



CONTRACT
TOWN OF BANNER ELK
TROPICAL STORM HELENE RECOVERY
(FUNDED BY FEMA)
Townwide Culvert Repairs

THIS CONTRACT, made this day _____, by and between **CONTRACTOR NAME**, hereinafter called the "Contractor" and the **TOWN**, hereinafter called the "Town," WITNESSETH, that the Contractor and the Town for the consideration stated herein mutually agree as follows:

WHEREAS, the Town desires to engage Contractor to perform culvert repair services related to damages resulting from Tropical Storm Helene (hereinafter individually or collectively referred to as the "Property"), pursuant to the terms of this Contract;

Authority and Responsibility

The "TOWN" referred to throughout this document shall mean the Town and all its staff, Departments, Divisions, policies and practices, that provides the funds for the Contract. The successful Bidder shall enter into this Contract for repair/restoration work with the Town. The Town is responsible for the administration of the work covered by these General Provisions and Scope of Work, only to the extent referenced therein, and is also the designated administrative authority that checks and approves plans.

The "Inspector" is the Town's designated representative who is assigned with the duty to manage and inspect specific assigned FEMA programs and projects and shall serve as the project quality control inspector and coordinator, carrying out all the functions of contract administration with the goal of providing project quality and timely construction scheduling and completion.

The "Contractor" is the name of the Contractor and its Owner(s) performing a project under an executed repair/restoration contract. The Contractor shall perform all work described in the Scope of Work, in accordance with the contract documents and the general provisions and scope of work included herein. The Contractor shall perform as project manager, maintaining continuous contact with the Town and the Inspector regarding the project status and any problems.

NOW THEREFORE, the Contractor and the Town, for the consideration stated herein, mutually agree as follows:

1. **STATEMENT OF WORK.** The Contractor shall furnish all supervision, labor, materials, machinery, tools, equipment, and services necessary to perform repairs to the Town's stormwater culverts. All work shall be completed in an efficient and workmanlike manner and in strict accordance with the Scope of Work and the Request for Bids, which the Contractor acknowledges receiving and which are incorporated into this Contract as if fully set forth herein. The following documents are hereby incorporated into and made part of this Contract:

- a. This Contract
- b. Attachment A: Scope of Work
- c. Attachment B: Pricing and Bid/Pay Items
- d. Attachment C: Contract Terms and Conditions for Construction Contracts

In the event of a conflict between the attachments listed above, the Contract Terms and Conditions shall govern, followed by the Scope of Work, then the Pricing and Bid/Pay Items, unless otherwise specified.

2. **CONTRACT PRICE.** The Contractor shall be compensated based on the number of units used times the unit rates in the Price Proposal for the repair/restoration services listed herein.
3. **CONTRACT AWARDS AND NOTICE TO PROCEED.** The Town may award multiple contracts under the Request for Bids when doing so is determined to be in the Town's best interest. All awards shall be made to the lowest responsible and responsive bidders in accordance with applicable procurement requirements. The Town further reserves the right to reject any or all bids, to waive informalities, and to make multiple or no awards at its sole discretion.

This Contract is non-exclusive and does not guarantee the Contractor any minimum or specific volume of work. Execution of this Contract does not obligate the Town to issue a Notice to Proceed (NTP) for any portion of the work.

For each assignment of work, the Town will issue a written NTP specifying the scope and description of work, estimated quantities, required timeline for completion, and payment terms applicable to that assignment. No work of any kind shall begin until the Contractor receives a written Notice to Proceed (NTP) for that specific assignment.

4. **PAYMENT, COMPENSATION, AND QUALITY REQUIREMENTS.**

- a. Method of Payment. Payment will be made as progress payments based on the approved Schedule of Values and the unit prices established in the Rate Sheet (Attachment B). Each progress payment is contingent upon:
 - Completion of the portion of work corresponding to the applicable line items in the approved Schedule of Values.
 - Inspection and approval of the completed work by the Town.
 - Submission of an invoice by the Contractor to the Town reflecting the approved progress payment amount, including all required certifications of inspection and other applicable work certifications.
 - All documentation required for FEMA Public Assistance reimbursement, including load tickets, haul logs, material certifications, and disposal site documentation, shall be included with each invoice.

Final payment for 100% of the work will be issued upon full completion of all contracted work, satisfaction of all inspection and documentation requirements, and resolution of any deficiencies.

- b. Compensation Structure. Services will be billed on a unit rate basis as specified in Attachment B. The Contractor may submit itemized invoices upon completion of each project or monthly for ongoing services. All invoices must include:

- Location(s) of work performed.
- Materials used and quantities.
- Start and completion dates.
- Material source and disposal site information.

All pricing must align with the approved Rate Sheet unless otherwise authorized in writing by the Town. No price adjustments will be made for underruns or overruns of actual quantities compared to estimated quantities. Unit prices include all labor, equipment, materials, overhead, and profit, unless otherwise specified. Contract quantities are approximate; no minimum or maximum amount of work is guaranteed.

- c. Quality Control and Inspections. The Contractor is responsible for performing all necessary quality control to ensure compliance with required specifications. The Town reserves the right to inspect the work at any time. Any work failing to meet specifications must be corrected by the Contractor at no additional cost. The Contractor, by execution of this Contract, agrees to hold the Town harmless from all claims or liens for labor or materials furnished or used in the performance of the work, whether provided by the Contractor or any subcontractor.

Authorized local, state, and federal government agency representative's shall have the right to examine and inspect work included in any Repair/Restoration Work contract financed by the Town and will inform the Town directly of any noncompliance with the terms of the contract. Also, these representatives shall be permitted to examine and inspect all contracts, materials, equipment, payroll, and conditions of employment pertaining to the repair/ restoration work, including all relevant data and records.

Work performed without the required local permits and inspections will be subject to scrutiny and possible non-acceptance by the Town. **The Inspector will provide coordination between the Contractor and the Town, but it is the Contractor's ultimate responsibility to ensure that the necessary interim and final inspections are requested and performed.**

The Inspector and the Town will make periodic visits to the job site during repair/restoration. The Contractor will be expected to fully cooperate in the conduct of these inspections. If the Contractor is not on the job, he shall designate a responsible person who is regularly on the job to discuss conditions with these authorized representatives.

Final Inspection and Payment. Final inspections by the Inspector and the Town will be made before 100% payment is made to the Contractor. Upon completion of all work and the correction of any deficiencies, full payment shall be authorized to the Contractor.

5. **PERFORMANCE CRITERIA.** In order for the Town to complete repair/restoration activities on an efficient basis, specific performance standards and time limits for contract execution and completion have been outlined in the TOWN's written contract award policy, which the Contractor may review upon request. Failure of the Contractor to comply with these performance standards and time limits may result in rejection of bids, awards, and/or

contract termination. Failure to maintain the performance standards outlined below will result in re-award of current awards to other Contractors and possible exclusion from the active Contractors' list.

The Contractor must have a working record acceptable to the Town, as defined by the performance criteria outlined in this section.

The Contractor must perform warranty work in a timely and conscientious manner. Falsification or alteration of bid and/or contract documents will be grounds for termination of existing work and exclusion from the Town's FEMA programs.

The Contractor must make regular payments to suppliers and subcontractors. The Contractor must ensure that liens are not filed against property included in the project, and that any liens or judgments against him are satisfied such that they do not affect his financial capability to accomplish repair/restoration work.

The Contractor will receive written notification from the Town prior to any negative action taken regarding his performance and may appeal the Town's actions in accordance with the written complaint procedure for the appropriate program.

The Contractor shall furnish all supervision, technical personnel, labor, materials, machinery, tools, equipment, fixtures, and services, including transportation services, and shall perform all required work in an efficient and workmanlike manner. The Contractor shall perform all the repair/restoration work as described in the scope of work and plans, in accordance with the provisions of all the Contract Documents. Permits shall be posted and maintained by the Contractor at the job site at all times for the purposes of viewing by the Town. A copy of the scope of work shall be available at the job site at all times.

The Contractor is responsible for any damages caused by encroachment on adjacent properties or on regulated setback areas. Encroachment damage shall be corrected by the Contractor at no cost to the Town.

The Contractor shall exercise due caution in the protection of existing utilities and structures and facilities during the period of repair/restoration. Facilities include all water, gas and sewer lines; lighting, power, cable/satellite TV or telephone conduits and wires; building connections in place; and other surface and subsurface structures or lines. If, in the performance of the work, the Contractor disturbs, disconnects, or damages any of the above, all expenses of whatever nature arising from such disturbance, or in replacing or repair thereof, shall be paid by the Contractor, unless otherwise stated in the contract documents due to special circumstances.

6. **PERFORMANCE STANDARDS.** All work must be performed in accordance with applicable NCDOT Design Standards and Specifications. The Contractor shall comply with all applicable Federal, State, and Local laws, ordinances, rules, and regulations, including MUTCD and OSHA standards. Contractor shall ensure compliance with applicable Local, State, and Federal safety and environmental regulations.
7. **TIME, MOBILIZATION, AND LIQUIDATED DAMAGES.** Timely performance is essential to the Town's operational needs, emergency response capabilities, and compliance with applicable reimbursement requirements. For each Notice to Proceed (NTP), the Contractor shall commence work promptly upon receipt and shall fully complete the assigned work within the number of calendar days specified in the NTP. Failure to begin or complete the work within the required timeframe constitutes a material breach of this Contract unless the Town grants a written extension due to circumstances beyond the Contractor's control.

Storage of equipment will be permitted only for the duration of the contract and removed prior to job closing.

Any damage resulting from mobilization of equipment shall be corrected by the Contractor prior to job closeout. When adjacent property is affected by any work done by the Contractor, it shall be the responsibility of the Contractor to take whatever steps are necessary to protect the adjacent property.

8. CARE OF WORK. The Contractor shall exercise proper precaution at all times and shall be responsible for all damages to persons or property, whether occurring within or beyond the project limits, that arise from its fault or negligence in connection with the prosecution of the work. The Contractor shall be responsible for the proper care and protection of all work performed throughout the duration of the road/embankment repair project until completion and final acceptance.

The Contractor shall not execute an agreement with any subcontractor, nor permit any subcontractor to perform any portion of the work included in this Contract, without prior written approval (change order) signed by the TOWN. The Contractor shall submit a list of proposed subcontractors for approval before commencement of the work, which approval shall not be unreasonably delayed or withheld.

Subcontractors shall be bound by the terms and conditions of the contract insofar as it applies to their work, but this shall not relieve the Contractor from full responsibility for the proper completion of all work.

The Contractor agrees to observe all applicable laws, ordinances, and codes governing construction, roadwork, and public infrastructure. The Contractor shall promptly pay all bills for labor performed and materials furnished in connection with the road/embankment repair services and shall keep all project areas free and clear of liens or claims of lien at all times.

9. INDEMNIFICATION OF TOWN. The Contractor shall indemnify and save harmless the Town and agents of the Town from liability for any injury or damages to persons or property resulting from its prosecution of work under this Contract, including all work performed by its subcontractors. The Contractor shall, at all times, comply with all applicable laws, ordinances, regulations, orders and decrees, and shall protect and indemnify the Town and agents of the Town against all claims, loss, damage, injury, fines, penalties, and costs - including court costs and attorney's fees, charges, liability and exposure, however caused - arising from or based on the violation of any law, ordinance, regulation, order or decree, whether by its employees and its subcontractors, or in any way connected with the Contractor's negligent performance or nonperformance of the terms of the Contract.

The Contractor shall supervise and direct the work, using skillful labor and proper equipment for all tasks. Safety of the Contractor's personnel and equipment is the responsibility of the Contractor.

Any unusual, concealed or changed conditions are to be immediately reported to the Town. The Contractor shall be responsible for the protection of existing utilities, roads, adjacent buildings, and other permanent fixtures. Any unnecessary damage will be repaired at the Contractor's expense.

10. INSURANCE. The Contractor shall maintain the following insurance and provide certificates of coverage to the Town prior to commencement of work:

- **Workers' Compensation & Employer Liability Insurance:** The Contractor shall maintain valid Workers' Compensation coverage for all employees and subcontractors engaged in work at the site, in accordance with Chapter 97 of the North Carolina General Statutes. The Contractor shall maintain Employer's Liability

insurance with minimum limits of \$500,000.00 per occurrence for bodily injury by accident as well as injury by disease.

- **Commercial General Liability Insurance:** The Contractor shall carry, and require subcontractors to carry, commercial general liability insurance with minimum limits of \$1,000,000.00 per occurrence for bodily injury, death, and property damage, and \$2,000,000.00 general aggregate. Coverage shall include contractual liability and the use of all equipment including, but not limited to excavating machinery, trenching machines, cranes, hoists, rollers, concrete mixers, and motor vehicles used in the performance of the Contract.
- **Automobile Liability Insurance:** The Contractor shall carry, and require subcontractors to carry, commercial automobile liability insurance with a combined single limit of \$1,000,000.00 per occurrence for bodily injury and property damage.

Failure to maintain the insurance shall be grounds for termination of the Contract. The Contractor is advised that it bears the financial responsibility for replacement of materials and equipment stored on site that are stolen or damaged during construction, and for damage to improvements made under the terms of this Contract due to vandalism, mishap, wind, high water, or fire. Insurance requirements in this Section do not limit the Contractor's indemnification obligations under Section 9.

11. **COMPLIANCE WITH LAWS, STANDARDS, AND PERMITTING REQUIREMENTS.** The Contractor and all subcontractors shall comply with all applicable federal, state, and local laws, ordinances, rules, and regulations governing construction and public-works projects, including but not limited to OSHA requirements and all North Carolina Department of Transportation (NCDOT) standards and specifications.

The Contractor shall obtain, at its own expense, all permits, licenses, approvals, and inspections required to perform the road/embankment services work. This includes securing any necessary local permits prior to the commencement of work, providing all required notices, coordinating with local inspection authorities, and allowing inspectors access to work areas for review of work in progress as required by applicable regulations. The Contractor shall be responsible for paying all associated fees and charges for such permits and approvals and for maintaining all required documentation throughout the duration of the project. This compliance requirement applies to all work performed under this Contract and supersedes any duplicative references in other sections.

12. **WRITTEN CHANGE ORDERS.** No changes to the scope of work under this Contract shall be made without a written Change Order duly approved and executed by both the Contractor and the Town. All Change Orders shall be prepared jointly by the Contractor and the Town and must be fully executed before any work described therein is performed.

Unless otherwise negotiated and expressly approved in the Change Order, the unit prices set forth in the original Agreement shall apply to all additions, deletions, or modifications to the work.

No work outside the original scope shall be performed without an executed Change Order. Any extra work performed without prior written authorization shall be deemed unauthorized and completed at the Contractor's sole expense. The Town may require such unauthorized work to be removed and replaced at the Contractor's expense.

13. **TERMINATION OF CONTRACT.** The Town may terminate this Contract, in whole or in part, immediately for cause, including but not limited to breach of contract, non-performance, failure to supply adequate labor or materials, abandonment of the work, insolvency or bankruptcy, or any other default in the prompt and diligent performance of the work. Written notice of termination shall be provided to the Contractor and may specify a final date by which corrective action must occur if the Town elects to allow an opportunity to cure.

The Town may also terminate this Contract for reasons beyond the Contractor's control that render the Contractor unable to complete the work, or if the Town is unable to authorize or fund completion of the remaining work. In such cases, the Town shall provide five (5) days' written notice of termination.

Upon any termination of this Contract, the Contractor shall be entitled to payment for all work satisfactorily completed as of the effective termination date, including the value of materials properly delivered and accepted for incorporation into the work. The Town may withhold amounts necessary to cover damages, costs of completion, or other claims arising from the Contractor's breach.

If termination occurs due to the Contractor's default, the Town shall have full authority to employ others to complete the work or to enter into new contracts for completion. Any additional costs incurred by the Town in completing the work, including administrative and managerial expenses, may be charged against the unpaid contract balance. If the unpaid balance exceeds the cost of completion, the remainder shall be paid to the Contractor. If the cost of completion exceeds the unpaid balance, the Town may pursue all legal remedies to recover the difference.

The Contractor shall not be held liable for delays caused by conditions beyond its control and without its fault or negligence; however, such delays shall not prevent the Town from terminating the Contract if the delay materially affects project completion. Extensions of time for weather, unforeseen site conditions, or other justifiable reasons may be granted only upon written approval by the Town.

Nothing in Section 13 limits the Town's rights under this Section to terminate the Contract for cause or convenience.

14. **SUSPENSION/TERMINATION OF SUBCONTRACTORS.** The Town may, at its sole discretion, advise the Contractor to suspend or terminate the services of a subcontractor for breach of the conditions of applicable sections of this Contract, including faulty workmanship or deviation from bid specifications.
15. **EMPLOYMENT REQUIREMENTS.** It is specifically agreed as part of the consideration of the signing of this Contract that the parties hereto, their agents, officials, employees, or servants will not discriminate in any manner on the basis of age, handicap, race, color, creed, sex or national origin with reference to the subject matter of this Contract, no matter how remote. This provision shall be enforced by action for specific performance, injunctive relief, or other remedy as by law provided; and this provision shall be construed in such manner as to prevent and eradicate all discrimination based on age, handicap, race, color, creed, sex or national origin. The Contractor agrees to comply with all equal employment, affirmative action, and labor standards compliance requirements outlined in the Request for Bids, all of which are incorporated herein by reference, and which the Contractor by

execution of this Contract acknowledges that it has received, all of which form a part of this Contract as fully as if they were herein repeated.

16. DISPUTE RESOLUTION. In the event that there is any question or dispute with respect to the interpretation or the manner of implementation of this Contract or related documents or with respect to the execution and progress of the work called for hereunder, the parties hereto agree to first attempt to resolve the matter through good-faith informal discussions. If the dispute cannot be resolved informally, the parties shall submit the matter to mediation conducted by a mutually agreed upon neutral mediator. Only if mediation is unsuccessful may either party pursue legal action. To the extent suit must be filed, the parties agree that this Contract is governed by the laws of the State of North Carolina and venue is appropriate in Avery County.
17. DEBARMENT AND SUSPENSION PROVISION. The Contractor certifies that neither the company itself nor any of its principals or subcontractors is currently debarred, suspended, or otherwise excluded from, or ineligible for participation in, Federal assistance programs.
18. ASSIGNMENT. Neither Town nor Contractor shall assign any rights or duties under this Contract without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Contract. Nothing contained in this paragraph shall prevent the Contractor from employing independent consultants, associates, and subcontractors to assist in the performance of the work covered by this Contract.

The Contractor and the Town hereby agree to the full performance of the covenants contained herein.

19. FEMA COMPLIANCE. All work performed under this Contract shall comply with FEMA Public Assistance requirements, including procurement, documentation, cost reasonableness, and record-keeping standards. The Contractor shall cooperate fully in providing all documentation required for reimbursement and shall maintain all records for the duration required by FEMA regulations.

IN WITNESS HEREOF, they have executed this Contract, this day and year first above written.

CONTRACTOR

TOWN OF BANNER ELK

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

This Contract has been pre-audited in accordance with the Local Government Budget and Fiscal Control Act.

Rick Owen, Town Manager

**TOWN OF BANNER ELK
TROPICAL STORM HELEN RECOVERY
Townwide Culvert Repairs**

ATTACHMENT A: Scope of Work

The Contractor shall perform culvert repair services. The Scope of Work includes but is not limited to:

- Remove and replace 18" CMP and HDPE culverts.
- Remove and replace or repair small headwalls, valley gutters, flared offsets, drop boxes, lids, and frames with grates.
- Place unclassified fill, rip rap, or #57 stone where needed.
- Erosion control and stabilization, as required.
- Provision and maintenance of traffic control measures consistent with NCDOT and MUTCD standards.

Notice to Proceed

- The Town will issue a Notice to Proceed (NTP) to authorize the commencement of work. No work shall begin until the NTP is issued by the Town.
- The NTP will include a timeline for completion.

Performance Standards

- All work must be performed in accordance with applicable NCDOT Design Standards and Specifications.
- The Contractor shall comply with all applicable federal, state, and local laws, ordinances, rules, and regulations, including the MUTCD and OSHA standards.
- Contractor shall ensure compliance with applicable local, state, and federal safety and environmental regulations.

Documentation & Reporting

The Contractor shall:

- Submit a brief work plan, if requested.
- Maintain a daily log of progress and work completed.
- Provide before-and-after photos.
- Provide documentation to show where all materials are purchased and where all materials are disposed of.
- Submit an itemized invoice and pay sheet consistent with Attachment B.

Work Locations

The repair locations and site-specific scopes of work are below:

Townwide Culverts

FEMA Project #	GPS and Site	Scope of Work	Unclassified Fill (CY)	#57 STONE (TN)	Calss II Rip Rap (TN)	Remove & Replace Headwall (CY)	18" CMP Culvert (LF)	18" HDPE Pipe (LF)	Concrete Valley Gutter (LF)	Concrete Flared Offset Inlet (EA)	Concrete Drop Boxes (EA)	Repair Concrete Drop Boxes and Reset Lid (EA)	Concrete Cap (EA)	Replace Frame & Grate (EA)	Geotextile Fabric (SF)	Rebuild Rock Headwall (EA)
Task Order #1																
810507	36.16331, -81.88008, Old Turnpike West Culverts	Shoulder fill needed - 20' x 12' x 4' deep, and class II rip rap 22' x 12' x 2'. Need to remove and replace 46' of 18" HDPE,	35.60		29.50			46.00								
Task Order #2																
952079	36.16400, -81.86111 (Balsam)	Remove/replace 4' x 30" x 12" headwall. Repair 6' x 4' x 2' of embankment washout.	1.78			0.37										
952079	36.16084, -81.86220, Puddingstone Pkwy site P-120	Repair 40' x 2' x 5" concrete valley gutter. Remove/replace 1 - 30' x 18" CMP culvert, 2 - 26' x 4' x 8" flared offset drop inlet, 2 - 4' x 3' x 3' drop boxes, and 2 - 3' x 4' x 6" concrete caps.		6.00			30.00		40.00	2.00	2.00		2.00			
Task Order #3																
952084	36.17204, -81.84839, Elkmont Ln site P-052	Collect flared end 24" HDPE from bottom of slope drain and re-attach to existing pipe. Install 6' x 10' x 4' of class II rip rap and #57 stone, 50' x 6' x 6' class II rip rap, and 2 secitions of geotextile fabric (50' x 6' and 14' x 6').		13.40	114.00					1.00					384.00	
952084	36.17103, -81.84799, Elkmont Ln site P-067	Repair the brick extension of the drop box and frame with frame/grate and place 2' x 2' x 2' of #57 stone.		0.50								1.00				
952084	36.16344, -81.86472 (Crooked Creek)	Brick and grout interior of drop box and reset the lid.										1.00				
952084	36.162511, -81.860877, Laurel Ln site P-225, P-224 (P-216, P-217)	Remove/replace 160' of 18" pipe, replace catch basin and fill the sinkhole, 15' x 10' x 5'.	28.00	6.00				160.00				1.00				
952084	36.16517, -81.87560, Brookview Ln site P-309	Rebuild outfall, 15' x 4' x 2' Class 2 rip rap			6.70											
952084	36.14594, -81.85231, Supreme Goldern Rd site P-543	Reclaim and rebuild the rock headwall with the onsite materials, roughly 12' x 4' x 4'.														1.00
Task Order #4																
952084	36.163590, -81.872370, First Community Bank site P-200	Remove/replace drop box (3.5' x 5.5' x 4') and frame/grate.									1.00			1.00		
952084	36.16451, -81.87698, Beech Haven Ln site P-315	Remove/replace 2' x 2' x 3' drop box with frame and grate.									1.00			1.00		

**TOWN OF BANNER ELK
TROPICAL STORM HELEN RECOVERY
Townwide Culvert Repairs**

ATTACHMENT B: Pricing and Bid/Pay Items

The Contractor shall be compensated based on the number of units used times the unit rates below. Progress payments can be requested and will be based on verified quantities used at the time of the request.

Item #	Item Description	Units	Estimated Quantities	Unit Price	Amount
2	Unclassified Fill	CY	66.00		
5	#57 Stone	TN	27.00		
6	Class II Rip Rap	TN	150.00		
7	18" CMP Pipe	LF	30.00		
8	18" HDPE Pipe	LF	220.00		
9	Remove/replace headwall	CY	0.40		
10	Concrete Valley Gutter	LF	40.00		
11	Concrete Flared Offset Inlet	EA	3.00		
12	Concrete Drop Boxes	EA	4.00		
13	Repair Concrete Drop Boxes and Reset Lid	EA	3.00		
14	Concrete Cap	EA	2.00		
15	Replace Frame & Grate	EA	2.00		
16	Geotextile Fabric	SF	384.00		
17	Rebuild Rock Headwall	EA	1.00		
				Total Amount =	

The Town shall retain five percent (5%) of the total amount due from each Progress Payment until final acceptance of the work by the Town. Retainage shall be withheld from each progress payment and will be released only after:

- All work has been completed to the satisfaction of the Town.
- All required documentation (including daily logs, before-and-after photos, and final invoicing) has been received and approved.
- Any deficiencies or punch list items identified by the Town have been corrected.

Retainage shall be released within thirty (30) days of final acceptance unless otherwise agreed in writing.

**TOWN OF BANNER ELK
TROPICAL STORM HELEN RECOVERY
Townwide Culvert Repairs**

ATTACHMENT C: Contract Terms and Conditions for Construction Contracts

Within Attachment D, the word “subcontractor” shall refer to any firm or individual employed by the Contractor. Since the parties anticipate that federal funding will be applied to this Contract, the following federal contract clauses must be complied with, where applicable, in addition to the clauses already contained herein.

PART I. REQUIRED CONTRACT PROVISIONS

1. REMEDIES.

In accordance with Part III of this Attachment, the parties shall have all remedies available to them under North Carolina law and in equity, including those set forth in this Contract. Upon default by the TOWN, these remedies shall include payment for the reasonable value of the services rendered by Contractor for work performed consistent with prevailing guidelines. Upon default by Contractor, remedies available to the TOWN shall include the cost of completion of the project, remediation of improper work, and such other damages as may be incurred.

2. TERMINATION FOR CAUSE AND CONVENIENCE.

This Contract may be terminated by the Contractor, only with cause, upon Contractor’s giving written notice to the TOWN that is in material breach of this Contract and upon such default not having been cured by the TOWN within 30 days of such notice. The TOWN may terminate this Contract upon providing written notice to Contractor that it no longer requires Contractor’s services under this Contract. Upon such termination by either party, (i) the Contractor shall continue to perform services and develop a plan for the orderly stoppage of the work, which shall include the delivery, or otherwise making available, to the TOWN all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Contractor in performing this Contract, whether completed or in process, and (ii) the TOWN shall pay the Contractor all fees and expenses due for services rendered through the 30th day after the notice of termination. Notwithstanding any such Termination, Contractor shall use best efforts to assist the TOWN regarding any unresolved and unsettled reimbursement claims with FEMA, including through first and second level appeals and as otherwise necessary or requested by the TOWN. Contract rates and payment terms shall apply to any work performed post termination.

3. EQUAL EMPLOYMENT OPPORTUNITY

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

- (a) 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.

- (b) 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.
- (c) 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.
- (d) 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.
- (e) The Contractor will comply with all provisions of any rules, regulations, and relevant orders of the Secretary of Labor.
- (f) The Contractor will furnish all information and reports required by any 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.
- (g) 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 such other sanctions may be imposed and remedies invoked as by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

4. DAVIS-BACON ACT.

Pursuant to 2 CFR, Part 200, Appendix II, the Davis-Bacon Act **DOES NOT** apply to the Public Assistance Program or other FEMA grant cooperative programs outside of the Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Port Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. As such, those provisions are inapplicable for this Contract executed under the FEMA Public Assistance Program.

5. COPELAND ANTI-KICKBACK ACT.

Recipient and subrecipient contracts are required to include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations. This requirement applies to all contracts for construction or repair work above \$2,000 in situations where the Davis-Bacon Act also applies. It **DOES NOT** apply to the FEMA Public Assistance Program.

6. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

- (a) *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.
- (b) *Violation; Liability for Unpaid Wages; Liquidated Damages.* In the event of any violation of the clause set forth in paragraph (a) 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 (a) of this section, in the sum of \$27 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 (a) of this section.
- (c) *Withholding for Unpaid Wages and Liquidated Damages.* The TOWN 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) of this section.
- (d) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a) through (d) of this section and also a clause requiring the subs to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.

7. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

The regulation at 37 C.F.R. § 401.2(a) defines funding agreement as “any contract, grant, or cooperative agreement entered into between any federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph. This requirement **DOES NOT** apply to the FEMA Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”

8. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

(a) *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 TOWN and understands and agrees that the TOWN 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.

(b) *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 TOWN and understands and agrees that the TOWN 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.

(c) *Clean Water Act.* The Contractor hereby agrees to adhere to the provisions which require compliance with all applicable standards, orders, or requirements issued under Section 508 of the Clean Water Act which prohibits the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities.

9. DEBARMENT AND SUSPENSION

- (a) 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).
- (b) 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.
- (c) This certification is a material representation of fact relied upon by the TOWN. 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 the TOWN, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

- (d) 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.

10. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (as amended)

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.

Required Certification: Upon request, Contractor must sign and submit to the non-federal entity the following certification.

APPENDIX A, 44 C.F.R. PART 18 – 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:

- (a) 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.
- (b) 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.
- (c) 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

11. PROCUREMENT OF RECOVERED MATERIALS

- (a) 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:
 - (1) Competitively within a timeframe providing for compliance with the contract performance schedule,
 - (2) Meeting contract performance requirements, or
 - (3) At a reasonable price.
- (b) 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>.
- (c) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

12. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT AND SERVICES

Pursuant to Section 889(b)(1) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 and 2 C.F.R. §200.216, the Contractor shall not obligate or expend funds on certain telecommunication products or from certain entities for national security reasons. As defined in the statutes set forth herein, no party to this Contract, including Contractor's subcontractors, shall obligate or expend any funds to do any of the following:

- (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; or
- (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.

13. DOMESTIC PREFERENCES FOR PROCUREMENT

As appropriate, and to the extent consistent with applicable law, the Contractor shall, to the greatest extent practicable, purchase, acquire, and use goods, products, and materials produced in the United States, including but not limited to iron, aluminum, steel, cement, and other manufactured products.

PART II. ADDITIONAL CONTRACT PROVISIONS

The Uniform Rules authorize FEMA to require additional provisions for non-Federal entity contracts. Although FEMA does not currently require additional provisions, FEMA recommends the following and they are included as follows:

1. ACCESS TO RECORDS

- (a) The Contractor agrees to provide the TOWN, the NC Department of Public Safety, 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.
- (b) 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.
- (c) 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.
- (d) In compliance with the Disaster Recovery Act of 2018, the TOWN 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.

2. CHANGES

Any change, modification, change order, or constructive change must be within the scope of the contract, and any changes made must be agreed upon by both parties in writing. Such a change can be made as to the method, price, or schedule of work without breaching the contract so long as the change is allowable, allocable, within the scope of the agreement, and reasonable for the completion of the project scope.

3. 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 specific FEMA pre-approval.

4. 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.

5. 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.

6. 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.

7. AFFIRMATIVE SOCIOECONOMIC CONTRACTING STEPS

The Contractor must take all necessary affirmative steps, consistent with 2 C.F.R. § 200.321, to ensure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms are used when possible in the award of subcontracts and procurement under this Contract. These requirements apply to all tiers of subcontracting. affirmative steps must include:

- (a) Placing qualified small and minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms on solicitation lists.
- (b) Soliciting these business types whenever they are potential sources.
- (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by these business types.
- (d) Establishing delivery schedules, where the requirement permits, that encourage participation by these business types.
- (e) Using the services and assistance, as appropriate, of organizations such as the U.S. Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce.

The Contractor must maintain documentation demonstrating compliance with these affirmative steps and make such documentation available to the Owner upon request.

8. COPYRIGHT AND DATA RIGHTS

Contractor shall comply with the requirements of 2 C.F.R. §200.315 et seq. regarding intangible property and shall provide the federal government and TOWN the rights to obtain, reproduce, publish, or otherwise use data produced pursuant to this Contract and shall have the right to authorize others to use such intangible property as deemed appropriate.

No materials, to include but not limited to reports, maps, or documents produced as a result of this contract, in whole or in part, shall be available to the Contractor for copyright purposes. Any such materials produced as a result of this contract that might be subject to copyright shall be the property of the Owner and all such rights shall belong to the Owner.

9. ENERGY POLICY AND CONSERVATION ACT

The Contractor hereby recognizes 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 (P.L. 94-163).

10. BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the Contractor or the Contractor's subcontractors may result in the suspension or termination of this Contract or such other action that may be necessary to enforce the rights of the parties of this contract. The duties and obligations imposed by the contract documents and the rights and remedies

available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

11. COMPLIANCE WITH THE OFFICE OF MANAGEMENT AND BUDGET

The parties agree to comply with the regulations, policies, guidelines, and requirements of the Office of Management and Budget, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards", 2 CFR Part 200, as they relate to the use of Federal funds under this contract.

12. FLOOD DISASTER PROTECTION

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

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

13. PATENTS

- (a) The Contractor shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract including its use by the Owner, unless otherwise specifically stipulated in the Contract Document.
- (b) License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized license, direct by the Owner and not by or through the Contractor.
- (c) If the Contractor uses any design device or materials covered by letters, patent or copyright, he shall provide for such use by suitable agreement with the owner of such patented or copy-righted design device or material.
- (d) It is mutually agreed and understood, that without exception the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or his Sureties shall indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copy-righted design, device or materials or any trademark or copy- right in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense, or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

14. CONFLICT OF INTEREST

- (a) No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Contractor shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.
- (b) No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

15. INTEREST OF CONTRACTOR

The Contractor covenants that he presently has no interest and shall not acquire any interest direct or indirect in the above described project or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed.

16. POLITICAL ACTIVITY

The Contractor will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.

17. PERSONNEL

The Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Owner.

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

No person who is serving sentence in a penal or correctional institution shall be employed on work under this Contract.

18. SUBCONTRACTS

- (a) The Contractor shall not enter into any subcontract with any subcontractor who has been debarred, suspended, declared ineligible, or voluntarily excluded from participating in contracting programs by any agency of the United States Government or the State of North Carolina.
- (b) The Contractor shall be as fully responsible to the Owner for the acts and omissions of the Contractor's subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by the Contractor.
- (c) The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractor to the Contractor by the terms of the contract documents insofar as applicable to the work of subcontractors and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provision of the contract documents.

- (d) Nothing contained in this contract shall create any contractual relation between any subcontractor and the Owner.

19. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

PART III. NON-DISCRIMINATION AND AFFIRMATIVE ACTION CLAUSES

It is agreed that the scope of services in an order may require compliance with the following provisions. Such are included only to the extent that they are implicated by the scope of services and required by applicable law:

1. SECTION 503 OF THE REHABILITATION ACT OF 1973 (29 USC 793)

- (a) The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is otherwise qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- (b) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- (c) In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- (d) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- (e) The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- (f) The Contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

2. SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED

The Contractor will not discriminate against qualified disabled person, nor will the person be excluded from participation in, be denied the benefits of, nor otherwise be subjected to discrimination under this Contract which receives or benefits from Federal financial assistance.

3. AGE DISCRIMINATION ACT OF 1975, AS AMENDED

The Contractor will not discriminate against any qualified person on the basis of age, nor will the person be excluded from participation, be denied the benefits of, nor otherwise be subjected to discrimination under this Contract which receives or benefits from Federal financial assistance.

4. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

The Contractor will not discriminate in any manner on the basis of race, color, religion, sex or national origin or other legally protected status with reference to the subject matter of this Contract, no matter how remote. This provision shall be enforced by action for specific performance, injunctive relief, or other remedy provided by law; and this provision shall be construed to such manner as to prevent and eradicate all discrimination based on race, color, religion, sex or national origin.

5. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 - COMPLIANCE IN THE PROVISION OF TRAINING, EMPLOYMENT AND BUSINESS OPPORTUNITIES

- (a) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR part 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.
- (c) The Contractor agrees to send to each labor organization or representative or workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under the Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- (d) The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 75. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 75.

- (e) The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 75 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 75.
- (f) Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

6. DISCRIMINATION DUE TO BELIEFS

No individual involved in administering or operating the project funded under this grant may discriminate against any program participant or applicant on the basis of political affiliation or political beliefs. All decisions regarding eligibility, participation, access to services, and treatment under the program must be made without regard to an individual's political affiliation or political beliefs.

7. CIVIL RIGHTS

The Contractor shall comply with the provisions of Title VI of the Civil Rights Act of 1964. No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

8. CERTIFICATION OF NONSEGREGATED FACILITIES

By the submission of a bid, the bidder, offeror, applicant or subcontractor certifies that he/she does not maintain or provide for his/her establishments, and that he/she does not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained. He/she certifies further that he/she will not maintain or provide for employees any segregated facilities at any of his/her establishments, and he/she will not permit employees to perform their services at any location under his/her control where segregated facilities are maintained. The bidder, offeror, applicant or subcontractor agrees that a breach of this certification is a violation of the equal opportunity clause of this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

He/she further agrees that (except where he/she has obtained for specific time periods) he/she will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that he/she will retain such certifications in his/her files; and that he/she will forward the following notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

PART IV. NORTH CAROLINA CONTRACT TERMS AND CONDITIONS.

- 1. Contractor shall submit records of payment for materials and payments to subcontractors for the work described herein on a monthly basis to the TOWN. At all times relevant to this contract, Contractor shall keep and maintain records for construction and other daily work for comparison with the TOWN's records.
- 2. Contractor shall keep the site and the surrounding area reasonably free from rubbish at all times and shall remove debris from the site from time to time or when directed to do so by the TOWN. Before final inspection and

acceptance of the project, the Contractor shall thoroughly clean all work sites, and completely prepare the project and site for use by the TOWN.

3. This Contract is entered into in Avery County, North Carolina, and shall be construed in accordance with the laws of the State of North Carolina. The parties hereby agree that Avery County, North Carolina, is an appropriate venue for the resolution of any disputes arising as a result of this contract. If a dispute arises out of or relates to the Contract which cannot be resolved informally between the parties, the parties agree to conduct pre-litigation mediation, consistent with the rules of Mediated Settlement Conferences for the Superior Court of North Carolina, prior to the filing of any suit arising out of this Contract.
4. Contractor shall provide and maintain, at Contractor's expense, such insurance as will protect Contractor and the TOWN from claims under the Workers' Compensation Act and such comprehensive general liability insurance as will protect the TOWN and Contractor from all claims for bodily injury, death, or property damage which may arise from the performance of Contractor or by Contractor's employees during the course of Contractor's functions and services required under this Agreement, such insurance being in amounts of at least one million dollars (\$1,000,000.00) for general liability insurance per occurrence/two million dollars (\$2,000,000.00) aggregate of Commercial General Liability and Workers' Compensation coverage. The Contractor shall furnish such additional insurance as may be required by North Carolina law, including motor vehicle insurance in amounts not less than the statutory limits. Each Certificate of Insurance shall bear the provision that the policy cannot be canceled, reduced in amount, or coverage eliminated. Contractor shall ensure all materials and the premises and structures that are the subject of this contract, that is, the proposed construction and renovation to the TOWN, until completion of the project and final payment by the TOWN. Contractor shall list the TOWN as an additional insured for the duration of this work. Copies of these policies shall be provided to the Project Manager and Town Manager.
5. All materials provided by Contractor, or any other party shall be free from liens, encumbrances, and claims of any individual, partnership, corporation, or entity. Contractor hereby waives any and all claims of liens related to this project on behalf of itself or its subcontractors.
6. Time is of the essence in the completion of this project.
7. Contractor agrees to indemnify and hold harmless the TOWN of any and all liability arising from any breach of contract or any other action related to, or incidental to, the performance of this contract.
8. Contractor warrants the materials used in this project to be of highest quality and fit and proper for the purposes which they are to be used. Where specifications are general in nature, all materials are to be equal to or exceed those specified. Contractor further warrants that all work will be completed in a workmanlike manner according to the highest standards and guaranteed to be free from defect due to inferior installation, inferior construction, or negligence. Contractor further warrants that all construction/renovation shall be free from structural defects and defects in workmanship under normal use and service, for a period of twelve (12) months after the date of installation and acceptance by the TOWN.

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

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

9. The TOWN shall not be responsible for incidental or consequential damages as a result of any breach of this contract, or for any Acts of God, fire, riot, war, civil unrest, or impossibility beyond the control of the TOWN.
10. Records of Contractor's personnel, consultants, additional services and expenses pertaining to the project, and records of accounts between the TOWN and other parties shall be kept on a generally recognized account basis, and all such records shall be available to the TOWN or its authorized representative at mutually convenient times.
11. All designs, drawings, specifications, design calculations, notes and other works developed in the performance of this contract shall become the sole property of the TOWN.
12. In event of termination, Contractor shall receive payment for services rendered prior to the receipt of written termination notice from the TOWN, less costs of the TOWN to complete and finish the work. Any work done by Contractor and any materials delivered by Contractor or any other supplier prior to termination shall become the property of the TOWN.
13. If any provision of this contract is unenforceable, invalid, or illegal, the remaining provisions will continue in full force and effect.
14. In the event that any incorporated documents conflict with the terms and conditions of this contract, the terms and conditions set forth in this document shall control.
15. Each Contractor shall verify the work authorization of its employees and subcontractors employees through E-Verify in accordance with N.C. GS§64-26(a), and shall sign an affidavit that they have complied with the requirements of this law.