STATE OF NORTH CAROLINA
DEPARTMENT OF PUBLIC SAFETY
OFFICE OF RECOVERY AND RESILIENCY
AND
THE CITY OF FAYETTEVILLE
AND
HORNE, LLP

MEMORANDUM OF AGREEMENT ON PARTIAL ASSIGNMENT AND AMENDMENT OF A CONTRACT FOR PROFESSIONAL PROJECT MANAGEMENT SERVICES FOR DISASTER RECOVERY PROGRAMS IN THE CITY OF FAYETTEVILLE

This Memorandum of Agreement ("MOA") is made this __ day of __________, 2019, by and between the NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY, OFFICE OF RECOVERY AND RESILIENCY ("NCORR"), THE CITY OF FAYETTEVILLE ("CITY"), and HORNE, LLP ("CONTRACTOR") (collectively, the "Parties"). The intent of this MOA is to execute a partial assignment of a contract for disaster recovery program management services from the City to NCORR (the "Contract," attached as Exhibit 1). Specifically, the CDBG-DR-funded housing recovery services portion of the Contract is to be assigned from the City to NCORR. The Parties also wish to amend the Contract as a condition for NCORR to accept the assignment.

WITNESSETH:

WHEREAS, on 8–9 October 2016, Hurricane Matthew caused record-breaking rainfall in central and eastern North Carolina, creating major flooding that devastated the people, infrastructure, businesses, and schools of entire communities, including the City; and

WHEREAS, an expedited major disaster declaration from the President of the United States was granted on 10 October 2016 as FEMA-4265-DR-NC, a declaration that included Cumberland County ("County"), the county in which the City is located; and

WHEREAS, the U.S. Department of Housing and Urban Development ("HUD") issued Federal Register notices 82 Fed. Reg. 5591 (Jan. 18, 2017) and 82 Fed. Reg. 36812 (Aug. 7, 2017), which allocated Community Development Block Grant — Disaster Recovery ("CDBG-DR") funds to the North Carolina Department of Commerce ("DOC") for the purpose of assisting recovery in the most impacted and distressed areas declared a major disaster due to Hurricane Matthew; and
WHEREAS, DOC and the North Carolina Division of Emergency Management executed a subrecipient agreement with Cumberland County that became effective on 1 December 2017, awarding funds to the County to implement local projects under the State’s CDBG-DR program; and

WHEREAS, pursuant to that subrecipient agreement, the County and the City executed a sub-subrecipient agreement on 3 April 2018 which awarded a portion of the County’s CDBG-DR grant amount to the City; and

WHEREAS, the City carried out a procurement process, pursuant to the requirements of 2 C.F.R. §§ 200.318–200.326, to select a contractor to manage its CDBG-DR-funded projects, and accordingly awarded the Contract to Home on 7 August 2018; and

WHEREAS, the North Carolina General Assembly enacted S.L. 2018-136 which created NCORR as a division within the Department of Public Safety, and authorized NCORR to administer all CDBG-DR funds awarded to the State and to enter into contracts for “project management services” to carry out that purpose; and

WHEREAS, DOC has entered into an agreement with NCORR, made effective 2 January 2019, subgranting a portion of HUD’s CDBG-DR award, in order for NCORR to carry out the requirements of S.L. 2018-136; and

WHEREAS, the City wishes to transfer the responsibility for administering the CDBG-DR single-family housing program in its jurisdiction to NCORR, and with that, the administration of a portion of its Contract with Home through an assignment to NCORR; and

WHEREAS, as a condition of the assignment, NCORR and Home desire to make certain amendments to the Contract, which are contained in Exhibit B to this MOA—amendments which shall go into effect upon the execution of the assignment;

WHEREAS, all Parties desire to enter into this MOA and intend to be bound by its terms;

NOW THEREFORE, in consideration of the mutual promises contained herein and subject to the amendments to the Contract contained in Exhibit 2, NCORR, the City, and Home agree as follows:

I. PARTIAL ASSIGNMENT:

The City agrees to assign all of its rights and responsibilities with respect to the CDBG-DR-funded single-family housing portion of the Contract to NCORR. No other portion of the Contract is to be assigned through this MOA.

Home agrees to be bound by this partial assignment of the Contract. For all responsibilities that Home has to the City with respect to the CDBG-DR-funded single-family housing portion of the Contract, Home now owes those obligations to NCORR. Similarly, for all rights that Home has against the City with respect to the CDBG-DR—
funded single-family housing portion of the Contract, Horne now has those rights against NCORR.

NCORR agrees to accept this partial assignment of the Contract. NCORR hereby assumes all of the City’s rights and responsibilities with respect to the CDBG-DR-funded single-family housing portion of the Contract. NCORR has no liabilities or duties with respect to the portions of the Contract that do not effectuate the single-family housing program funded by CDBG-DR.

II. ENTIRE AGREEMENT: This MOA and any annexes, exhibits and amendments annexed hereto and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral and written statements or agreements.

III. COUNTERPARTS: This MOA may be executed in counterparts, each of which shall be an original, and all of which, when taken together, shall constitute one and the same instrument.

IV. EFFECTIVE DATE: This MOA shall become effective upon execution by all parties to the MOA.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
[signatures on following pages]
IN WITNESS WHEREOF, the Parties have executed this MOA by their duly authorized representatives in multiple originals, one of which shall be retained by each of the Parties.

CITY OF FAYETTEVILLE

By: [Signature]

Douglas J. Hewett
City Manager

Date: 02/01/19

NORTH CAROLINA OFFICE OF RECOVERY AND RESILIENCY

By: [Signature]

Mike Sprayberry
Director

Date: 2/15/19

HORNE, LLP

By: [Signature]

S. Neil Forbes
Partner

Date: 1/29/2019
EXHIBIT 1

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND
CITY OF FAYETTEVILLE

GENERAL SERVICES AGREEMENT
FOR -PROFESSIONAL PROJECT
MANAGEMENT SERVICES FOR
DISASTER RECOVERY PROGRAMS

THIS AGREEMENT, effective the day of August 7, 2018 by and between the City OF FAYETTEVILLE, a municipal corporation duly organized and existing under the laws of the State of North Carolina NORTH CAROLINA (hereinafter referred to as City), with principal business offices at Fayetteville, North Carolina, and HORNE LLP (hereinafter referred to as Consultant), a corporation with principal business offices at Fayetteville, North Carolina.

WITNESSETH:

WHEREAS, City, is engaged in the recovery from the devastating floods that affected the City in October 2016 as a result of Hurricane Matthew; and

WHEREAS, the professional services of consultants with expertise in implementation of federal disaster recovery programs are needed by the City to assure proper implementation of such programs and compliance with applicable federal laws and regulations; and

WHEREAS, pursuant to N.C.G.S. 143-64.31 it is the public policy of this State that municipalities announce all requirements for architectural, engineering and surveying services, to select firms qualified on the basis of demonstrated competence and qualification and to negotiate contracts for services at a fair and reasonable fee with the best qualified firm; and

WHEREAS, Consultant provides professional consulting services of the nature required by the City and employs trained and experienced consultants, technical and/or other personnel possessing adequate knowledge, skills and experience to provide professional services to the City; and

WHEREAS, the parties contemplate that the services of Consultant will be performed in various stages in accordance with separate authorizations to be issued by City, and the parties desire to set forth the basic terms of their agreement in this General Services Agreement rather than in separate authorizations to be issued by City.
NOW THEREFORE, IN CONSIDERATION of the premises and the mutual covenants herein contained, the parties hereto do hereby contract and agree as follows:

ARTICLE 1 - REQUEST FOR PROPOSAL-SUBMITTAL OF PROPOSAL. As the need for consulting services arise, City participated in a request for Proposal for said services from Consultant which described the scope of work, program, estimated schedule and City's requirements. Consultant has the qualified personnel to meet City's requirements to perform the consulting services requested by the City. Consultant has submitted to City within the time specified a written Proposal describing the necessary consulting, technical and/or other services, guidance, opinions and advice to be provided. The Proposal set forth in general terms Consultant's recommendations to carry out the work. Consultant listed the background and experience of Consultant's personnel to be assigned to the project. Said Proposal contains a fee schedule setting forth fees for services of the various categories of personnel to be assigned to City's project, found in Exhibit A attached hereto.

ARTICLE 1.1 - ACCEPTANCE OF PROPOSAL. City and Consultant contemplate certain discussions, negotiations and possible changes to the Proposal submitted by Consultant over the course of this Agreement. Upon a meeting of the minds, Consultant shall submit new language which shall set forth the agreement of the parties. If the new language is acceptable, the City shall accept same in writing. Consultant's fee schedule shall remain in effect during the term of this Agreement, unless modified by the parties in writing. City shall provide Consultant with a specific written Authorization to Proceed for each Proposal accepted by the City.

ARTICLE 2 - TERM OF AGREEMENT. The term of this General Services Agreement for Consulting Services shall be for three (3) years from the date it is effective. The Agreement may be extended thereafter by mutual written agreement of the parties.

ARTICLE 2.1 - ASSIGNMENT. It is the intent of this Agreement to secure the personal services of the Consultant and failure of the Consultant for any reason to make the personal services available to the City for the purposes described in this Agreement shall be cause for termination of this Agreement. However, City shall, before termination, give written notice to Consultant of the issue and provide five (5) business days to cure the alleged breach or deficiency. If Consultant cannot cure the alleged breach or defect in that amount of time, then immediate termination shall be available to the City. The City shall only be liable to pay for work completed by the Consultant at the time of the notice of termination. The Consultant shall not assign, sublet, or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of City. Nothing contained in this paragraph shall prevent Consultant from employing such independent consultants, associates, and sub-contractors as it may deem appropriate to assist Consultant in the performance of services rendered.

ARTICLE 2.2 - SCOPE OF SERVICES. The scope of services under this Agreement is found in Exhibit B and is for providing professional project management services for disaster recovery programs in the City of Fayetteville, North Carolina.
ARTICLE 2.3 - FEDERAL CONTRACTING PROVISIONS. The applicable Federal Contracting Provisions are attached hereto as Exhibit C and fully incorporated herein by reference.

ARTICLE 3 - COMPENSATION. Consultant shall submit to City monthly invoices for services performed during that month, computed on the basis of the Proposal accepted by City. City agrees to pay Consultant's monthly invoice within thirty (30) days after said invoice is received by the City. Adjustments to an invoice for billing errors may extend the time for payment. The compensation model under this Agreement is contained Exhibit A.

ARTICLE 3.1 - VERIFICATION OF INVOICES. City has the right to require the Consultant to produce for inspection all Consultant's time records, salaries of personnel and charges for direct expenses for which cost-plus compensation is provided. Consultant agrees to provide City with said records on a timely basis and cooperate with City to verify the accuracy of all invoices.

ARTICLE 3.2 - COSTS AND EXPENSES. Consultant will invoice City for all applicable travel expenses and will ensure that all travel costs comply with the State of North Carolina's Travel Policy and Procedures relative to per diem expenses. Accommodations for Consultant's employees shall be arranged by Consultant. Consultant will seek pre-approval of all travel expenses and understands that approved travel will be reimbursed in addition to the fees for services rendered.

ARTICLE 3.3 - DISPUTES. City shall pay Consultant's invoices at times heretofore set forth unless a bona fide dispute exists between City and Consultant concerning the accuracy of said invoice or the services covered thereby.

ARTICLE 3.4 - NON-APPROPRIATION. Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the City are from appropriations and monies from the City Council and any other governmental entities. In the event sufficient appropriations or monies are not made available to the City to pay the terms of this agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the City. This contract is not contingent on the availability of federal funding.

ARTICLE 4 - PROFESSIONAL STANDARDS AND DUTIES OF Consultant. Consultant shall be held to the same standard and shall exercise the same degree of care, skill and judgment in the performance of services for City as is ordinarily provided by a similar professional under the same or similar circumstances at the time in Cumberland County, North Carolina.

ARTICLE 4.1 - Consultant NOT RESPONSIBLE FOR CONSTRUCTION MEANS OR SAFETY. A Consultant for general construction projects shall not be responsible for any general contractor's or other project participant's failure to fulfill their contractual responsibilities to the City, nor shall Consultant be responsible for construction means, methods, techniques, sequences, or procedures. Neither shall Consultant be responsible for a project safety program or safety precautions unless Consultant's Proposal sets
forth a safety program which is accepted by City and becomes a part of the agreement between the parties.

ARTICLE 4.2 - Consultant AS CONSTRUCTION MANAGER. In the event the City contracts with the Consultant to provide Construction Management Services, the Consultant shall be responsible for determining that each construction contractor provides work to the quality level specified and in accordance with the plans and specifications. In no event shall Consultant be responsible for any contractor's, subcontractor's, vendor's, or other project participant's failure to comply with federal, state or local laws, ordinances, regulations, rules, codes, orders, criteria, or standards unless it has contracted with the City to do so.

ARTICLE 5 - ESTIMATES OF COST AND TIME. Although Consultant has no control over the cost of labor, materials, equipment or services furnished by others, or over contractor's, sub-contractor's, or vendor's methods of determining prices, or over competitive bidding or market conditions, nevertheless Consultant's cost estimates and time estimates shall be made on the basis of current labor and material prices and the Consultant's experience and qualifications, and Consultant's estimates shall represent its best judgment as an experienced and qualified professional familiar with electric, water and sewer utility projects, or other projects for which Consultant is employed. Although Consultant has no control over the resources provided by contractors to meet contract schedules, nevertheless Consultant's estimates or forecast of schedules shall be made on the basis of its experience and qualifications and shall represent Consultant's best judgment as an experienced and qualified professional familiar with electric, water and sewer utility projects, or other projects for which Consultant is employed. Consultant does not guarantee that project costs and schedules will not vary from the estimates and schedules given to City.

ARTICLE 6.0 - LIABILITY, INDEMNIFICATION AND INSURANCE.

6.1 - GENERAL. The City and Consultant have considered the risks and potential liability that may exist during the performance of services by Consultant, and have agreed to allocate such liabilities in accordance with this Article. During the performance of services under this Agreement, Consultant shall purchase and maintain insurance coverage as hereinafter set forth, without lapse or changes contrary to the requirements of this section. Words and phrases used in this Article shall be interpreted in accordance with customary insurance industry usage and practice.

6.2 - INDEMNITY AND PROFESSIONAL LIABILITY. Consultant agrees to indemnify and hold the City harmless from and against damages and losses arising out of the performance of professional services for City to the extent caused by the professional negligence of Consultant, Consultant's employees, and Consultant's subcontractors, for whom Consultant is legally responsible. Consultant agrees to purchase and maintain professional liability insurance (errors and omissions insurance) in the amount of $1,000,000 coverage for each claim, with a general aggregate of $2,000,000. Said insurance coverage shall be underwritten by an insurance company authorized to do business in the State of North Carolina by the North Carolina Department of Insurance, with an A.M. Best rating of not less than A-VII.
6.3 - LIABILITY INSURANCE. Consultant agrees to indemnify and hold the City, its servants, agents and employees, harmless from and against all liabilities, claims, demands, suits, losses, damages, costs and expenses (including attorney's fees) for third party bodily injury to or death of any person, or damage to or destruction of any third party property, to the extent caused by the negligence of the Consultant, Consultant's employees, and Consultant's subcontractors, for whom Consultant is legally responsible during the performance of services under this Agreement. Consultant shall purchase and maintain at all times during performance of services under this Agreement Commercial General Liability Insurance with combined single limits of $1,000,000.00 coverage for each occurrence with a general aggregate of $2,000,000.00, designating the City as an additional insured and which said insurance provides Consultant with insurance for contractual liability which Consultant has assumed pursuant to the terms of this Article 6.

6.4 - OTHER INSURANCE. In addition to professional liability insurance and commercial general liability insurance set forth above, Consultant further agrees to purchase and maintain at all times during the performance of services under this Agreement insurance coverage as follows:
(a) Worker's Compensation Insurance as provided by North Carolina law which said policy shall also afford coverage to Consultant for employer's liability.
(b) Automobile liability insurance with $1,000,000.00 combined single limit for each accident covering bodily injury and property damage.
(c) The CGL policy required above shall include independent contractor liability coverage.
(d) The CGL policy required above shall provide Consultant with products and completed operations insurance, said coverage to be written on an occurrence basis, with coverage extended for such a period of time that suits can be filed before the running of the statute of limitations on any claim for injury to person or property due to negligence of Consultant in the design of any building designed by the Consultant under the terms of this Agreement.

ARTICLE 7 - INDEPENDENT CONTRACTOR. Consultant is an independent contractor and shall undertake performance of the services pursuant to the terms of this Agreement as an independent contractor. Consultant shall be wholly responsible for the methods, means and techniques of performance. City shall have no right to supervise methods and techniques of performance employed by Consultant, but City shall have the right to observe such performance.

ARTICLE 8 - COMPLIANCE WITH LAWS. Consultant agrees that in performing services pursuant to this Agreement to comply with all applicable regulatory requirements including federal, state and local laws, rules, regulations, orders, codes, criteria, and standards. Consultant shall be responsible for procuring all permits, certificates, and licenses necessary to allow Consultant to perform services under this Agreement. Consultant shall not be responsible for procuring permits required for the construction of any building, unless such responsibility is specifically agreed to by Consultant.
ARTICLE 9 - City's RESPONSIBILITIES. City will furnish to Consultant all of City's requirements for the project, including, but not limited to, scope of work, program, time constraints, schedule milestones, financial constraints, design objectives and design constraints, which are available to the City or which the City can reasonably obtain to furnish to Consultant to enable Consultant to make a Proposal to City. Additionally, the City shall also be responsible for the following:

(1) Make final decisions utilizing information supplied by Consultant.
(2) Designate personnel to represent City in matters involving the relationship between City, Consultant and third parties.
(3) Provide such accounting, independent cost estimating, and insurance counseling services as may be required by the project.
(4) Provide such legal services as City may require or Consultant may reasonably request with regard to legal issues pertaining to the project, including those which may be raised by contractors, subcontractors, vendors or other project participants.
(5) Enter into contracts for the purchase, construction, or other services with contractors, subcontractors, and vendors.
(6) Provide financing for the project and make all payments in accordance with the terms of the contract.

ARTICLE 10 - OWNERSHIP OF DOCUMENTS. All documents, including drawings and specifications prepared by Consultant pursuant to this AGREEMENT, are instruments of service in respect of the Project. They are not intended or represented to be suitable for reuse by City or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by Consultant for the specific purpose intended will be at City's sole risk and without liability to Consultant. Any such verification or adaptation will entitle Consultant to further compensation at rates to be agreed upon by City and Consultant.

ARTICLE 11 - TERMINATION OF CONTRACT FOR CAUSE. In the event of substantial failure by Consultant to perform in accordance with the terms of this Agreement, the City shall, before termination, give written notice to Consultant of the issue and provide five (5) business days to cure the alleged breach or deficiency. If Consultant cannot cure the alleged breach or defect in that amount of time, then immediate termination shall be available to the City. The City shall only be liable to pay for work completed by the Consultant at the time of the notice of termination.

ARTICLE 12 - TERMINATION OF CONTRACT FOR CONVENIENCE. City shall have the right to terminate this Agreement for City's convenience upon seven (7) days written notice to Consultant. Consultant shall terminate performance of services on a schedule acceptable to City. In the event of termination for convenience, the City shall pay Consultant for all services performed.
ARTICLE 13 - NONDISCLOSURE OF PROPRIETARY INFORMATION.
Consultant shall consider all information provided by City and all drawings, reports, studies, calculations, plans, specifications, and other documents resulting from the Consultant's performance of the SERVICES to be proprietary, unless such information is available from public sources. Consultant shall not publish or disclose proprietary information for any purposes other than the performance of the SERVICES without the prior written authorization of City. Consultant shall not make any written or verbal statement to any press or news media concerning the Project without the written authorization of City. Notwithstanding any other language in this Agreement, Consultant, in the course and scope of work under this Agreement, may produce documentation or work product that it considers to be proprietary in nature, the release of which could harm the Consultant in future competitive solicitations. As such, the Consultant may request non-disclosure of such confidential or proprietary information and the City shall honor that request to extent allowed under applicable state laws and/or city ordinances.

ARTICLE 14 - NOTICE. Any formal notice, demand, or request required by or made in connection with this agreement shall be deemed properly made if delivered in writing or deposited in the United States mail, postage prepaid, to the address specified below.

TO CONSULTANT: HORNE LLP
ATTENTION: S. NEIL FORBES
1020 HIGHLAND COLONY PARKWAY
SUITE 400
RIDGELAND, MS 39157

TO CITY:
CITY OF FAYETTEVILLE
ATTENTION: DOUGLAS J. HEWETT
CITY MANAGER
433 HAY STREET
FAYETTEVILLE, NC 28301

Nothing contained in this Article shall be construed to restrict the transmission of routine communication between representatives of Consultant and City.

ARTICLE 15 - DELAY BEYOND CONTROL OF THE PARTIES. Neither Consultant nor City shall be considered to be in default of the provisions of this Agreement for delays in performance due to forces beyond the control of the parties. "Forces beyond the control of the parties" shall mean, but is not limited to, delay caused by fire, acts of God, flood, earthquakes, storms, lightning, epidemic, war, riot, and/or civil disturbance.

ARTICLE 16 - GOVERNING LAW. The Parties expressly agree that if litigation is brought in connection with this contract and (1) the litigation proceeds in the Courts of the State of North Carolina, the parties agree that the appropriate venue shall be in Cumberland County (Twelfth Judicial District of North Carolina); or (2) the litigation proceeds in a federal court,
the parties agree that the appropriate venue shall be the United States District Court for the Eastern District of North Carolina

ARTICLE 17 - MISCELLANEOUS. NONWAIVER FOR BREACH.
No breach or non-performance of any term of this Agreement shall be deemed to be waived by either party unless said breach or non-performance is waived in writing and signed by the parties. No waiver of any breach or non-performance under this Agreement shall be deemed to constitute a waiver of any subsequent breach or non-performance and for any such breach or non-performance each party shall be relegated to such remedies as provided by law.

17.1 PRECEDENCE. In the event of any conflict or discrepancy between the terms of this Agreement and the specific written authorization to proceed pursuant to this Agreement, then the written authorization to proceed shall be given precedence over this Agreement in resolving such conflicts or discrepancies. If any conflict or discrepancy is discovered by either party hereto, then the written authorization to proceed, or this Agreement, shall be modified or amended, as necessary.

17.2 SEVERABILITY. The invalidity, illegality, or un-enforceability of any portion or provision of this Agreement shall in no way affect the validity, legality and/or enforceability of any other portion or provision of this Agreement. Any invalid, illegal or unenforceable provision of this Agreement shall be deemed severed from this Agreement, and the balance of the Agreement shall be construed and enforced the same as if the Agreement had not contained any portion or provision which was invalid, illegal or unenforceable. Provided, however, this section 17.3 shall not prevent this entire Agreement from being void in the event any portion or provision of this Agreement which is of the essence of this Agreement shall be deemed void as provided by law or as determined by a court of competent jurisdiction.

ARTICLE 18 - INTEGRATED AGREEMENT. The City's request for Proposal, the Consultant's written Proposal, the City's authorization to proceed and this General Services Agreement for Consulting Services shall be integrated into and shall become the integrated agreement between the parties. Consultant and City agree that all prior negotiations, representations, proposals, letters, agreements, understandings, or other communications between them, whether written or oral, are hereby merged into the Agreement and that the Agreement supersedes all such prior negotiations, contracts and/or agreements. This Agreement shall not be modified unless such modifications are evidenced in writing, signed by both Consultant and City.
ARTICLE 19 - BENEFITS LIMITED TO PARTIES. Nothing herein shall be construed to give any right or benefits hereunder to anyone other than City and Consultant.

19.1 LIMITATIONS. Consultant’s total liability to City under each authorization shall not exceed the total compensation paid under the authorization, or $1,000,000, whichever is greater; any portion of liability determined to be consequential damages under this per authorization limit, shall not exceed the compensation paid under the authorization.

In no event shall Consultant’s total liability in the aggregate, for all services under this agreement, exceed $4,000,000. Limits set forth in this agreement shall apply notwithstanding any and all causes whatsoever including, but not limited to negligence (of any degree), errors, omissions, warranty, indemnity, strict liability or breach of contract, provided, however, that the foregoing limitation shall not apply to any indemnity obligations of consultant with respect to third party personal injury and death or damage to third party property.

ARTICLE 20 - DISPUTE RESOLUTION. City and Consultant agree that they shall first submit any and all unsettled claims, counterclaims, disputes and other matters in question between them arising out of or relating to this Agreement or the breach thereof to mediation, pursuant to The Mediated Settlement Conference Rules of the 12th Judicial District, Superior Court Division, Cumberland County. If such mediation is unsuccessful in resolving a dispute, then either party may seek to have the dispute resolved by a court of competent jurisdiction.
IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives effective the day and year first above written.

ATTEST:

[Signature]
PAMELA MEGILL, City Clerk

CITY OF FAYETTEVILLE:

[Signature]
DOUGLAS J. HEWITT, ICMA-CM
City Manager
08/10/18
Dated

Consultant:
S. Neil Forbes, Partner in Charge

Address:
1020 Highland Colony Pkwy, Suite 400 Ridgeland, MS 39157

Phone: 601-326-1091
Email: neil.forbes@hornellp.com

Date: 08/10/18
Signature: [Signature]

This instrument has been pre-audited in the manner Required by the Local Government Budget and Fiscal Control Act. Purchase Order to be issued.

[Signature]
Jill Toland, Chief Financial Officer

(not exceed # 1,259,214.00)
EXHIBIT A

CITY OF FAYETTEVILLE PROJECTS

COMPENSATION MODEL

The services rendered under this Exhibit shall be compensated pursuant to Article 3 of this Agreement, according to the unit fees and hourly rates listed below. However, HORNE will perform services on a case by case basis upon assignment from the City. The City shall not be liable to pay for services that have not been properly rendered and invoiced. Any deviation from this compensation model shall be made upon written agreement between the parties. The information below represents an amount that will not be exceeded without the express written consent of the parties to this agreement.

<table>
<thead>
<tr>
<th>Title/Function</th>
<th>Total Cost</th>
<th>Average Hourly Rate for Contract</th>
<th>Estimated # of FTE Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>CDBG - DR Housing Recovery -</td>
<td>$4,928,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Project Manager</td>
<td>$439,110.00</td>
<td>$205</td>
<td>2,142</td>
</tr>
<tr>
<td>Team Lead 3 / Disaster Recovery Specialist</td>
<td>$192,780.00</td>
<td>$180</td>
<td>1,071</td>
</tr>
<tr>
<td>Mitigation Specialist</td>
<td>$23,940.00</td>
<td>$190</td>
<td>126</td>
</tr>
<tr>
<td>Administrative Support</td>
<td>$111,384.00</td>
<td>$51</td>
<td>2,142</td>
</tr>
<tr>
<td>CDBG - DR Multi-Family Rental -</td>
<td>$2,597,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Project Manager</td>
<td>$287,000.00</td>
<td>$205</td>
<td>1400</td>
</tr>
<tr>
<td>HMG -</td>
<td>$4,100,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Project Manager</td>
<td>$205,000.00</td>
<td>$205</td>
<td>1000</td>
</tr>
</tbody>
</table>
HORNE’s past recovery experience has proven that it can be difficult to predict exactly what each project will require prior to its launch. Therefore, in addition to the project delivery cost estimate above, included is the rate per position for additional categories which may be necessary to support your recovery activities:

<table>
<thead>
<tr>
<th>Position</th>
<th>Hourly Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive</td>
<td>$0</td>
</tr>
<tr>
<td>Program Director</td>
<td>$250</td>
</tr>
<tr>
<td>Deputy Program Manager/Alternate</td>
<td>$205</td>
</tr>
<tr>
<td>Team Lead 3</td>
<td>$180</td>
</tr>
<tr>
<td>Team Lead 2</td>
<td>$150</td>
</tr>
<tr>
<td>Team Lead 1</td>
<td>$130</td>
</tr>
<tr>
<td>Case Worker Lead</td>
<td>$115</td>
</tr>
<tr>
<td>Intake Specialist</td>
<td>$100</td>
</tr>
<tr>
<td>Administrative Assistance</td>
<td>$51</td>
</tr>
<tr>
<td>Senior Advisor for Disaster</td>
<td>$225</td>
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<tr>
<td>Technical Assistance</td>
<td>$135</td>
</tr>
<tr>
<td>Appeals Specialist</td>
<td>$225</td>
</tr>
<tr>
<td>Mitigation Specialist</td>
<td>$190</td>
</tr>
<tr>
<td>Disaster Recovery Specialist</td>
<td>$180</td>
</tr>
<tr>
<td>Project Manager</td>
<td>$205</td>
</tr>
</tbody>
</table>

HORNE unit prices for the services listed potentially necessary to deliver this program are as follows:

**IMPLEMENTATION UNIT PRICE TABLE**

<table>
<thead>
<tr>
<th>Contractor Implementation Activity</th>
<th>Unit Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outreach, Intake, and Eligibility</td>
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<td>Eligibility QC and DOB Verification</td>
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<td>Cost Reasonableness Policy Development</td>
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<tr>
<td>Service Description</td>
<td>Cost</td>
</tr>
<tr>
<td>------------------------------------------------------------------------------------</td>
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<td>Builder Procurement, Assignment, and Oversight</td>
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<td>Damage Assessments</td>
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<td>Inspections (as appropriate per activity)</td>
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<td>Plans, Construction Documents, Scope of Work Development, Work Order</td>
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<tr>
<td>Notice to Proceed and Pre-Construction Meetings</td>
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<td>Construction Monitoring</td>
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<td>Boundary Survey</td>
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<td>Elevation Certifications</td>
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<td>Lead Based Paint</td>
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EXHIBIT B

HORNE SCOPE OF SERVICES

COMMUNITY DEVELOPMENT BLOCK GRANT – DISASTER RECOVERY STEP-BY-STEP

The State of North Carolina is implementing Steps 1-3 of the 8 Step CDBG-DR Process on behalf of the City of Fayetteville. The HORNE team will both follow the program’s specific 8 Steps beginning at Step 4 and will bring the best practice solutions to expedite delivery of this program to the community. HORNE will also provide assurance for Steps 1-3 to set at ease any concerns on the part of the City, as needed. The City shall be liable to compensate work performed by HORNE upon authorization of the City.

If necessary in supporting Intake, HORNE would include the following:

- Provide technical resources for document collection;
- Integrate customer service survey;
- Identify communication designees;
- Build in a status tracker with real-time updates from intake to construction completion

If the State is not performing Eligibility Reviews for the City, HORNE will provide the following Eligibility Services:

- Utilization of established Third Party data subscription services with nationally recognized providers to expedite eligibility processing and assure accuracy;
- Use of third party data to establish identity and ownership.

HORNE will also work, as necessary and required, in providing services pertaining to Duplication and/or Verification of Benefits Analysis through the following:

- Assurance that no citizen receives duplication of benefits by verifying FEMA, SBA, NFIP, private insurance and other data to calculate benefits received before recovery assistance is provided;
- Provision of team of specialized DOB reviewers;
- Provision of education to applicants during intake as to programs guidelines and requirements.

CDBG-DR Priority #1: Tiered Environmental Review (As may be needed and requested):
EXHIBIT 1

HORNE will assess the status of the City’s Tier 1 environmental review, upon request of the City with the understanding that the majority of the Tiered Environmental Reviews have been completed by the State of North Carolina. Upon written request, on a case by case basis as needed in view of any remaining work necessary for Environmental review, HORNE will then partner with the state and regulatory parties to quickly evaluate the status of existing coordination efforts and resolve any outstanding compliance requirements.

A simultaneous focus will be on those applicants which are most likely to successfully proceed through the program and receive assistance. Once applicants are progressing through the program, HORNE will incorporate additional measures to ensure efficient processing of all eligible applicants to move the program forward.

Once the applicants progress through the eligibility process, the structure will be evaluated for Matthew-related damage. The HORNE team will perform disaster-specific damage assessments to ensure eligibility. HORNE brings analysts who are well-versed in recognizing the difficulties surrounding many environmental issues and handle topics such as:

- Special flood hazard areas,
- Lead-based paint,
- Floodway areas,
- Above-ground storage tanks,
- Mold, and
- Hazardous materials.

Documentation of each assessment is comprehensive to support the judgment required by our professionals as we understand that the damage estimate is the basis of the potential award.

CDBG-DR Priority #2: Grant Determination (As may be needed and requested):

Once the prior 4 steps have been completed, HORNE is able to either support or fully conduct the determination of grant funds available to your applicants under the CDBG-DR housing programs. This step is one of the most critical in the entire process. HORNE will perform this step only after being expressly authorized to do so by the City, and the City will only be liable for work performed on request.

CDBG-DR Priority #3 – Contractor Selection:

The City has the option to use the State-procured CMR team or procure your own CMR. The HORNE team will be ready to support either model.

This may include:

- Developing solicitations for various services to ensure procurements comply with federal and state requirements;
- Supporting hiring for various services, such as construction, engineering, architecture and surveying; and
EXHIBIT 1

- Coordination with the City to understand the preferred method of selection and support of additional procurement needs based on criteria such as past experience with housing recovery programs, cash on hand, staffing of superintendents and works in progress, among others.

CDBG-DR Priority #4 – Construction Management:

HORNE will work with the City to:

- Develop policies, procedures, and controls necessary to effectively accomplish the construction phase of the CDBG-DR programs;
- Bring to the City expertise to execute all phases of construction activity including program setup, procurement, bidding, contracting, contractor pool management and all other Davis Bacon and Related Acts compliance as applicable, preconstruction conferences, scheduling, cost verification, oversight and final inspection;
- Address critical aspects of CDBG construction including compliance with HUD Quality standards, building codes, floodplain ordinances, payment request review, and project documentation;
- Implementation of ongoing construction contractor training to include minimum standards and ensure compliance with program policies and state and federal regulations;
- Assurance that expenditures are properly classified as activity delivery versus administrative costs;
- Focus on documentation that supports activity expenditure, including overseeing collection, scanning and reviewing of all pay request documents for completeness, compliance and accuracy.

CDBG-DR Priority #5 – Closeout

HORNE will work with the City to:

- Upon completion of each applicant’s rehabilitation, reimbursement or construction, HORNE will prepare and submit all applicant closeout documents and prove all records to the City;
- HORNE will provide reconciliation and closeout of all application files, preparation and submission of all financial reports and award calculations and submission of all final supporting documentation.

CDBG-DR Priority #6 – Other Services

Reporting Compiled and Maintained for Jurisdiction

If called upon, HORNE has technology systems in place to support every facet of each program, with built-in customizations for the City of Fayetteville operations representing minimal to no delay on development for the Hurricane Matthew recovery. These systems are designed to support comprehensive project management with real-time reporting and performance data on all aspects of the program. Schedules are monitored closely by team members, specifically the project director, and the project, construction, and eligibility managers.
In addition to multitude of options for customized reports, HORNE will compile a single, windshield view report to depict the state of the program in real time and detect bottlenecks before they happen. The Program Management Timeline Report takes into account the duration of each activity required to process applications from eligibility to complete, which assists management in anticipating and mitigating issues.

HORNE will customize enhanced reporting templates and aging reports to the Hurricane Matthew housing programs' scope of work and manage benchmarks against actual production to identify potential bottlenecks downstream, address capacity gaps, and adjust resources appropriately.

Monitoring of Contractors and Reporting to Jurisdiction

HORNE will ensure that all stakeholders, including the program managers, are aware of and compliant with any regulatory requirements associated with the CDBG-DR funds. Additionally, HORNE will monitor the action and communication plans associated with each program to ensure that all key performance indicators are properly monitored, and issues are addressed and resolved quickly and effectively.

Progress reports are delivered for each program to provide monitoring on key benchmarks that are established for performance. Upon review of the reports, we then conduct any necessary site visits and limited scope audits for documentation of eligibility, labor standards, and fair housing compliance. Program progress is monitored through interviews and continuous correspondence with the City of Fayetteville, program managers, contractors, and other stakeholders.

HORNE’s Internal Monitoring Plan includes:

- Program rules and requirements;
- Items needed for performance measurements;
- Process for internal and external audits;
- Reporting; and
- Recordkeeping.

FEMA HAZARD MITIGATION ASSISTANCE PROGRAM

HORNE uses a dedicated customer service system that allocates a single point of contact to the City of Fayetteville for each applicable funding source. From application approval to closeout, throughout the monitoring and technical assistance process, HORNE will work alongside the City as your trusted advisor.

HORNE understands there are currently 28 homes in the City of Fayetteville that meet the HMGP criteria for acquisition, elevation, or reconstruction and have been approved by the State, and the City has submitted 40 additional properties to be considered for the second phase of HMGP funding.

HORNE will provide the following services for HMGP, only after specific request to do so by the
City which shall be documented:

Project Award:

- HORNE reviews applications to verify:
  1. Scope of Work;
  2. Owner Eligibility;
  3. Determination of property within floodway/floodplain;
  4. Substantial Damage Review;
  5. Clear Title Review;
  6. Applicability of Waivers;
  7. Benefit Cost Analysis;
  8. Appraisal delivered in full compliance with FEMA HMA program requirements;
  9. Tenancy determination;
  10. Develop per property budget;
  11. Develop project schedule;
  12. Consider pre-award costs;
  13. Consider URA costs;
  14. Identify matching sources;
  15. Preliminary DOB review.

Project Implementation & Monitoring:

- HORNE will:
  1. Develop property tracking workflow in acquisition module;
  2. Procure necessary services;
  3. Meet with property owners to finalize and document DOB;
  4. Explore matching opportunities of increased cost of compliance;
  5. Property owner offer;
  6. Coordination of closing;
  7. Compile and provide closeout documentation;
  8. Request advance funding to ensure funds are available at closing;
  9. Attend closing;
  10. Procure and contract demolition services;
  11. Monitor progress throughout life of acquisition;
  12. Ensure adherence to project schedule; and
  13. Request scope of work changes as needed.

Closeout:

- HORNE will:
  1. Ensure required deed restriction verbiage filed with court;
  2. Develop monitoring plan for property inspection;
  3. Document completion of demolition of property;
  4. Provide required documentation to support costs claimed per property;
  5. Compile close out package and request closeout of State funding agency; and
  6. Service as liaison for the City of Fayetteville.
EXHIBIT C

SPECIAL PROVISIONS AND REGULATIONS REQUIRED BY THE US DEPARTMENT
OF HOUSING AND URBAN DEVELOPMENT (HUD)
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM.

Contractor agrees to comply with the following Special Provisions and Regulations. Furthermore, the Contractor shall include each of the following Special Provisions and Regulations in each sub-contract executed by Contractor for the City of Fayetteville, North Carolina Relief Programs.

1. Access of the City of Fayetteville, North Carolina, HUD and Others to CDBG Documents, Papers, and Books. The Contractor agrees to allow the City of Fayetteville, HUD, the Comptroller General of the United States, and any of their duly authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to the CDBG Program for the purpose of making audits, examinations, excerpts, and transcriptions.

2. Termination of Contract for Cause. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner any obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Contract, the City of Fayetteville shall thereupon have the right to terminate this Contract by giving written notice to the Contractor of such termination and specifying the effective date of such termination. In such event, all finished or unfinished documents, data, studies, and reports prepared by the Contractor shall entitle the Contractor’s receipt of just and equitable compensation for any satisfactory work completed on such documents. Notwithstanding the above, the Contractor shall not be relieved of liability to the City of Fayetteville for damage sustained to the City of Fayetteville by virtue of any
breach of the Contract by the Contractor. The City of Fayetteville may withhold any payments to the Contractor for the purpose of set off until such time as the exact amount of damages due the City from the Contractor is determined.

3. **Termination for Convenience of the City of Fayetteville.** The City of Fayetteville may terminate this Contract any time by a notice in writing from the City to the Contractor. If the Contract is terminated by the City of Fayetteville as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the Work actually performed bears to the total Work of the Contractor covered by this Contract, less payments of compensation previously made.

4. **Records.** All records required to be kept on the project shall be maintained for at least five (5) years after final payments and until all other pending matters under the grant for this project are closed. However, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the five (5) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the five (5) year period, whichever is later.

5. **Health and Safety Standards.** All parties participating in this project agree to comply with Sections 107 and 103 of the Contract Work Hours and Safety Standards Act. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions, which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation.

6. **Environmental Compliance.** Contracts, subcontracts, and subgrants of amounts in excess of $100,000.00 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1957 (h)) Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations (40 CFR, 15), which prohibit the use under nonexempt Federal contracts, grants, or loans facilities included on the EPA List of Violating Facilities. The provisions shall require reporting of violations to the grantor agency and the U.S. EPA Assistant Administrator for Enforcement (EN-329).

7. **Energy Efficiency.** All participants in the projects shall recognize 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 (PL 94-163).

8. **Changes.** The City of Fayetteville may, from time to time, request changes in the scope of the Work of the Contractor to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor’s compensation which are mutually agreed upon by and between the City and the Contractor, shall be incorporated in written and executed amendments to this Contract.
9. Personnel. The Contractor represents that it has, or will secure at its own expense, all personnel required in performing the Work under this Contract. Such personnel shall not be employees of or have any contractual relationship with the City. All the Work 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 Work. No person who is serving sentence in a penal or correctional institution shall be employed on work under this Contract.

10. Anti-Kickback Rules. Wages of personnel performing work under this Contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. 874; and Title 40 U.S.C. 276c). The Contractor shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this contract to insure compliance by the subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors hereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

11. Withholding of Wages. If in the performance of this Contract, there is any underpayment of wages by the Contractor or by any subcontractor hereunder, the City may withhold from the Contractor out of payment due to him an amount sufficient to pay to employees underpaid the difference between the wages required thereby to be paid and the wages actually paid such employees for the total number of hours worked. The amounts withheld may be disbursed by the City for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

12. Claims and Disputes Pertaining to Wage Rates. Claims and disputes pertaining to wage rates or to classifications of professional staff or technicians performing work under this Contract shall be promptly reported in writing by the Contractor to the City for the latter's decision which shall be final with respect thereto.

13. Equal Employment Opportunity. During the performance of this Contract, the Contractor agrees to comply with Executive Order 11246, and the regulations issued pursuant thereto (24 CFR 130 and 41 CFR Chapter 60), which provides that no person shall be discriminated against on the basis of race, color, religion, gender, or national origin in all phases of employment during the performance of Federal or Federally assisted construction contracts. Contractors and subcontractors on Federal and Federally assisted construction contracts shall take affirmative action to ensure fair treatment in employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates or pay or other forms of compensation and selection for training apprenticeship.

14. Anti-Discrimination Clauses. The Contractor will comply with the following clauses:

(A) Title VI of the Civil Rights Act of 1964 (PL 88-352), and the regulations issued pursuant thereto (24 CFR 1), which provides that no person in the United States shall on the
grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the City receives Federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the City, this assurance shall obligate the City, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits;

(B) Title VIII of the Civil Rights Act of 1968 (PL 90-284), as amended, administering all programs and activities relating to housing and community development in a manner to affirmatively further fair housing, and taking action to affirmatively further fair housing in the sale or rental of housing, the financing of housing, and the provision of brokerage services; and

(C) Executive Order 11063 as amended by Executive Order 2259, on equal opportunity in housing and nondiscrimination in the sale or rental of housing built with Federal assistance.

(D) Section 109 of the Housing and Community Development Act of 1974, as amended which requires that no person in the United States shall on the grounds of race, color, national origin, or gender be excluded from participation in, be denied the benefits or be subjected to discrimination under, any program or activities funded in whole or in part with community development funds made available pursuant to the Act. Section 109 further provides that any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) or with respect to an otherwise handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 796) shall also apply to any such program or activity.

15. Section 3 Clause. The Contractor will comply with the following clauses from 24 CFR 135.38:

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

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

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

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

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

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

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

16. Discrimination Because of Certain Labor Matters. No person employed on the work covered by this Contract shall be discharged or in any way discriminated against because he has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable hereunder to his employer.

17. Compliance with Local Laws. The Contractor shall comply with all applicable laws, ordinances, and codes of the State and local governments, and shall commit no trespass on any public or private property in performing any of the work embraced by this Contract.

18. Subcontracting. None of the Work covered by this Contract shall be subcontracted without prior written consent of the City. The Contractor shall be as fully responsible to the City for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by it. The Contractor shall insert in each subcontract appropriate provisions requiring compliance with the labor standards provisions of this Contract.
19. **Assignability.** The Contractor shall not assign any interest in this Contract and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of the City provided that claims for money due or to become due the Contractor from the City under this Contract may be assigned to a bank, trust company, or other financial institution, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.

20. **Interest of Members of Local Public Agency and Others.** The Contractor agrees to establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have a family, business, or other tie. The Contractor will be aware of and avoid any violation of the laws of this State which prohibit municipal officers and employees from having or owning any interest or share, individually or as agent or employee of any person or corporation, either directly or indirectly, in any contract made or let by the governing authorities of such municipality for the construction or doing of any public work, or for the sale or purchase of any materials, supplies or property of any description, or for any other purpose whatsoever, or in any subcontract arising therefrom or connected therewith, or to receive, either directly or indirectly, any portion or share of any money or other thing paid for the construction or doing of any public work, or for the sale or purchase of any property, or upon any other contract made by the governing authorities of the municipality, or subcontract arising therefore or connected therewith.

The Contractor will also be aware of and avoid any violation of the laws of this State which prescribe a criminal penalty for any public officer who has an interest in any contract passed by the board of which he is a member during the time he was a member and for one year thereafter.

21. **Interest of Certain Federal Officers.** No member of or delegate to the Congress of the United States and no Resident Commissioner shall be admitted any share or part of this Contract or to any benefit to arise therefrom.

22. **Interest of Contractor.** The Contractor covenants that it 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 the Work hereunder. The Contractor further covenants that no person having any such interest shall be employed in the performance of this Contract.

23. **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.

24. **Davis-Bacon Act Requirements.** The Contractor will comply with Section 110 of the Housing and Community Development Act of 1974, as amended, which requires that all laborers and mechanics employed by contractors or subcontractors on construction work assisted under the Act shall be paid at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended 40 U.S.C. 276a-276a5), and it will comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.). However, these requirements apply to the rehabilitation of residential property only if such property is designed for residential use of eight or more families.
25. Uniform Act Requirements. The Contractor will comply with all applicable requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4630) as specified in regulations issued by the Secretary of the Department of Housing and Urban Development and published in 24 CFR 570-1.

26. Lead-Based Paint Requirements. The Contractor will comply with Title IV of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831), which prohibits the use of lead-based paint in residential structures constructed or rehabilitated with Federal assistance in any form.

27. Compliance with Office of Management and Budget. The Contractor agrees to comply with the regulations, policies, guidelines, and requirements of the Office of Management and Budget Circulars A-95, A-102, A-133, and A-54, as they relate to the use of Federal funds under this contract.

28. Flood Insurance Purchase Requirements. The Contractor agrees to comply with all applicable flood insurance purchase requirements of Section 102(2) of the Flood Disaster Protection Act of 1973, (PL 93-234, 87 Stat. 975) approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase, “Federal financial assistance,” includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance. It is understood that the Contractor does not own the Properties and, therefore, any required flood insurance is the Owner’s responsibility to provide and maintain in force.

29. Historic Preservation. Contractor agrees to assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 111593, and the Archaeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-l et seq.) by (a) consulting with the State Historic Preservation officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (CFR Part 600.8) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency and City to avoid or mitigate adverse effects upon such properties.

30. Program Monitoring. The Contractor agrees to assist and cooperate with the Federal grantor agency and County of Cumberland, North Carolina or their duly designated representatives in the monitoring of the project or projects to which this grant relates, and to provide in form and manner approved by City such monitoring reports, progress reports, and the like as may be required and to provide such reports at the times specified.

31. Discrimination Due to Beliefs. No person with responsibilities in operation of the project to which this grant relates will discriminate with respect to any program participant or any applicant for participation in such program because of political affiliation or beliefs.
32. Confidential Findings. All of the reports, information, data, etc., prepared or assembled by the Contractor under this Contract are confidential, and the Contractor agrees that they shall not be made available to any individual or organization without prior written approval of the City.

33. Third-Party Contracts. The City shall include in all contracts with parties receiving grant funds under this contract (each a “Participating Party”) provisions requiring the following: (1) Each such Participating Party keeps and maintains books, records and other documents relating directly to the receipt and disbursement of such grant funds; and (2) Any duly authorized representative of the North Carolina Department of Environmental Quality, the North Carolina Development Authority, the U.S. Department of Housing and Urban Development, and the Comptroller General of the United States shall, at all reasonable times, have access to and the right to inspect, copy, audit, and examine all such books, records, and other documents of such Participating Party until the completion of all close-out procedures respecting this grant and the final settlement and conclusion of all issues arising out of this grant.

34. Lobbying. The Contractor certifies, to the best of his or her knowledge and belief that:

   (A) No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; and

   (B) If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
EXHIBIT 1
STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

AFFIDAVIT

I, Bethany A. Clack (the individual attesting below), being duly authorized by and on behalf of Horne LLP ("Consultant") after first being duly sworn hereby swears or affirms as follows:

1. Consultant understands that E-Verify is the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with NCGS §64-25(5).

2. Consultant understands that Employers Must Use E-Verify. Each employer, after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS §64-26(a).

3. Consultant is a person, business entity, or other organization that transacts business in this State and that employs 25 or more employees in this State. (mark Yes or No)
   a. YES X, or
   b. NO ___

4. Consultant and Consultant’s subcontractors comply with E-Verify, and Consultant will ensure compliance with E-Verify by any subcontractors subsequently hired by Consultant.

This 8th day of August, 2018.

[Signature]

Print or Type Name: J. Neil Forbes

State of MS County of Madison

Signed and sworn to (or affirmed) before me, this the 8th day of August, 2018.

My Commission Expires: June 4, 2021

Notary Public
MEMO TO: Prospective Bidders

FROM: Kimberly Toon, Purchasing Manager

SUBJECT: Addendum #1: RFP – CDBG-DR Assistant Program Consulting – Hurricane Matthew – Cumberland County and the City of Fayetteville

DUE DATE AND TIME: Friday, September 22, 2017; 5:00 p.m.

1. The Bid Documents are hereby modified per the attached Addendum #1 dated September 15, 2017. To include the following:

   a. The Office of Historically Underutilize Businesses (HUB) promotes full and equal access to business opportunities with the State of North Carolina. HUB firms which include minority-owned and women-owned businesses, disadvantaged-owned businesses and disabled-owned businesses as well as other responsible vendors shall have a fair and reasonable opportunity to participate in state business opportunities. Prime suppliers and contractors should support the HUB Office Program by making an effort to engage minority, women, disadvantaged and disabled businesses as subcontractors for goods and services to the extent available. The state’s utilization goal is 10%.

   b. **Question** Can the responding offeror include additional rate categories not listed in Section 6.3.

      **Answer** Yes
The RFP (Section 9.2) references that an offeror could be disqualified if it fails to submit a detailed/itemized cost proposal; however, only hourly rates are requested on the Bid Proposal Form. Since case management, CDBG eligibility, damage assessment, scoping, environmental assessment, and construction management and other activities related to the delivery of the CDBG-DR housing services described in the RFP are routinely priced on a fixed fee or unit basis, will Cumberland/Fayetteville consider an offeror's alternative pricing proposals for these services?

Yes.

What evaluation factors will be used to consider proposals submitted? Please also detail the relative importance of the evaluation criteria utilized. ("2 CFR 200.320(d) (1) requires that any procurement using competitive proposals must identify all evaluation factors and their relative importance.")

The evaluation factors will consist of Management 30%, Technical 50%, and Availability of Personnel & Resources 20%.

2. The foregoing changes shall be incorporated in the Bid Documents, and a copy of the Addendum #1, signed by the Bidder, must accompany the Bid to indicate the Bidder's familiarity with the changes.

Bidder Acknowledgement:

Bidder Name (Print):

Bidder Signature:

Date of Signature:
AMENDMENT ONE TO A CONTRACT FOR PROFESSIONAL PROJECT MANAGEMENT SERVICES FOR DISASTER RECOVERY PROGRAMS IN THE CITY OF FAYETTEVILLE

This Amendment Number One (" Amendment") is made by and between the NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY, OFFICE OF RECOVERY AND RESILIENCY ("NCORR") and HORNE, LLP ("CONTRACTOR") (collectively, the "Parties"), to a contract for disaster recovery program management services (the "Contract," attached as Exhibit 1). The execution of this Amendment is a condition for NCORR to accept the partial assignment of the Contract from the City of Fayetteville ("City"). This Amendment is made effective simultaneous to the execution of the Contract's partial assignment from the City to NCORR.

WITNESSETH:

WHEREAS, the City entered into a Contract with Horne on 7 August 2018 to carry out Hurricane Matthew disaster recovery program management services; and

WHEREAS, the City wishes to transfer the responsibility for administering the CDBG-DR single-family housing program in its jurisdiction to NCORR, and with that, the administration of a portion of its Contract with Horne through an assignment to NCORR; and

WHEREAS, upon execution of the assignment, NCORR assumes all rights and responsibilities of the City with respect to the CDBG-DR-funded single-family housing portion of the Contract; and

WHEREAS, as a condition of the aforementioned assignment, NCORR and Horne desire to execute the Amendment to the Contract listed below, and the Amendment shall go into effect upon the execution of the assignment of the Contract; and

WHEREAS, the Amendment will pertain to the Contract that results from the aforementioned assignment and will therefore bind only NCORR and Horne, and the Amendment will not pertain to the portion of the Contract retained by the City after the assignment; and

WHEREAS, NCORR and Horne desire to execute this Amendment and intend to be bound by its terms;

NOW THEREFORE, pursuant to Article 18 of the Contract, and in consideration of the mutual promises contained herein, NCORR and Horne agree to amend the Contract as follows:

I. The Parties agree to be bound by the North Carolina General Contract Terms & Conditions, as amended, which are inserted below. To the extent there is a conflict between any term below and a term in the original Contract, the term in the North Carolina General Contract Terms & Conditions, as amended, shall prevail.

   1. PERFORMANCE AND DEFAULT:
a) It is anticipated that the tasks and duties undertaken by the Vendor shall include services or the manufacturing, furnishing, or development of goods and other tangible features or components as deliverables that are directly correlated and/or ancillary to the services performed. Except as provided immediately below, and unless otherwise mutually agreed in writing prior to award, any service deliverables or ancillary services provided by Vendor in performance of the contract shall remain property of the State. During performance, Vendor may provide proprietary components as part of the service deliverables that are identified in the solicitation response. Vendor grants the State a personal, permanent, non-transferable license to use such proprietary components of the service deliverables and other functionalities, as provided under this Agreement. Any technical and business information owned by Vendor or its suppliers or licensors made accessible or furnished to the State shall be and remain the property of the Vendor or such other party, respectively. Vendor agrees to perform its services under the contract in the same or similar manner provided to comparable users. The State shall notify the Vendor of any defects or deficiencies in performance of its services or failure of service deliverables to conform to the standards and specifications provided in this solicitation. Vendor agrees to remedy defective performance or any nonconforming deliverables upon timely notice provided by the State.

b) Vendor has a limited, non-exclusive license to access and use State Data provided to Vendor, but solely for performing its obligations under this Agreement and in confidence as may be further provided herein. Vendor or its suppliers shall at a minimum, and except as otherwise specified and agreed herein, provide assistance to the State related to all services performed or deliverables procured hereunder during the State’s normal business hours. Vendor warrants that its support, customer service, and assistance will be performed in accordance with generally accepted and applicable industry standards.

c) If, through any cause, Vendor shall fail to fulfill in a timely and proper manner the obligations under the Contract, the State shall have the right to terminate the Contract by giving written notice to the Vendor and specifying the effective date thereof. In that event, any or all finished or unfinished deliverables under the Contract prepared by the Vendor shall, at the option of the State, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any acceptable work completed as to which the option is exercised. Notwithstanding, Vendor shall not be relieved of liability to the State for damages sustained by the State by virtue of any breach of the Contract, and the State may withhold any payment due the Vendor for the purpose of setoff until such time as the exact amount of damages due the State from such breach can be determined. The State may require at any time a performance bond or other acceptable alternative performance guarantees from a Vendor without expense to the State.

d) In the event of default by the Vendor, the State may procure the goods and services necessary to complete performance hereunder from other sources and hold the Vendor responsible for any excess cost occasioned thereby. In addition, in the event of default by the Vendor under the Contract, or upon the Vendor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Vendor, the State may immediately cease doing business with the Vendor, immediately terminate the Contract for cause, and may take action to debar the Vendor from doing future business with the State.

2. GOVERNMENTAL RESTRICTIONS: In the event any Governmental restrictions are imposed which necessitate alteration of the goods, materials, quality, workmanship or performance of the Services offered prior to acceptance, it shall be the responsibility of the Vendor to notify the Contract Lead at once, in writing, indicating the specific regulation which required such alterations. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.
3. AVAILABILITY OF FUNDS: Any and all payments to the Vendor shall be dependent upon and
subject to the availability of funds to the agency for the purpose set forth in The Contract.

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

5. SITUS AND GOVERNING LAWS: This Contract is made under and shall be governed and construed
   in accordance with the laws of the State of North Carolina, without regard to its conflict of laws rules,
   and within which State all matters, whether sounding in Contract or tort or otherwise, relating to its
   validity, construction, interpretation and enforcement shall be determined. The exclusive venue for any
   claims arising out of this Contract shall be the North Carolina General Court of Justice, Wake County.

6. PAYMENT TERMS: Payment terms are Net not later than 30 days after receipt of a correct invoice or
   acceptance of goods, whichever is later. The using agency is responsible for all payments to the Vendor
   under the Contract. Payment by some agencies may be made by procurement card, if the Vendor accepts
   that card (Visa, MasterCard, etc.) from other customers, and it shall be accepted by the Vendor for
   payment under the same terms and conditions as any other method of payment accepted by the Vendor.
   If payment is made by procurement card, then payment may be processed immediately by the Vendor.

7. AFFIRMATIVE ACTION: The Vendor will take affirmative action in complying with all Federal and
   State requirements concerning fair employment and employment of people with disabilities and
   concerning the treatment of all employees without regard to discrimination on the basis of any prohibited
   grounds as defined by Federal and State law.

8. CONDITION AND PACKAGING: Unless otherwise provided by special terms and conditions or
   specifications, it is understood and agreed that any item offered or shipped has not been sold or used for
   any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling,
   storage or shipment.

9. INTELLECTUAL PROPERTY WARRANTY AND INDEMNITY: Vendor shall hold and save the
   State, its officers, agents and employees, harmless from liability of any kind, including costs and
   expenses, resulting from infringement of the rights of any third party in any copyrighted material,
   patented or patent-pending invention, article, device or appliance delivered in connection with The
   Contract.
   a. Vendor warrants to the best of its knowledge that:
      i. Performance under The Contract does not infringe upon any intellectual property
         rights of any third party; and
ii. There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party;

h. Should any deliverables supplied by Vendor become the subject of a claim of infringement of a patent, copyright, trademark or a trade secret in the United States, the Vendor, shall at its option and expense, either procure for the State the right to continue using the deliverables, or replace or modify the same to become non-infringing. If neither of these options can reasonably be taken in Vendor’s judgment, or if further use shall be prevented by injunction, the Vendor agrees to cease provision of any affected deliverables and refund any sums the State has paid Vendor and make every reasonable effort to assist the State in procuring substitute deliverables. If, in the sole opinion of the State, the cessation of use by the State of any such deliverables due to infringement issues makes the retention of other items acquired from the Vendor under this Agreement impractical, the State shall then have the option of terminating the Agreement, or applicable portions thereof, without penalty or termination charge; and Vendor agrees to refund any sums the State paid for unused Services or Deliverables.

c. The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the deliverables supplied by the Vendor, their use or operation, infringes on a patent, copyright, trademark or violates a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded or agreed in a settlement against the State in any such action. Such defense and payment shall be conditioned on the following:

i. That the Vendor shall be notified within a reasonable time by the State of any such claim; and

ii. That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that the State shall have the option to participate in such action at its own expense.

d. Vendor will not be required to defend or indemnify the State if any claim by a third party against the State for infringement or misappropriation results from the State’s material alteration of any Vendor-branded deliverables or Services, or from the continued use of the deliverable(s) or Services after receiving notice of infringement on a trade secret of a third party.

10. ADVERTISING: Vendor may represent in commercial advertising or marketing that it is working in or on behalf of the State of North Carolina on disaster recovery, but Vendor may not represent the endorsement or any other message on behalf of the State of North Carolina within such commercial advertising or marketing. A Vendor may inquire whether the State is willing to act as a reference by providing factual information directly to other prospective customers.

11. ACCESS TO PERSONS AND RECORDS: During and after the term hereof, the State Auditor and any using agency’s internal auditors shall have access to persons and records related to the Contract to verify accounts and data affecting fees or performance under the Contract, as provided in G.S. 143-49(9). This provision operates in addition to, and does not supersede, the provision for access to records found in Exhibit C to the Contract.

12. ASSIGNMENT: No assignment of the Vendor’s obligations nor the Vendor’s right to receive payment hereunder shall be permitted.

However, upon written request approved by the issuing purchasing authority and solely as a convenience to the Vendor, the State may:

a) Forward the Vendor’s payment check directly to any person or entity designated by the Vendor, and

b) Include any person or entity designated by Vendor as a joint payee on the Vendor’s payment check.

In no event shall such approval and action obligate the State to anyone other than the Vendor and the
Vendor shall remain responsible for fulfillment of all Contract obligations. Upon advance written request, the State may, in its unfettered discretion, approve an assignment to the surviving entity of a merger, acquisition or corporate reorganization, if made as part of the transfer of all or substantially all of the Vendor's assets. Any purported assignment made in violation of this provision shall be void and a material breach of The Contract.

13. INSURANCE:

COVERAGE - During the term of the Contract, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. As a minimum, the Vendor shall provide and maintain the following coverage and limits:

a) **Worker's Compensation** - The Vendor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of $500,000.00, covering all of Vendor's employees who are engaged in any work under the Contract in North Carolina. If any work is sub-contracted, the Vendor shall require the sub-Contractor to provide the same coverage for any of his employees engaged in any work under the Contract within the State.

b) **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of $1,000,000.00 Combined Single Limit. Defense cost shall be in excess of the limit of liability.

c) **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used within North Carolina in connection with the Contract. The minimum combined single limit shall be $250,000.00 bodily injury and property damage; $250,000.00 uninsured/under insured motorist; and $2,500.00 medical payment.

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

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

15. ELECTRONIC PROCUREMENT:

a) Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third-party agent shall serve as the Supplier Manager for this E-Procurement Service. The Vendor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract.

b) **THE SUCCESSFUL BIDDER(S) SHALL PAY A TRANSACTION FEE OF 1.75% (.0175) ON THE TOTAL DOLLAR AMOUNT (EXCLUDING SALES TAXES) OF ALL GOODS**
INCLUDED ON EACH PURCHASE ORDER ISSUED THROUGH THE STATEWIDE E-PROCUREMENT SERVICE. This applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. The transaction fee shall not be stated or included as a separate item on the invoice. There are no additional fees or charges to the Vendor for the services rendered by the Supplier Manager under this contract. Vendor will receive a credit for transaction fees paid for the purchase of any item(s) if an item(s) is returned through no fault of the Vendor. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the Vendor’s failure to perform or comply with specifications or requirements of the contract.

c) Vendor or its Authorized Reseller, as applicable, will be invoiced monthly for the State's transaction fee by the Supplier Manager. The transaction fee shall be based on a) purchase activity for the prior month, or b) purchases for which the supplier invoice has been paid. Unless Supplier Manager receives written notice from the Vendor identifying with specificity any errors in an invoice for the transaction fee within thirty (30) days of the receipt of invoice, such invoice shall be deemed to be correct and Vendor shall have waived its right to later dispute the accuracy and completeness of the invoice. Payment of the transaction fee by the Vendor is due to the account designated by the State within thirty (30) days after receipt of the invoice for the transaction fee. If payment of the transaction fee is not received by the State within this payment period, it shall be considered a material breach of contract. Pursuant to G.S. 147-86.23, the Service will charge interest and late payment penalties on past due balances. Interest shall be charged at the rate set by the Secretary of Revenue pursuant to G.S. 105-241.21 as of the date the balances are past due. The late-payment penalty will be ten percent (10%) of the account receivable. Within thirty (30) days of the receipt of invoice, Vendor may dispute in writing the accuracy of an invoice. No interest shall be charged on disputed and overdue amounts to the extent the State agrees to reduce or adjust the amount in dispute. The Supplier Manager shall provide, whenever reasonably requested by the Vendor in writing (including electronic documents), supporting documentation from the E-Procurement Service that accounts for the amount of the invoice.

d) The Supplier Manager will capture the order from the State approved user, including the shipping and payment information, and submit the order in accordance with the E-Procurement Service. Subsequently, the Supplier Manager will send those orders to the appropriate Vendor on State Contract. The State or State-approved user, not the Supplier Manager, shall be responsible for the solicitation, bids received, evaluation of bids received, award of contract, and the payment for goods delivered.

 e) Vendor shall at all times maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If Vendor is a corporation, partnership or other legal entity, then the Vendor may authorize its employees to use its password. Vendor shall be responsible for all activity and all charges by such employees. Vendor agrees not to permit a third party to use the Statewide E-Procurement Services through its account. If there is a breach of security through the Vendor’s account, Vendor shall immediately change its password and notify the Supplier Manager of the security breach by email. Vendor shall cooperate with the State and the Supplier Manager to mitigate and correct any security breach.

17. SUBCONTRACTING: Performance under The Contract by the Vendor shall not be subcontracted without prior written approval of the State’s assigned Contract Lead. Unless otherwise agreed in writing, acceptance of a Vendor’s proposal shall include approval to use the subcontractor(s) that have been specified therein.

18. CONFIDENTIALITY: Any State information, data, instruments, documents, studies or reports given to or prepared or assembled by or provided to the Vendor under The Contract shall be kept as confidential, used only for the purpose(s) required to perform The Contract and not divulged or made available to any individual or organization without the prior written approval of the State.

19. CARE OF STATE DATA AND PROPERTY: The Vendor agrees that it shall be responsible for the proper custody and care of any data owned and furnished to the Vendor by the State (State Data), or other State property in the hands of the Vendor, for use in connection with the performance of The
Contract or purchased by or for the State for The Contract, Vendor will reimburse the State for loss or damage of such property while in Vendor's custody.

The State's Data in the hands of the Vendor shall be protected from unauthorized disclosure, loss, damage, destruction by a natural event or other eventuality. Such State Data shall be returned to the State in a form acceptable to the State upon the termination or expiration of this Agreement. The Vendor shall notify the State of any security breaches within 24 hours as required by G.S. 143B-1379. See G.S. 75-60 et seq.

20. OUTSOURCING: Any Vendor or subcontractor providing call or contact center services to the State of North Carolina or any of its agencies shall disclose to inbound callers the location from which the call or contact center services are being provided.

If, after award of a contract, the contractor wishes to relocate or outsource any portion of performance to a location outside the United States, or to contract with a subcontractor for any such performance, which subcontractor and nature of the work has not previously been disclosed to the State in writing, prior written approval must be obtained from the State agency responsible for the contract. Vendor shall give notice to the using agency of any relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons providing performance under a State contract to a location outside of the United States.

21. COMPLIANCE WITH LAWS: Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and its performance in accordance with The Contract, including those of federal, state, and local agencies having jurisdiction and/or authority.

22. ENTIRE AGREEMENT: This Contract and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral or written statements or agreements. This Contract, any addenda hereto, and the Vendor's proposal are incorporated herein by reference as though set forth verbatim.

All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.

23. ELECTRONIC RECORDS: The State will digitize all Vendor responses to this solicitation, if not received electronically, as well as any awarded contract together with associated procurement-related documents. These electronic copies shall constitute a preservation record and shall serve as the official record of this procurement with the same force and effect as the original written documents comprising such record. Any electronic copy, printout or other output readable by sight shown to reflect such record accurately shall constitute an "original."

24. AMENDMENTS: This Contract may be amended only by a written amendment duly executed by the State and the Vendor.

25. NO WAIVER: Notwithstanding any other language or provision in The Contract, nothing herein is intended nor shall it be interpreted as a waiver of any right or remedy otherwise available to the State under applicable law. The waiver by the State of any right or remedy on any one occasion or instance shall not constitute or be interpreted as a waiver of that or any other right or remedy on any other occasion or instance.

26. FORCE MAJEURE: Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable
control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

27. SOVEREIGN IMMUNITY: Notwithstanding any other term or provision in The Contract, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign immunity or other State or federal constitutional provision or principle that otherwise would be available to the State under applicable law.

II. Strike all the text following ARTICLE 3.2, and insert “Reserved.”

III. Strike all the text following ARTICLE 4.1, and insert “Reserved.”

IV. ARTICLE 4.2 is rewritten as follows:

Consultant AS CONSTRUCTION MANAGER. In the event the City contracts with the Consultant to provide Construction Management Services, the Consultant shall be responsible for determining that each construction contractor provides work to the quality level specified and in accordance with the plans and specifications, and for ensuring that each construction contractor complies with the federal, state, and local laws applicable to each project that the contractor is assigned. In no event shall Consultant be responsible for any contractor's, subcontractor's, vendor's, or other project participant's failure to comply with federal, state or local laws, ordinances, regulations, rules, codes, orders, criteria, or standards unless it has contracted with the City to do so.

V. Strike all the text following ARTICLE 5, and insert “Reserved.”

VI. ARTICLE 7 is rewritten as follows:

INDEPENDENT CONTRACTOR. Consultant is an independent contractor and shall undertake performance of the services pursuant to the terms of this Agreement as an independent contractor. Consultant shall be wholly responsible for the methods, means and techniques of performance. City shall have no right to supervise, methods and techniques of performance employed by Consultant, but City shall have the right to observe such performance.

VII. In ARTICLE 14, replace the City's notice contact information with the following:

NORTH CAROLINA OFFICE OF RECOVERY AND RESILIENCY
ATTENTION: LAURA HOGSHEAD
CHIEF OPERATING OFFICER
1636 GOLD STAR DRIVE
RALEIGH, NC 27607

VIII. Strike all the text following ARTICLE 16, and insert “Reserved.”

IX. ARTICLE 17.1 is rewritten as follows:
PRECEDENCE. In the event of an inconsistency or conflict between or among the provisions of the contract documents, the inconsistency shall be resolved by giving precedence in the following order (highest to lowest):

1. Any amendments to the contract.
2. The assignment agreement from the City to NCORR.
3. The contract.
4. The RFP.
5. Consultant’s proposal in response to the RFP.

X. ARTICLE 17.2 is rewritten as follows:

SEVERABILITY. The invalidity, illegality, or un-enforceability of any portion or provision of this Agreement shall in no way affect the validity, legality and/or enforceability of any other portion or provision of this Agreement. Any invalid, illegal or unenforceable provision of this Agreement shall be deemed severed from this Agreement, and the balance of the Agreement shall be construed and enforced the same as if the Agreement had not contained any portion or provision which was invalid, illegal or unenforceable. Provided, however, this section 17.2 shall not prevent this entire Agreement from being void in the event any portion or provision of this Agreement which is of the essence of this Agreement shall be deemed void as provided by law or as determined by a court of competent jurisdiction.

XI. ARTICLE 20 is rewritten as follows:

DISPUTE RESOLUTION. The parties agree that it is in their mutual interest to resolve disputes informally. A claim by Consultant shall be submitted in writing to NCORR’S Contract Lead for resolution. A claim by NCORR shall be submitted in writing to the Consultant’s Project Manager for resolution. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Contract. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under this Contract, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

XII. EXHIBIT A is rewritten as follows:

Compensation Model for Implementation of City of Fayetteville, North Carolina CDBG-DR Homeowner Recovery Program

Compensation
As full compensation for the identified Services, NCORR shall compensate HORNE under the compensation model as follows:
Invoices will occur on a monthly basis for all unit services completed in the month preceding. Invoices will be submitted in accordance with the procedures developed by NCORR for appropriate review and processing of the documentation. All activities billed shall include the national objective associated with the specific activity billed (i.e. "LMI Housing" or "Urgent Need"). The invoices will be submitted electronically to a project lead identified by NCORR, who will review for accuracy and completeness. Upon approval by the project lead, the invoice will be submitted to NCORR's fiscal unit for processing and payment.

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<tr>
<th>Compensation Model</th>
<th>Program Implementation Costs</th>
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<tbody>
<tr>
<td>Program Step / Activity Name</td>
<td>Description of Unit Activity</td>
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</table>
| Program Management and Execution | • All services required to mobilize program activities in a manner to minimize delay in the delivery of services to potential applicants.  
• Manage team carrying out activities.  
• Coordination with State Agencies and relevant entities | $36,922.50 | 11 | $402,517.50 |
| Intake and Eligibility Operations | Outreach, Intake and Eligibility | $805.70 | 75 | $60,427.50 |
| Steps 2 - 8 | Steps 2 - 3 | All services necessary to execute, or cause to be executed, the State's approved outreach plan, including both targeted and general applicant outreach as contemplated in the approved action plan.  
• all services required to collect and qualify applicants in accordance with Action Plan requirements  
• Ensure that applicants (and tenants) participating in a covered program meet stated eligibility requirements for the respective program. |
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<thead>
<tr>
<th>Eligibility QC and DOB Verification</th>
<th>执行资格质量政策</th>
<th>150.00</th>
<th>150</th>
<th>22,500.00</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Step 3</strong></td>
<td></td>
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</tr>
<tr>
<td>• Ensure applicants are compliant with Stafford Act requirements and Area Median Income (AMI) restrictions.</td>
<td>• 执行资格质量政策</td>
<td>150.00</td>
<td>150</td>
<td>22,500.00</td>
</tr>
<tr>
<td>• Perform title review services to verify ownership and liens.</td>
<td>• 执行资格质量政策</td>
<td>150.00</td>
<td>150</td>
<td>22,500.00</td>
</tr>
<tr>
<td>• Perform personal consultations with responsive applicants and maintain documentation of all scheduling efforts for nonresponsive applicants.</td>
<td>• 执行资格质量政策</td>
<td>150.00</td>
<td>150</td>
<td>22,500.00</td>
</tr>
<tr>
<td>• Ensure applicant files are complete and maintained in the document control and management system (i.e., grant management system).</td>
<td>• 执行资格质量政策</td>
<td>150.00</td>
<td>150</td>
<td>22,500.00</td>
</tr>
<tr>
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</tr>
<tr>
<td>Construction Management</td>
<td>服务作为州的建设经理</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>（为所有项目）</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>HORNE将监督和管理</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>所采购的承包商，以支持该计划。</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cost Reasonableness Policy Development</td>
<td>• If necessary, develop cost reasonableness policy determination for program.</td>
<td>2,200</td>
<td>1</td>
<td>2,200.00</td>
</tr>
<tr>
<td>Builder Procurement, Assignment, Oversight and Monitoring Steps 4, 6, 7</td>
<td>• Perform builder assignments.</td>
<td>160</td>
<td>150</td>
<td>22,500.00</td>
</tr>
<tr>
<td></td>
<td>• Monitor contractor performance and allocate available work based on contractor performance.</td>
<td>160</td>
<td>150</td>
<td>22,500.00</td>
</tr>
</tbody>
</table>
### Damage Assessments
**Step 4**
- Visual inspection purported property damage. Note: Inspectors will not engage in destructive inspection techniques.
- Assess the cause and extent of damaged observed.
- Document a damage estimate to be utilized in the determination of grant award.
- Identify and adjust the construction scope of work for duplication of benefits, if required.
- Statement of Probable Cost of Repair for each application.
- Amended Statement of Probable Cost of Repair for applicants with duplication of benefit gaps.
- Write up and documentation required for each applicable site.
- Assess the cost reasonableness of rehabilitation, reconstruction, or manufactured home unit ("MHU") replacement.
- Any other services required to assess property eligibility in accordance with program requirements in a manner to minimize delay in the delivery of services to potential applicants.

### Inspections (as appropriate per activity)
**Step 7**
- On-site draw inspections required to thoroughly oversee construction.
- Progress inspections verify that work is performed in accordance with HUD Housing Quality Standards and may also include code compliance inspections, as required.

### Plans, Construction Documents, Scope of Work Development, Work Order Preparation
**Step 4**
- Write up and documentation required for each applicable site.
Notice to Proceed and Pre-Construction Meetings

Step 6

Construction Monitoring

Step 7

Boundary Survey

Step 4

Elevation Certifications

Step 4

Code Search and Implementation

Step 4

Pre-Construction meeting for every eligible site

$100.00 150 $15,000.00

Construction reporting and builder oversight

$125.00 150 $18,750.00

Boundary Survey for each applicable site

$850.00 50 $42,500.00

Elevation certification for each applicable site

$425.00 50 $21,250.00

Provide code search for each applicable site

$50.00 150 $7,500.00

Environmental Reviews

Tier 2 Environmental Reviews

Step 4

Prepare a Tier II Environmental Review for each property in which an applicant has been deemed potentially eligible and grant funding remains available.

$750.00 100 $75,000

Lead Based Paint

Step 4

Lead-based paint inspection and risk assessment.

$875.00 60 $52,500

TOTAL HOMEOWNER
RECOVERY DELIVERY
COSTS

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[signatures on following pages]
IN WITNESS WHEREOF, the Parties have executed this Amendment by their duly authorized representatives in multiple originals, one of which shall be retained by each of the Parties.

NORTH CAROLINA OFFICE OF RECOVERY AND RESILIENCY

By: [Signature]

Mike Sprayberry
Director

Date: 2/5/19

HORNE, LLP

By: [Signature]

S. Neil Forbes
Partner-In-Charge, Government Services

Date: 1/29/2019