

**NORTH CAROLINA  
BRUNSWICK COUNTY**

**INTERAGENCY AGREEMENT  
[For Services and Facilities]**

**THIS INTERAGENCY AGREEMENT** (hereinafter referred to as the "Agreement") is made and entered into by and between Brunswick County, a body politic and corporate of the State of North Carolina, (hereinafter referred to as "County"), party of the first part and Brunswick County Schools, an entity organized and existing pursuant to the laws of the State of North Carolina and located in Brunswick County, (hereinafter referred to as "BCS"), party of the second part.

**WITNESSETH:**

**WHEREAS**, County and BCS desire to establish an inter-governmental approach for the provision of services or resources, as more fully described herein;

**WHEREAS**, County and BCS each agree that the cooperative endeavor contemplated hereby will be beneficial to the citizens of Brunswick County; and

**WHEREAS**, County and BCS, in order to set out the provisions and conditions under which said services or resources will be provided, have entered into this Agreement as authorized by Article 20, Part 1 of Chapter 160A of the North Carolina General Statutes:

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants and promises contained herein, County and BCS do hereby agree as follows:

**1. SERVICES**

The services to be performed and/or the resources to be provided under this Agreement (hereinafter referred to collectively as "Services") are set forth on Exhibit "A" attached hereto.

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

In no event shall Services provided by County under this Agreement include legal services, which shall be provided by BCS at its own expense.

**2. TERM OF AGREEMENT**

The initial term of this Agreement begins on July 1, 2022, and continues in effect until June 30, 2023, unless earlier terminated pursuant to any of the terms and conditions contained herein. It is expressly agreed that this Agreement shall automatically and without further action on the part of either party be extended from year to year unless one of the parties gives written notice to the other party pursuant to the termination requirements herein.

### **3. TERMINATION**

- a. **FOR CAUSE.** Notwithstanding the foregoing, either party may terminate this Agreement upon six (6) months' written notice to the other party if the other party is in material breach of any provision herein and fails to cure the breach during the notice period.
- b. **WITHOUT CAUSE.** County or BCS may terminate this Agreement at any time without cause by giving twelve (12) months' written notice to the other.

### **4. NONAPPROPRIATION**

If the Board of County Commissioners does not appropriate the funding needed by the County to fulfill its financial obligations, if any, under this Agreement for a given fiscal year, County will not be obligated beyond the end of the last fiscal year for which funds were appropriated. In such event, County will promptly notify BCS of the non-appropriation, and this Agreement will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by County which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.

### **5. COMPLIANCE WITH FEDERAL LAWS, REGULATIONS, AND EXECUTIVE ORDERS**

The parties acknowledge that FEMA financial assistance may be used to fund all or a portion of this Agreement. The parties will comply with all applicable federal laws, regulations, executive orders, FEMA policies, procedures, and directives.

### **6. COMPENSATION**

Compensation for any services herein are detailed in Exhibit "A."

### **7. RELATIONSHIP OF PARTIES**

Both County and BCS agree that the parties are acting as independent contractors under this Agreement. Control of County personnel, standards of performance, discipline and all other aspects of performance shall be governed entirely by County. No joint agency is established by this Agreement. This Agreement does not create a partnership, joint venture, other joint endeavor, joint ownership, joint operations, or personnel sharing of any kind. No joint personnel are needed by the parties in order to carry out the obligations under this Agreement.

### **8. REPRESENTATIONS**

Each party to this Agreement represents to the other party each of the following as of the Effective Date of this Agreement and covenants with the other party that each such representation will remain true and correct:

- a. It is a duly organized entity or corporation qualified to do business and in good standing under the laws of the State of North Carolina;
- b. It has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
- c. No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under this Agreement;
- d. It shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses;
- e. It shall not violate any agreement with any third party by entering into or performing the obligations under this Agreement;
- f. In fulfilling its obligations under this Agreement, it will not violate, infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party, or any other third-party rights (including without limitation non-compete agreements); and
- g. No elected or appointed official or employee has any interest (financial, employment or other) in the transactions contemplated by this Agreement.

## 9. INDEMNITY

- a. To the extent permitted by law, County shall indemnify and hold harmless BCS and its officers, agents and employees from and against any and all claims, actions, suits, liabilities, losses, costs, expenses and damages of any nature whatsoever, by reason of or arising out of any negligent action or omission of County, its officers, agents and employees or any of them, in fulfilling its obligations pursuant to this Agreement. In the event that any suit based upon such a claim, action, loss or damage is brought against BCS, County shall defend the same at its sole cost and expense; provided that, BCS retains the right to participate in said suit if any principal of government or public law is involved. If final judgment is to be rendered against BCS and its respective officers, agents, employees or any of them, or jointly against BCS and County and its respective officers, agents and employees, or any of them, County shall satisfy same.
- b. To the extent permitted by law, BCS shall indemnify and hold harmless County and its officers, agents and employees from and against any and all claims, actions, suits, liabilities, losses, costs, expenses and damages of any nature whatsoever, by reason of or arising out of any negligent action or omission of BCS, its officers, agents and employees or any of them, in fulfilling its obligations pursuant to this Agreement. In the event that any suit based upon such a claim, action, loss or damage is brought against County, BCS shall defend the same at its sole cost and expense; provided that, County retains the right to participate in said suit if any principal of government or public law

is involved. If final judgment is to be rendered against County and its respective officers, agents, employees or any of them, or jointly against County and BCS and its respective officers, agents and employees, or any of them, BCS shall satisfy same.

- c. By executing this Agreement, County does not assume liability or responsibility for or in any way release BCS from any liability or responsibility which arises in whole or in part from the existence or effect of BCS ordinances, rules, or regulations. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such BCS ordinance, rule or regulation is at issue, BCS shall defend the same at its sole cost and expense and if judgment is entered or damages are awarded against BCS, County or both, BCS shall satisfy the same, including all chargeable costs and attorneys' fees.

#### **10. COMPLIANCE WITH E-VERIFY PROGRAM**

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

#### **11. DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL**

BCS hereby certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. § 147-86.81.

#### **12. JESSICA LUNSFORD ACT**

BCS acknowledges that N.C.G.S. § 14-208.18 prohibits anyone required to register as a sex offender under Article 27A of Chapter 14 of the General Statutes from knowingly being on the premises of any place intended primarily for the use, care, or supervision of minors, including but not limited to schools and playgrounds. This prohibition applies to persons required to register under 27A who have committed any offense in Article 7A of Chapter 14 or any offense where the victim of the offense was under the age of 16 years at the time of the offense.

#### **13. CONFIDENTIAL INFORMATION**

For purposes of this Agreement, the party disclosing Confidential Information is the "Discloser," and the party receiving Confidential Information is the "Recipient." "Confidential Information" shall mean any nonpublic information concerning the parties' respective businesses including, but not limited to, all tangible, intangible, visual, electronic, present or future information such as: (a) trade secrets; (b) financial information, including pricing; (c) technical information, including research, development, procedures, algorithms, data, designs and know-how; (d) business information, including operations, planning, marketing interests and products; and (e) the terms of

any agreement between the parties and the discussions, negotiations and proposals related to that agreement. Confidential Information disclosed to the other party must be clearly identified. Written Confidential Information must be clearly marked in a conspicuous place with an appropriate legend identifying the information as "Confidential." Confidential Information that is not written must be identified as confidential at the time of disclosure and confirmed in writing delivered to Recipient within fifteen (15) days of disclosure.

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

- a. in the public domain through no fault of the Recipient;
- b. within the legitimate possession of the Recipient, with no confidentiality obligations to a third party;
- c. lawfully received from a third party having rights in the information without restriction, and without notice of any restriction against its further disclosure;
- d. independently developed by the Recipient without breaching this Agreement or by parties who have not had, either directly or indirectly, access to or knowledge of the Confidential Information;
- e. disclosed with the prior written consent of the Discloser; or
- f. required to be disclosed by law, regulation or court or governmental order, specifically including requests pursuant to the Public Records Laws of North Carolina contained in Chapter 132 of the North Carolina General Statutes. In the event Recipient receives such a request, it shall notify Discloser and Discloser shall have the opportunity to defend against production of such records at Discloser's expense.

#### **14. NO ASSIGNMENT WITHOUT CONSENT**

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

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

Contractors or Providers who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-

federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

## **16. PROCUREMENT OF RECOVERED MATERIALS**

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

## **17. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES**

- (1) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause –
- (2) *Prohibitions.*
  - i. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
  - ii. Unless an exception in paragraph (c) of this clause applies, BCS and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

- a. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- b. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- c. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- d. Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(3) *Exceptions.*

- i. This clause does not prohibit contractors from providing –
  - a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
  - b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- ii. By necessary implication and regulation, the prohibitions also do not apply to:
  - a. Covered telecommunications equipment or services that:
    - 1. Are *not used* as a substantial or essential component of any system;  
*and*
    - 2. Are *not used* as critical technology of any system.
  - b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(4) *Reporting requirement.*

- i. In the event a party identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or a party is notified of such by a subcontractor at any tier or by any other source, the party shall report the information in paragraph (d)(2) of this clause to the recipient or

subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

- ii. A party shall report the following information pursuant to paragraph (d)(1) of this clause:
  - a. Within one (1) business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
  - b. Within ten (10) business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, BCS shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

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

## **18. DOMESTIC PREFERENCE FOR PROCUREMENTS**

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

For purposes of this clause:

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

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



## **19. ACCESS TO RECORDS**

The following access to records requirements apply to this Agreement:

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

## **20. DHS SEAL, LOGO, AND FLAGS**

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

## **21. SUSPENSION AND DEBARMENT**

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

agrees to include a provision requiring such compliance in its lower tier covered transactions.

## **22. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

BCS acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to each of their actions pertaining to this Agreement.

## **23. NO OBLIGATION BY FEDERAL GOVERNMENT**

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

## **24. MINORITY BUSINESS ENTERPRISES**

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

## **25. EQUAL EMPLOYMENT OPPORTUNITY**

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

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

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

- (2) BCS will, in all solicitations or advertisements for employees placed by or on behalf of BCS, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) BCS will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another

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

- (4) BCS will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of BCS's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) BCS will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) BCS will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of BCS's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and BCS may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) BCS will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. BCS will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

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

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

## **26. COMPLIANCE WITH THE COPELAND "ANTI-KICKBACK" ACT**

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

## **27. COMPLIANCE WITH THE DAVIS-BACON ACT (AS AMENDED)**

- (1) If applicable, all transactions regarding this Agreement shall be done in compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) and the requirements of 29 C.F.R. Part 5, as may be applicable. BCS shall comply with 40 U.S.C. §§ 3141-3144 and 3146-3148 and the requirements of 29 C.F.R. Part 5, as applicable.
- (2) BCS is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- (3) Additionally, BCS is required to pay wages not less than once a week.

## **28. CLEAN AIR ACT**

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

## **29. FEDERAL WATER POLLUTION CONTROL ACT**

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

## **30. COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

Compliance with the Contract Work Hours and Safety Standards Act:

- (1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek

unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

- (2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (1) of this section BCS and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, BCS and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) *Withholding for unpaid wages and liquidated damages.* County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by BCS or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) *Subcontracts.* BCS or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

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

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

### **31. GOVERNING LAW AND VENUE**

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

### **32. DISPUTE RESOLUTION**

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

### **33. GOVERNMENTAL IMMUNITY**

To the extent applicable, neither party waives its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

### **34. NON-WAIVER**

Failure by County at any time to require the performance by BCS of any of the provisions of this Agreement shall in no way affect County's right hereunder to enforce the same, nor shall any waiver by County of any breach be held to be a waiver of any succeeding breach or a waiver of this Section.

### **35. ENTIRE AGREEMENT**

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

### **36. HEADINGS**

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

### **37. SEVERABILITY**

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

Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

### **38. AMENDMENTS**

No amendments or changes to this Agreement, or additional Proposals or Statements of Work, shall be valid unless in writing and signed by authorized agents of both BCS and County.

### **39. NOTICES**

- a. **DELIVERY OF NOTICES.** Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by facsimile to the intended recipient at the address set forth below.
- b. **EFFECTIVE DATE OF NOTICES.** Any notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by facsimile or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier.
- c. **NOTICE ADDRESS.** Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment or waiver of any provision of this Agreement shall be sent to:

- i. For the County: Brunswick County Manager  
P.O. Box 249  
Bolivia, NC 28422  
Fax: 910-253-2022

- ii. For BCS: Brunswick County Schools  
35 Referendum Dr  
Bolivia, NC 28422

[SIGNATURES APPEAR ON FOLLOWING PAGE]



#### 40. SIGNATURES

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

ATTEST:

**BRUNSWICK COUNTY**

\_\_\_\_\_  
Clerk to the Board

By: \_\_\_\_\_

Randell Thompson  
Chairman

[SEAL]

**BRUNSWICK COUNTY SCHOOLS**

By: \_\_\_\_\_

*S. Barger, Chair*

Printed Name: Dr. Jerry Oates

Title: Superintendent

Date: 8/3/22

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

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

"This instrument has been preaudited in the manner required by the School Budget and Fiscal Control Act."

*Freyja Caball*  
\_\_\_\_\_  
Freyja Caball, Chief Finance Officer  
Brunswick County Schools

APPROVED AS TO FORM

\_\_\_\_\_  
Robert V. Shaver, Jr., County Attorney /  
Bryan W. Batton, Assistant County Attorney  
Brunswick County, NC

APPROVED AS TO FORM

*Richard Green*  
\_\_\_\_\_  
Richard Green  
Brunswick County Schools

**EXHIBIT "A"**  
**SCOPE OF SERVICES OR RESOURCES/FEES**

**1. BRUNSWICK COUNTY SCHOOLS:**

- a. Open the building within twenty-four (24) hours' notice from Brunswick County EMS and staff the building with a minimum of: one (1) Principal or Assistant Principal; one (1) Maintenance Technician; one (1) Head Custodian; two (2) Custodians; one (1) Cafeteria Manager and two (2) Cafeteria staff. This initial staffing level will be based on the expectation of an event requiring a shelter capacity of no more than 200 occupants. An additional custodian and one cafeteria staff will be added to any shelter location at each benchmark of 100 additional occupants after exceeding 200 occupants. The table below provides a snapshot for reference.

<b>Position Title</b>	<b>POP 0-200</b>	<b>POP 201- 300</b>	<b>POP 301- 400</b>	<b>POP 401- 500</b>	<b>POP 501- 600</b>	<b>POP 601- 700</b>	<b>POP 701- 800</b>
Principal or Assistant Principal	1	1	1	1	1	1	1
Maintenance Technician	1	1	1	1	1	1	1
Head Custodian	1	1	1	1	1	1	1
Custodian	2	3*	4*	5*	6*	7*	8*
Cafeteria Manager	1	1	1	1	1	1	1
Cafeteria staff	2	3*	4*	5*	6*	7*	8*

\* Final approval for increased BCS staffing levels resides with the Incident Commander, typically the Brunswick County Emergency Management Director. Requests for increased staff should be sent to the attention of the IC or their designee as specified in the Emergency Operations Center for any one event.

- b. Make available a Transportation Team to assist in evacuation efforts. The Transportation Team will consist of three (3) Bus Drivers and one (1) Mechanic per shelter, plus one (1) Mechanic, one (1) Coordinator/Dispatcher, the Transportation Director and Assistant Transportation Director based in the Transportation Department.
- c. Make available the Technology Data Systems Manager for IT support, the Director of Facilities to manage Custodial and Maintenance personnel and events and the Chief Operations Officer and Director of Safety and Administration for coordination in the Emergency Operations Center.
- d. Supply cleaning materials required for general building cleaning and to maintain cleanliness of restrooms, hallways, and general areas, such as gyms and cafeterias, clean and free of waste materials.

- e. Supply food required to serve three (3) meals per day (one (1) hot meal if possible) to sheltered individuals and staff serving the shelter as available, unless meals ready to eat (MRE's) are necessary and available to be provided to mitigate issues with preparing meals (including, but not limited, to loss of power, unavoidable staffing shortages, lack of inventory). School staff shall assist to the extent allowable with distribution of MRE's in the absence of meals.
- f. Contract for industrial hospital grade cleaning after shelter closes.
- g. At the direction of the Principal or Assistant Principal in charge – assist shelter management with all requests that at this time go unnamed, to the best of BCS abilities.
- h. Make routine repairs on facility related equipment as requested by shelter management, to the best of BCS abilities.
- i. Coordinate enhancements to school facilities with Brunswick County Emergency Management (BCEM). Consider any and all effects building additions or alterations may have on shelter operations and coordinate a discussion with BCEM about said alterations or additions. Enhancements shall be made to the extent the respective fiscal year allows.
- j. Use joint funding initiatives when available, pursuant to mutual agreement of the parties and in compliance with State Law and Board policies.
- k. Transfer funding currently allotted to generator maintenance at specified shelter sites to Brunswick County and supply the County with any keys, passes, etc. that may be required to access equipment for maintenance. These sites may be amended annually in January.

## **2. BRUNSWICK COUNTY AGREES TO:**

- a. Fund and oversee the maintenance of emergency generators and their associated fueling systems at the following schools: West Brunswick HS, Cedar Grove Middle School, Town Creek Middle School, and North Brunswick HS (refer to section 1.k.). This includes assuming maintenance of equipment currently in place and the capital cost of any upgrades of generators at these schools. These sites may be amended annually in January.
- b. Evaluate said school's potable water and wastewater systems and fund and manage any projects that are needed to improve reliability of these systems during power outages.
- c. Under a County declared SOE, the County will reimburse BCS for non-exempt employees working the event at a rate of 1.5 times the base hourly rate and 1.0 times the base hourly rate for exempt employees for every hour worked during the event.
- d. Reimburse BCS for expenses associated with cleaning and repairs necessary due to sheltering activities.

- e. Reimburse BCS for cost of food and supplies not reimbursed by USDA Disaster Funding.
- f. Reimburse cost during emergencies for two (2) BCS staff members that act as liaisons for all communications necessary to implement this Agreement.
- g. Reimburse BCS for bus mileage at current mileage rates as assigned by the State and associated efficiency penalties that BCS incurs due to additional mileage.