance with Drug Free Workplace Act of 1988 (Pub 100-690, Title V, Subtitle D). All contractors entering into federal funded contracts over \$100,000 must comply with Federal Drug Free workplace requirements as Drug Free Workplace Act of 1988.

2. Contractor Compliance

The Contractor shall comply with all uniform administrative requirements, cost principles, and audit requirement for federal awards.

3. Conflict of Interest

The Contractor must disclose in writing any potential conflict of interest to the City of Fayetteville and County of Cumberland or pass through entity in accordance with federal policy.

4. Mandatory Disclosures

The Contractor must disclose in writing all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. **Energy Conservation** The Contractor and Subcontractors agrees to comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. § 6321, et seq.

5. Clean Air Act and The Federal Water Pollution Control Act

Clean Air Act:

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

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

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act:

(1) The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

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

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

6. Access to Records and Reports

The following access to records requirements apply to this contract:

(1) The Contractor agrees to provide the City, County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

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

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

(4) In compliance with the Disaster Recovery Act of 2018, the City, County and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

7. No Obligation by Federal Government

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

8. Program Fraud and False or Fraudulent Statements or Related Acts

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

9. Changes

Any change in the contract cost, modification, change order, or constructive change must be allowable, allocable, within the scope of its funding, grant or cooperative agreement, and reasonable for the completion of project scope. All changes and/or amendments to the contract will be outlined in detail, formalized in writing, and signed by the authorized representative of each party. Contractor's failure to do so shall constitute a material breach of the contract.

10. Termination

(1) **Termination Without Cause.** The City and County may immediately terminate this Agreement at any time without cause by giving 30 days' written notice to the Contractor.

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

The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in this Agreement, provided that, unless otherwise stated in this Agreement, such failure or violation shall not be cause for

termination if both of the following conditions are satisfied: (i) such default is reasonably susceptible to cure; and (ii) the other party cures such default within thirty (30) days of receipt of written notice of default from the non-defaulting party; or

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

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

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

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

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

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

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

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

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

(7) No Suspension. In the event that the City and County disputes in good faith an allegation of default by the Contractor, notwithstanding anything to the contrary in this Agreement, the Contractor agrees that it will not terminate this Agreement or suspend or limit the delivery of Products or Services or any warranties or repossess, disable or render

unusable any Software supplied by the Contractor, unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise.

(8) Authority to Terminate. The City Manager and County Manager or their designee is authorized to terminate this Agreement on behalf of the City and County.

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

11. Remedies

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

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

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

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

(3) Right to Withhold Payment. If the Contractor materially breaches any provision of this Agreement, the City and County shall have a right to withhold all payments due to the Contractor with respect to the services that are the subject of such breach until such breach has been fully cured.

(4) Specific Performance and Injunctive Relief. The Contractor agrees that due to the potential impact on public health, monetary damages may not be an adequate remedy for the Contractor's failure to provide the Services required by this Agreement, and monetary damages may not be the equivalent of the performance of such obligation. Accordingly, the Contractor hereby agrees that the City and County may seek an order granting specific performance of such obligations of the Contractor in a court of competent jurisdiction in Cumberland County, North Carolina. The Contractor further

consents to the City and County seeking injunctive relief (including a temporary restraining order) to assure performance in the event the Contractor breaches the Agreement in any material respect.

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

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

12. Debarment and Suspension

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor'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) The contractor 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 City and County. If it is later determined that the contractor 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 City and County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The vendor 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 vendor or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

13. Equal Employment Opportunity

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

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

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

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee

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

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions 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) The contractor 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. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

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

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.

14. Davis-Bacon Requirements

(1) All transactions regarding this contract 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. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

(2) Contractors 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, contractors are required to pay wages not less than once a week.

15. Copeland “Anti-Kickback” Act

(1) **Contractor.** The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) **Breach.** A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

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

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

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

(2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (b) (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b) (1) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b) (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(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 (b)(1) through (4) of this section.

17. Rights to Inventions Made Under a Contract or Agreement

Patent and Rights in Data

Contracts involving experimental, developmental, or research work.

The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

Rights in Data - The following requirements apply to each contract involving experimental, developmental or research work:

The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(1) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution. In accordance with 49 CFR § 18.34 and 49 CFR § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)(i) and (2)(b)(ii) of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

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

(3) Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part.

(4) When federal assistance is awarded for experimental, developmental, or research work, it is the general intention to increase knowledge available to the public rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless determined otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agree to make

available to the public, either the license in the copyright to any subject data developed in the course of that contract or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance.

(5) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(6) Nothing contained in this clause regarding rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(7) Data developed by the Purchaser or Contractor and financed entirely without the use of Federal assistance that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(8) Unless determined otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

(9) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

(10) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

Patent Rights - The following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide those rights in that invention due the Federal Government as described in U.S. Department of

Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

18. Procurement of Recovered Materials

(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

- Competitively within a timeframe providing for compliance with the contract performance schedule.
- Meeting contract performance requirements.
- 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) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

19. Safeguarding Personal Identifiable Information:

Contractor will take reasonable measures to safeguard protected personally identifiable information and other information designated as sensitive by the awarding agency or is considered sensitive consistent with applicable federal, state, and/or local laws regarding privacy and obligations of confidentiality.

20. DHS Seal, Logo, and Flags

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without pre-approval by the specific federal agency.

21. Byrd Anti-Lobbying Amendment

Contractors who apply or bid for an award of \$100,000 or more 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.

22. Compliance with Federal Law, Regulations, and Executive Orders

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.