

APRIL 25, 2023
REQUEST FOR PROPOSALS
NEWBERRY COUNTY- SUBERTOWN ROAD/GARY STREET SIDEWALK PROJECT
ENGINEERING SERVICES
CDBG Project # 4-CE-22-09
Newberry County RFP #2023-12

DUE DATE:
May 23, 2023, by 3:00 p.m.

RECIPT LOCATION:
Newberry County Courthouse Annex Conference Room
PO Box 156 (USPS)
1309 College Street (ground)
Newberry, SC 29108

OFFICIAL CONTACT:
Crystal Waldrop, CPPB
Purchasing Director
Newberry County
(803) 321-1420
cwaldrop@newberrycounty.net

The County of Newberry County reserves the right to reject any and all proposals or any parts thereof and to waive any irregularities or minor informalities in any proposal or in the proposal process and to make a contract award in the best interest of the Town.

This project is being funded in whole or in part by the Community Development Block Grant Program (CDBG). All federal CDBG requirements will apply to the contract. All contractors and subcontractors are required to be registered in the federal System for Award Management (SAM). Respondents on this work will be required to comply with the President's Executive Order No. 11246 & Order No. 11375 which prohibits discrimination in employment regarding race, creed, color, sex, or national origin. Respondents must comply with Title VI of the Civil Rights Act of 1964, the Davis-Bacon Act, the Anti-Kickback Act, the Contract Work Hours and Safety Standards Act, and 40 CFR 33.240.

1. INTRODUCTION

The County of Newberry is issuing this Request for Proposals (RFP) to identify a qualified engineer to provide a full range of engineering services to support the implementation of the Subertown Rd/Gary Street Sidewalk Project, awarded to the County through the South Carolina Community Development Block Grant (CDBG) program. These services will be prepared under contract with the County of Newberry, with funding provided by the South Carolina Department of Commerce (SCDOC) under CDBG Award # 4-CE-22-009

1.1. Project Description

The CBDG funding will be used to construct approximately 1,700 LF of 5' wide 4" thick ADA compliant concrete sidewalk along Subertown Road from Young Lane to Gary Street, and approximately 710 LF of 5' wide 4" thick ADA compliant concrete sidewalk along Gary Street from Subertown Road to Lowry Street. The new sidewalk will include approximately 14 accessible concrete curb ramps with warning surfaces, one thermoplastic crosswalk, and a one 6" concrete driveway crossing. In addition to construction of the sidewalk, the project will also include contractor mobilization, utility coordination/relocation, traffic control, stormwater mitigation, site grading and grassing, engineering services, and grant administration.

1.2. Engineering Scope of Work

To support this project, the County of Newberry is requesting full engineering services to include the following scope of work:

- Preparing drawings and specifications
- Filing applications for permits and/or design approvals
- Revising drawings in response to directives from governmental authorities as needed
- Preparing bidding documents and revising as needed
- Bidding the project and negotiating with contactors
- Putting the contract together and participating in the pre-construction conference
- Construction observation and inspection
- Preparing pay requests
- Conducting final inspection and providing a notice stating that the work is acceptable
- Preparation and/or submittal of contractor prepared final as built drawings

2. REQUEST FOR PROPOSAL (RFP) PROCESS AND POLICIES

2.1. Submittal of Proposals

The County of Newberry is hereby issuing this Request for Proposals (RFP) to engineering firms that have the capability and interest in undertaking and performing the scope of work described in this RFP. The RFP will be publicly advertised and released in accordance with the SCDOC CDBG procurement guidelines.

The OFFICIAL CONTACT for this solicitation is:

Crystal Waldrop, CPPPB
Purchasing Director
Newberry County
(803)321-1420
cwaldrop@newberrycounty.net

Each firm responding to this solicitation is officially a RESPONDENT. Each RESPONDENT must submit a sealed proposal package containing an original and five (5) copies plus one (1) digital copy of its proposal to Crystal Waldrop at the address above no later than **3:00 p.m. on May 23, 2023**. Proposals may be submitted in person, by messenger, or by regular mail. All proposals will be logged in and date and time stamped. **Any proposal package that is received after the date and time specified will be logged and date and time stamped as "late" and returned unopened to the RESPONDENT.**

2.2. Proposed Procurement Timeline

Release date for RFP	April 25, 2023
Final Date to Receive Written Questions/Clarifications	Monday, May 15, 2023, by 5:00 p.m. local time
RFP Closing Date	Tuesday, May 23, 2023, at 3:00 p.m. local time
Evaluation Committee Review and Recommendation	May 23, 2023- May 31, 2023
Council Award	June 7, 2023, tentative

2.3. Labeling of Proposals

All proposals must be submitted in a sealed envelope or package plainly marked "County of Newberry County-Subertown Road/Gary Street Sidewalk Project," ATTN: Crystal Waldrop and name and address of the RESPONDENT in the upper left-hand corner. No responsibility will attach to the County or any official or employee thereof, for the pre-opening, post-opening, or failure to open a proposal not properly addressed and identified.

2.4. Questions/Requests for Clarification

All questions and/or requests for clarification regarding this RFP should be provided in writing to Crystal Waldrop no later than May 15, 2023, by close of business at 5:00 p.m., local time. All questions submitted and their answers will be posted on the Newberry County website as an addendum to this RFP. No telephone inquiries will be accepted.

2.5. Addenda

If it becomes necessary to revise any part of this RFP, a written addendum will be issued. All addenda issued by Newberry County will become part of the official RFP and will be posted on the Newberry County website, under the link for the project.

2.6. Contact Policy

No direct or indirect contact regarding this solicitation may be made with any representatives of the County of Newberry other than the OFFICIAL CONTACT identified in this RFP. If such contact is made, the County of Newberry reserves the right to reject a proposal submitted by that RESPONDENT. All questions and/or requests for clarification must be provided in accordance with Section 2.4 of the RFP. This contact policy applies to site visits and requests for technical information. Any technical information needed from the County of Newberry to prepare a proposal should be coordinated through the Questions/Requests for Clarification process outlined in Section 2.4.

2.7. Acceptance and Rejection of Proposals

Any proposals that do not conform to the essential requirements of the RFP shall be rejected. The County of Newberry reserves the right to waive informalities and minor irregularities in submittals and reserves the sole right to determine what constitutes informalities and minor irregularities. The County of Newberry also reserves the right to accept or reject any or all proposals received in response to this RFP and to negotiate separately with competing RESPONDENTS. The County of Newberry is not obligated to enter into any contract on the basis of any submittal in response to this RFP. The County of Newberry reserves the right to request additional information from any firm submitting under this RFP if such information is necessary to further evaluate the firm's qualifications.

2.8. Cancellation/Rejection

The County of Newberry may cancel this RFP in whole or in part at any time if it is determined to be in the best interest of the Town. The County of Newberry may reject any or all proposals in whole or in part if it is determined to be in the best interest of the County.

2.9. Conflict of Interest

RESPONDENTS shall promptly notify the County in writing of all potential conflicts of interest for any prospective business association, interest, or other circumstance, which may influence or appear to influence the RESPONDENT'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest, or circumstance, the nature of work that such a person may undertake, and request an opinion of the County as to whether the association, interest, or circumstance would, in the opinion of the County, constitute a conflict of interest. By submitting this proposal, the respondent certifies that it has no conflict of interest with any

employee, agent, elected official or officer of the county or any other conflict as may be set forth herein.

2.10. Collusion

More than one proposal from an individual, firm partnership, corporation, association or related parties under the same or different names will not be considered. If the County of Newbery believes that collusion exists among RESPONDENTS, all proposals from the suspected firms will be rejected. "Related parties" means RESPONDENTS or the principals thereof, which have a direct or indirect ownership or profit-sharing interest in another RESPONDENT.

RESPONDENTS shall comply with all local, state, and federal directives, orders, and laws applicable to this RFP and any resulting contract.

By responding to this RFP, RESPONDENTS certify that the response is made without previous understanding, agreement, or connection with any person, firm or corporation making a proposal for the same item, and they certify the knowledge that this would constitute an illegal action.

2.11. Proprietary/Confidential Information

Trade secrets or proprietary information submitted by a RESPONDENT in connection with a procurement transaction shall not be subject to public disclosure under the Freedom of Information Act; however, the RESPONDENT must invoke the protections of this section prior to or upon submission of the data or other materials and must identify the data or other materials to be protected and state reasons why protection is necessary. Disposition of material after award is made should be stated by the RESPONDENT. No information, materials or other documents relating to this procurement will be presented or made otherwise available to any other person, agency, or organization until after award.

All RESPONDENTS must visibly mark as "Confidential" each part of their proposal that they consider to contain proprietary information. All unmarked pages will be subject to release in accordance with the guidelines set forth under Chapter 4 of Title 30 (The Freedom of Information Act) South Carolina Code of Laws and Section 11-35-410 of the South Carolina Consolidated Procurement Code. Privileged and confidential information is defined as "information in specific detail not customarily released to the general public, the release of which might cause harm to the competitive position of the part supplying the information." The examples of such information provided in the statute includes: customer lists, design recommendations and identification of prospective problem areas under an RFP, design concepts to include methods and procedures, and biographical data on key employees of the RESPONDENT.

Evaluative documents pre-decisional in nature such as inter or intra-agency memoranda containing technical evaluations and recommendations are exempted so long as the contract

award does not expressly adopt or incorporate the inter- or intra-agency memoranda reflecting the pre-decisional deliberations.

Marking the entire proposal confidential/proprietary is not in conformance with the South Carolina Freedom of Information Act.

2.12. Competition

This procurement process is designed to provide full and open competition. Nothing contained herein is intended to, nor should it be construed to, limit competition, but instead is intended to provide fair, impartial, and free competition among all offerors. It is the intent that this RFP permit and encourage open competition. This RFP identifies all evaluation factors that will be used in the selection process and their relative importance. Selection of the most qualified and responsible RESPONDENT will be based on the technical merits of their proposal and their ability to perform successfully under the terms outlined in this RFP.

2.13. Community Development Block Grant (CDBG) Requirements

This project is being funded in whole or in part by the Community Development Block Grant Program (CDBG). All federal CDBG requirements will apply to the contract. All contractors and subcontractors are required to be registered in the federal System for Award Management (SAM). Respondents on this work will be required to comply with the President's Executive Order No. 11246 & Order No. 11375 which prohibits discrimination in employment regarding race, creed, color, sex, or national origin. Respondents must comply with Title VI of the Civil Rights Act of 1964, the Davis-Bacon Act, the Anti-Kickback Act, the Contract Work Hours and Safety Standards Act, and 40 CFR 33.240.

Respondent must also make positive efforts to use small and minority-owned businesses and to offer employment, training and contracting opportunities in accordance with Section 3 of the Housing and Urban Development Act of 1968. Attention of respondents is particularly called to the requirements as to conditions of employment to be observed and minimum wage rates to be paid under the contract.

3. PROPOSAL CONTENTS

RESPONDENTS interested in providing the services outlined in this RFP must prepare and submit a proposal that adheres to the following requirements:

3.1. Number of Pages

Proposals must not be more than the equivalent of 30 single sided 8 ½ by 11 inch pages in length (not counting the front and back covers of the proposal, section dividers that contain no information, and all required forms).

3.2. Cover Letter

The response should contain a cover letter signed by a person who is authorized to commit the RESPONDENT to perform the work included in the proposal and should identify all subcontractors, materials, and enclosures being forwarded in response to the RFP.

3.3. Consultant Qualifications

Provide relevant information about the consultant team to include the following:

- Name and contact information for the proposed project manager who will be the sole point of contact for the County of Newberry during day-to-day operations
- Organization/company overview as it relates to the requirements of the RFP
- Organization/company overview of all sub-contractors as it relates to the requirements of the RFP
- Number of years the organization has been providing the requested services with a brief description of recently performed projects that indicate the past performance and abilities of the proposed team. More detail on specific projects should be included in the references section.

3.4. Key Personnel

Provide a proposed project management structure that identifies the project manager and all personnel who will be assigned to work on this project, including a description of their abilities, qualifications, and experience. Include resumes and contact information for all key individuals (including sub-consultants) who will be completing a portion of the scope of work.

3.5. Project Proposal

Provide a description of the project understanding and a detailed methodology and work plan to include a proposed list of required tasks and milestones to address the provided scope of work as well as any additional recommendations, options, or alternatives that should be taken into consideration by the County of Newberry.

3.6. Fee Schedule/Cost Proposal

Provide a fixed price, total cost proposal itemized by work tasks and inclusive of all fees. ***The cost proposal must be submitted under separate, sealed cover, and must be clearly identified as such with the works "COST PROPOSAL" labeled on the front of the cost proposal package.***

3.7. Project Schedule

Provide a proposed project schedule that includes the key task activities, duration, milestones and deliverables that will complete the scope of work within the timeframe outlined in this RFP. This section must include a flow chart depicting key task activities and the sequence of their completion within the proposed timeframe.

3.8. References

Provide three (3) client references for recently performed relevant projects within the last 5 years that indicate the past performances and abilities of the proposed team. Include a key client contact person for each project with their current daytime phone number and email address.

4. EVALUATION AND AWARD PROCESS

4.1. Selection Committee

The County of Newberry will conduct a formal selection process to determine the best qualified RESPONDENT. This process will include the formation of a selection committee and the appointment of other technical advisors as needed to review all of the proposals and score them based on the established selection criteria outlined herein. The award will be made to the highest rated and ranked RESPONDENT based on the cumulative scores of the selection committee.

The County of Newberry reserves the right to contact a firm to obtain written clarification of information submitted in their proposal and to contact references to obtain information regarding performance, reliability, and integrity.

4.2. Notice of Intent to Award

Once the evaluation committee makes a recommendation for award, a notice of "Intent to Award" will be posted on the County website. A notice will also be emailed to all RESPONDENTS informing them of the success, or lack thereof, of their proposal to receive an award.

4.3. Protested Solicitations and Awards

Per the County of Newberry Purchasing policy (Am. Ord. 10-42-06, passed 11-15-2006) any RESPONDENT who is aggrieved in connection with the solicitation or award of a contract may protest to the Purchasing Director. The protest, setting forth the grievance, shall be submitted in writing within 10 days after the aggrieved persons know or should have known of the facts giving rise thereto.

The Purchasing Director shall have authority, with the advice and consent of the County Administrator or designee, to attempt to settle and resolve a protest of an aggrieved bidder,

offerer, contractor, or subcontractor, actual or prospective, concerning the solicitation or award of a contract without cost to the county. This authority shall be utilized in a manner consistent with regulations or laws governing the procurement of supplies, services, and construction for the county.

If the protest is not resolved by mutual agreement, the Purchasing Director shall promptly issue a decision in writing within 5 working days. The decision shall state the reasons for the action taken.

A copy of this decision under division (H)(3) above shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.

A decision shall be final and conclusive, or unless any person adversely affected by the decision requests a review, in writing, setting forth the grievance to the County Administrator, or unless the County Administrator decides to review the decision for his or her own reasons. If not resolved by the County Administrator within 10 working days, the protestant may, within 15 working days from date of the adverse decision is issued, request a review by the County Council. County Council, as soon thereafter as practicable, may review the file and make its decision based solely on the review or it may review the matter de novo, and hold a hearing to review the file and/or to receive the testimony of witnesses, in its sole discretion. The burden of proof in the review by County Council is on the protestant. The Council shall determine the particular procedures it wishes to follow in making the review. The decision of the Council on all matters shall be final.

The request for a review shall not stay the purchase or contract unless the County Administrator or the County Council determines that there is good cause for the stay, or that the stay is advisable based on legal considerations.

Per Section 4.4 below, a final contract will not be awarded/executed until the South Carolina Department of Commerce, Grants Administration has given contract approval.

4.4. Contract Negotiations/Award of Contract

After the close of the appeal period, if no appeals were received or successfully granted, the highest rated respondent identified in the "Intent to Award" will be invited to enter into contract negotiations with County of Newberry to finalize the scope of work, personnel, hours, hourly rates, use of sub-consultants, and other direct costs that will be required to complete the agreement between the County of Newberry and the selected RESPONDENT. If an agreement cannot be reached with the top ranked firm, the County of Newberry will select the next highest ranked responsive and qualified firm and the negotiation phase will be repeated. This process will continue until an agreement is reached with a qualified firm that can provide the required scope of services within the project budget. Any contracts awarded as a result of this procurement process will be between the RESPONDENT and the County of Newberry.

Per SCDOC CDBG guidelines, any contract negotiated as a result of this procurement process will require approval from SCDOC Grants Administration prior to award/execution. Once a draft contract is negotiated, the County of Newberry will submit it to SCDOC for approval. Once approval is granted the County of Newberry and the selected RESPONDENT may enter into the contract. Failure to adhere to this policy could result in disallowed grant costs and the cancellation of this solicitation.

5. SELECTION CRITERIA

The selection criteria and the percentage of their importance in making the selection are:

5.1. Qualifications and Experience (40%)

The ability of a prospective RESPONDENT will be evaluated under the terms of the RFP relative to having demonstrated experience and capabilities needed to successfully perform all aspects of the project. This will be measured by evaluating the following criteria: qualifications of project personnel (e.g., experience, education, and professional certifications); experience working on similar types of infrastructure projects; experience with the CDBG program; experience and/or familiarity with the existing locality's system.

5.2. Technical Proposal (25%)

This refers to the technical soundness and suitability of the RESPONDENT'S stated approach to the project, the comprehensiveness of the proposed approach, the timeline presented, and the techniques to be used. A determination will be made as to the RESPONDENT'S understanding of the project purpose and goals, as well as the technical approach, and allocation of time for specific tasks. The project schedule/timeline should include a discussion of the RESPONDENTS recent, current, and projected workload and how it might impact the ability to meet time and budget requirements.

5.3. Cost Proposal (20%)

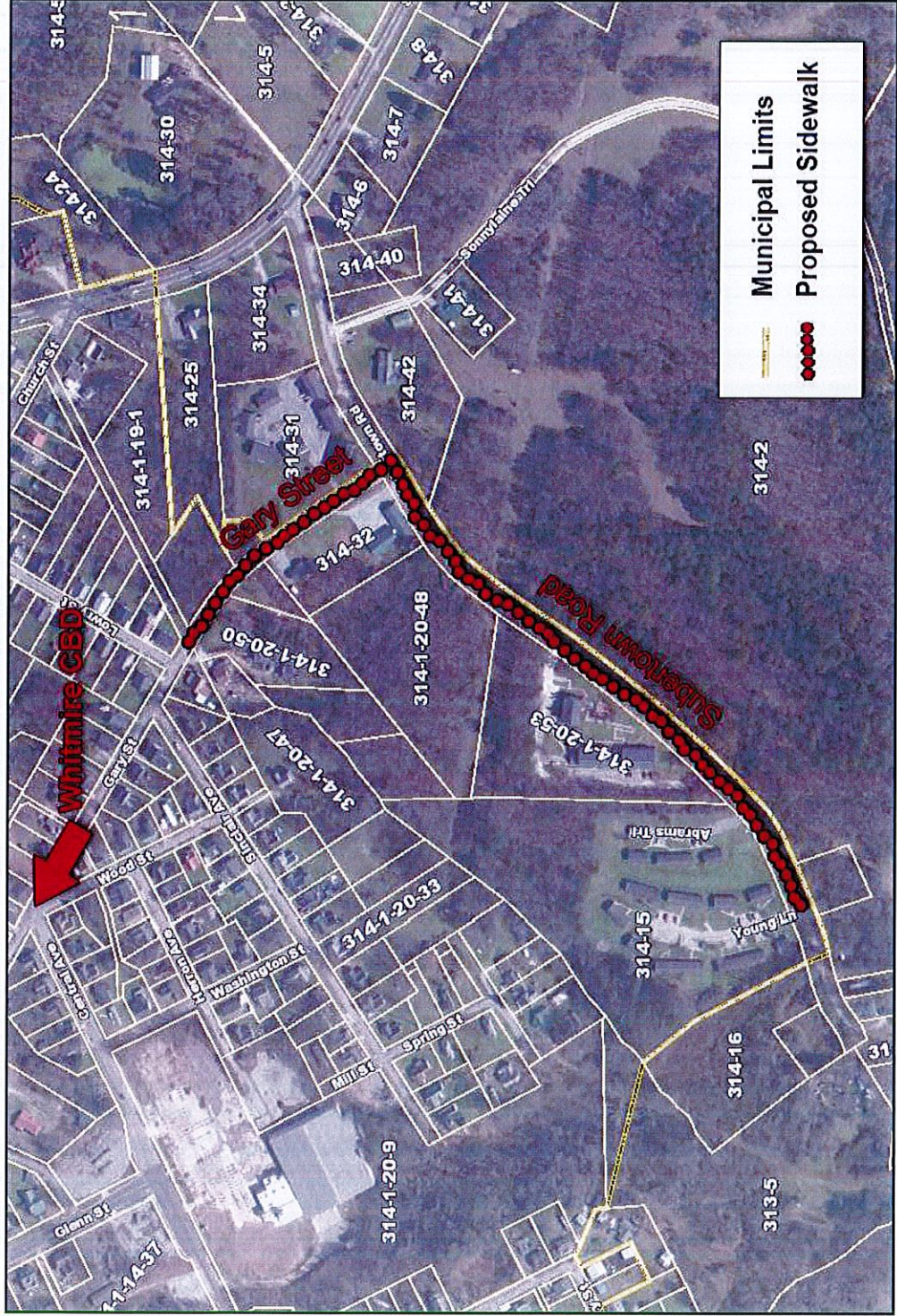
RESPONDENTS must provide a fixed price cost proposal in a separate sealed envelope, clearly marked as "COST PROPOSAL." Points for cost will be assigned by the Newberry County Purchasing Director or designee. The lowest total cost proposal for the proposed services will receive the maximum points allowed and all other RESPONDENTS will be assigned points on a pro rata basis.

5.4. Past Performance on Projects of a Comparable Nature (15%)

RESPONDENTS should clearly demonstrate through their proposals their past performance and quality of work on projects of a similar nature in whole or in part. Per Section 3.7 of the RFP, RESPONDENTS must also provide three (3) client references for recently performed, relevant projects within the last 5 years that indicate the past performances and abilities of the proposed team. These references must include a key client contact person for each project with their current daytime phone number and email address.

ATTACHMENT A: PROJECT AREA MAP

Subertown Road/Gary Street Sidewalk Improvement Project
Project Location Map



ATTACHMENT B: NEWBERRY COUNTY CERTIFICATION FORMS

VENDOR INFORMATION FORM

The undersigned, on behalf of the respondent, certifies that; (1) this information is made without previous understanding, agreement or connection with any person, firm, or corporation providing a response to the same document; (2) is in all respects fair and without collusion or fraud; (3) the person whose signature appears below is legally empowered to bind the firm in whose name the response is entered; (4) they have read the complete Request for Proposal and understand all provisions; (5) if officially proposed in response to any Request for Proposal accepted by Newberry County, the capabilities identified are guaranteed as written and will be implemented as stated; and (6) mistakes in writing of the submitted response will be their responsibility.

Vendor Name as Registered with the SC Secretary of State

Type of Organization (check one):

Sole Proprietorship **Partnership** **Corporation** **Public Corp.**

Authorized Contact Name Printed

Title

Authorized Signature

Date

Mailing Address

Physical Address

City/State/Zip

City/State/Zip

Phone Number

Fax Number

Company Website Address

E-Mail

Tax I.D. Number

ATTACHMENT C: DRAFT CONTRACT

STATE OF SOUTH CAROLINA) PROFESSIONAL SERVICES
AGREEMENT
COUNTY OF NEWBERRY)

This Contract is entered into this ____ day of _____, 20____, by and between the County of Newberry, a political subdivision of the State of South Carolina, having its principal place of business at 1309 College Street, Newberry, SC 29108 ("County"), herein referred to as the "COUNTY" and (name of Contractor), whose address is _____, herein referred to as the "Contractor" for the Subertown Road/Gary Street Sidewalk project (CDBG Project # 4-CE-22-09) , herein referred to as the "CDBG Project," Newberry County RFP #2023-12,

WITNESSETH:

WHEREAS, the County of Newberry desires to engage the Contractor to render engineering services for the above described CDBG Project; and

WHEREAS, the County of Newberry has complied with provisions for soliciting contractors as cited in the Community Development Block Grant (CDBG) Implementation Manual; and

WHEREAS, to ensure compliance with CDBG program requirements on the CDBG Project, it is deemed to be in the best interests of the County of Newberry to enter into an agreement with the Contractor as hereinafter provided;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. SERVICES OF CONTRACTOR.

The County of Newberry agrees to engage the Contractor, and the Contractor agrees to provide the services described in Section 6 in order to provide for the administration and management of the CDBG project for the County of Newberry as approved by the South Carolina Department of Commerce, Grants Administration, herein referred to as "Grants Administration."

2. INDEPENDENT CONTRACTOR.

The contracting parties warrant by their signature that no employer-employee relationship is established between the Contractor and the County of Newberry by the terms of this Contract. It is understood by the parties hereto that the Contractor is an independent contractor and as such neither it nor its employees, if any, are employees of the County of Newberry for purposes of tax, retirement system or social security (FICA) withholding.

3. CONTRACTOR'S INSURANCE.

The Contractor warrants that it has obtained and will maintain at its expense for the duration of this Contract, mandatory worker's compensation coverage, employer's liability and comprehensive general liability insurance coverage for its principals and employees for the services to be performed hereunder. Professional liability insurance will need to be provided. The comprehensive general liability insurance shall have, at a minimum, a coverage limit of at least one hundred thousand dollars (\$100,000) per claim, and five hundred thousand dollars (\$500,000) aggregate.

4. LIAISON.

The County of Newberry's liaison with the Contractor is Crystal Waldrop, Purchasing Director.

The Contractor's designated liaison with the County of Newberry is _____.

5. EFFECTIVE DATE AND TIME OF PERFORMANCE.

This Contract takes effect on _____. The services to be performed by the Contractor will be completed no later than _____.

6. SCOPE OF SERVICES.

The Contractor will perform the following services:

- (a) **Project Description.** The CBDG funding will be used to construct approximately 1,700 LF of 5' wide 4" thick ADA compliant concrete sidewalk along Subertown Road from Young Lane to Gary Street, and approximately 710 LF of 5' wide 4" thick ADA compliant concrete sidewalk along Gary Street from Subertown Road to Lowry Street. The new sidewalk will include approximately 14 accessible concrete curb ramps with warning surfaces, one thermoplastic crosswalk, and a

one 6" concrete driveway crossing. In addition to construction of the sidewalk, the project will also include contractor mobilization, utility coordination/relocation, traffic control, stormwater mitigation, site grading and seeding, engineering services, and grant administration.

(b) **Engineering Scope of Work.** To support this project, the County of Newberry is requesting full engineering services to include the following scope of work:

- Preparing drawings and specifications
- Filing applications for permits and/or design approvals
- Revising drawings in response to directives from governmental authorities as needed
- Preparing bidding documents and revising as needed
- Bidding the project and negotiating with contactors
- Putting the contract together and participating in the pre-construction conference
- Construction observation and inspection
- Preparing pay requests
- Conducting final inspection and providing a notice stating that the work is acceptable
- Preparation and/or submittal of contractor prepared final as built drawings

7. **CHANGES IN THE WORK.**

Without invalidating the Agreement and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document executed or issued pursuant to these provisions, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

8. **COMPENSATION.**

For the satisfactory completion of the services to be provided under this Contract, the County of Newberry will pay the Contractor a sum, not to exceed \$ _____, that the County of Newberry agrees to pay as set forth herein.

Payments shall be made monthly when Contractor has completed the services described in accordance with Section 6 above.

9. RECORDS AND REPORTS.

Records for nonexpendable real property purchased totally or partially by the Unit of Local Government with CDBG funds must be retained for five years after its final disposition. The (Unit of Local Government) must provide a quarterly progress report. All other pertinent grant records, including beneficiary data, financial records, supporting documents, and statistical records, shall be retained for a minimum of five years after final close-out of the Grant. If, however, any litigation, claim or audit is started before the expiration of the five-year period, then records must be retained for five years after the litigation claim or audit is resolved.

10. MODIFICATION AND ASSIGNABILITY OF CONTRACT.

This Contract, including all documents incorporated by reference pursuant to paragraph 10 hereof, contains the entire agreement between the parties, and no statements, promises or inducements made by either party, or agents of either party, that are not contained in the written contract, are valid or binding. This Contract may not be enlarged, modified or altered except upon written agreement signed by both parties hereto. The Contractor may not subcontract or assign its rights (including the right to compensation) or duties arising hereunder without the prior written consent of the (Unit of Local Government) and Grants Administration). Any subcontractor or assignee will be bound by all of the terms and conditions of this Contract and will be required to enter into a written agreement with the (Unit of Local Government).

11. TERMINATION OF CONTRACT.

This Contract may be terminated as follows:

In the event that Grants Administration reduces or terminates payments under the CDBG Program so as to prevent the County of Newberry paying the Contractor with CDBG funds, the County of Newberry will give the Contractor written notice which sets forth the effective date of the termination and explains the reasons for the termination. The notice shall also describe the conditions for any reimbursement for any work completed.

This contract is subject to termination for failure to comply with the specifications, terms and conditions by the County or the Contractor upon written notice by registered mail. Such termination will be effective not less than ten (10) days nor more than sixty (60) days after Contractor's receipt of

such notice from the County, nor less than thirty (30) days nor more than sixty (60) days after receipt by the County from the Contractor. Receipt of notice by one party to terminate the contract will nullify any subsequent reciprocal notice by the receiving party prior to the announced termination date. In the event of termination, the County shall be responsible to pay the Contractor only for work satisfactorily completed upon the effective date of termination, and the County shall not be responsible for any other charges.

Should the County fail to make payment on any undisputed invoice amount within sixty (60) business days upon receipt of such invoice, Contractor may elect to either suspend the services provided or terminate this Agreement; provided, however, prior to termination, the County shall be given notice of the default and an opportunity to cure such default within seven (7) business days after receipt of the notice of default. Should this Agreement be terminated by Contractor, Contractor shall be entitled to be paid only for the services actually completed to the satisfaction of the County as of the date of termination.

The County may terminate this contract for convenience by providing sixty (60) calendar days advance written notice to the Contractor. This Agreement may also be terminated pursuant to the pertinent portions of Section 7 herein. This Agreement may also be terminated by the prior written mutual consent of both parties.

12. CONTRACT DOCUMENTS

This Agreement, along with the provisions contained in Newberry County RFP #2023-12 and Contractor's Response to County IFB #2023-12 represents the entire agreement between the parties and supersedes any and all prior agreements, whether written or oral, that may exist between the parties regarding same. If there is a conflict between any of the terms of these contract documents the order of precedence of these contract documents shall be;

- (a) Any amendment signed after the execution date of this agreement;
- (b) This Agreement;
- (c) Contractor's Response to Newberry County RFP #2023-12;
- (d) Newberry County RFP #2023-12;
- (e) The County of Newberry's application to SCDOC Grant Administration for CDBG grant funding
- (f) The CDBG Contract Special Provisions are hereby incorporated by this reference and included as an attachment.

Federal and State Laws: The Unit of Local Government is responsible for compliance with all applicable Federal or State laws, Executive Orders, and regulations of the CDBG program.

13. APPLICABLE LAW AND VENUE.

The construction, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina. The County and Contractor further agree that this Agreement shall be deemed to be made and performed in Newberry County, South Carolina. For the purposes of venue, all suits or causes of action arising out of this Agreement shall be brought in the courts of Newberry County, South Carolina.

14. SEVERABILITY

Should any section, paragraph, clause, phrase, or provision of this Agreement be determined invalid or held unconstitutional by a court of competent jurisdiction, such declaration shall not affect the validity of this Agreement as a whole or any part or provision thereof, other than the part so decided to be invalid or unconstitutional.

15. SPECIAL WARRANTY

The Contractor warrants that nothing of monetary value has been given, promised or implied as remuneration or inducement to enter into this Contract. The Contractor further declares that no improper personal, political or social activities have been used or attempted in an effort to influence the outcome of the competition, discussion or negotiation leading to the award of this Contract. Any such activity by the Contractor shall make this Contract null and void.

16. INDEMNIFICATION

Contractor agrees to defend, indemnify and save harmless the County and all County officers, agents and employees from and against any loss, damage, claim or action, including all expenses incidental to such claim and action, to the extent arising from any negligent acts or omissions by Contractor, its agents, staff, consultants and contractors employed by it, in the performance of the services under this Agreement. Contractor shall not be responsible for any loss, damage, or liability to the extent arising from acts of the County, its agents, staff, and other consultants employed by it.

17. RIGHT OF ENTRY

The County will provide for the right of entry for Contractor, its subcontractors, and all necessary equipment in order to complete the work under this Agreement. Contractor agrees to be responsible for any damage to property that is caused by Contractor, its subcontractors and/or equipment and further agrees to take all necessary corrective action for any damage to property that is caused by Contractor, its subcontractors and/or equipment.

18. COMPLIANCE WITH CODES AND STANDARDS

Contractor's professional services shall incorporate those federal, state and local laws, regulations, codes and standards that are applicable at the time Contractor rendered its services. Contractor shall not be responsible for any claim or liability for injury or loss allegedly arising from Contractor's failure to abide by federal, state or local laws, regulations, codes and standards that were not in effect or publicly announced at the time Contractor rendered its services.

19. PUBLIC RESPONSIBILITY

The County has a duty to conform to applicable codes, standards, regulations and ordinances with regard to public health and safety. Contractor will at all times alert the County to any matter of which Contractor becomes aware and believes requires the County to issue a notice or report to certain public officials, or to otherwise conform with applicable codes, standards, regulations or ordinances. If the County decides to disregard Contractor's recommendations in these respects, Contractor shall employ its best judgment in deciding whether or not it should notify public officials.

20. CLIENT LITIGATION

Contractor agrees to produce documents, witnesses and/or general assistance to any litigation, arbitration or mediation involving the County, if the County requests such documents, witnesses and/or general assistance. The County shall reimburse Contractor for all direct expenses incurred and time according to Contractor's rate schedule as of the date of the execution of this Agreement.

21. CONFIDENTIALITY

Contractor will maintain as confidential any documents or information provided by the County and will not release, distribute or publish same to any third party without prior permission from the County, unless compelled by law or order of a court or regulatory body of competent jurisdiction. Such release will occur only after prior notice to the County.

22. ASSIGNMENT

This Agreement may not be assigned by either party without the prior written consent of the other party.

22. NOTICES

All notices made pursuant to this Agreement shall be in writing and delivered personally or sent by registered or certified mail, return receipt requested, to the parties at their respective addresses set forth below:

COUNTY

CONTRACTOR

Jeff Shacker, County Administrator
County of Newberry
PO Box 156 (USPS)
1309 College Street (ground)
Newberry SC 29108

Any party may change the person to whom notices are to be sent by giving ten (10) calendar days written notice of such change to the other party.

WITNESSES:

CONTRACTOR

By: _____

Its: _____

COUNTY OF NEWBERRY

By: _____

Jeff Shacker
County Administrator

ATTEST: _____

Susan Fellers, Clerk to Council

ATTACHMENT A: CDBG CONTRACT PROVISIONS

**DEPARTMENT OF COMMERCE
GRANTS ADMINISTRATION
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM**



CONTRACT SPECIAL PROVISIONS

The following CDBG Contract Special Provisions should be used with all construction contracts, including housing rehabilitation, as applicable, and professional service contracts, where CDBG funds are being used in whole or in part.

CONTRACT SPECIAL PROVISIONS

1. **Definitions:** For purposes of this Contract, the following terms shall have the meanings set forth below:
 - (a) “Assistance” means the CDBG grant funds provided, or to be provided, to the Grantee by the State, pursuant to the Grant Award Agreement.
 - (b) “CDBG” means Community Development Block Grant.
 - (c) “Contract” means the contractual agreement between the Owner and the Contractor to which these Contract Special Provisions have been incorporated and made a part thereof.
 - (d) “Contractor” means the contractor whose services are retained pursuant to the Contract.
 - (e) “Grantee” means the unit of local government designated as the recipient of the Assistance in the Grant Award and signing the acceptance provision of the Grant Award.
 - (f) “HUD” means U.S. Department of Housing and Urban Development, which is the federal agency that awards and has authority over CDBG funding to the State.
 - (g) “Owner” means the Grantee or Subrecipient, as applicable.
 - (h) “Project” means the project for which the services of the Contractor have been retained pursuant to the Contract which are funded, in whole or in part, with CDBG funds.
 - (i) “State” means the State of South Carolina, or that agency, agency division, or Office of State government which has been delegated the responsibility for administering the CDBG program for the State of South Carolina, as appropriate.
 - (j) “Subrecipient” means the agent of the unit of local government as designated by an agreement.
 - (k) “Labor Surplus Area” means a civil jurisdiction that has an unemployment rate at least 20% above the average unemployment rate for all states, the District of Columbia, and Puerto Rico during the previous two calendar years. The Department of Labor issues the labor surplus area list on a fiscal year basis.

2. **Prime Contractor Responsibilities:** The Contractor is required to assume sole responsibility for the complete effort and enforcement of laws and regulations under this Contract. The Owner will consider the Contractor to be the sole point of contact with regard to contractual matters. All contractors, including subcontractors must be registered in SAM and eligible to receive federal contracts.
3. **Federal and State Laws:** The Contractor agrees to comply with all CDBG requirements as well as other federal and state laws, regulations, or Executive Orders. The State reserves the right to add or delete terms and conditions of this Contract as may be required by revisions and additions or changes in the requirements, regulations, and laws governing the CDBG Program.
4. **Procurement and Contracting:** In accordance with 2 CFR Part 200, the cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used. This provision shall supersede any conflicting provision in an executed contract document or agreement funded in whole or in part with CDBG funds.
5. **Ownership:** Ownership of all real or personal property, acquired in whole or in part with CDBG funds for use on this Project, shall be vested in the Grantee, unless otherwise authorized by the State. When the Grantee determines that the property is no longer required for the purposes of this Project, the Grantee must notify the State and obtain approval for disposition of the property in accordance with applicable guidelines.
6. **Copyright:** Except as otherwise provided in the terms and conditions of this Contract, the Contractor paid through this Contract is free to copyright any books, publications or other copyrightable materials developed in the course of the Project and under this Contract. However, HUD and the State reserve a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, for Federal government and State purposes:
 - (a) the copyright in any work developed under this Contract; and
 - (b) any rights of copyright to which a subcontractor purchases ownership with grant support.

The Federal government's rights and the State's rights identified above must be conveyed to the publisher and the language of the publisher's release form must insure the preservation of these rights.
6. **Reporting Requirements:** The Contractor agrees to complete and submit all reports, in such form and according to such schedule, as may be required by the State or HUD. Further, the Contractor agrees to require any subcontractors to submit reports that may be required and to incorporate such language in its agreements. Failure to meet deadlines with the required information could result in sanctions.
7. **Access to Records:** All records with respect to all matters covered by this Contract shall be made available at any time for audit and inspection by HUD, the State or the Grantee or their representatives upon their request.
8. **Maintenance of Records:** Records for non-expendable property purchased totally or partially with Federal funds must be retained for five years after final close-out of the grant. All other pertinent contract records including financial records, supporting documents and

statistical records shall be retained for a minimum of five years after the final close-out report. However, if any litigation, claim, or audit is started before the expiration of the five year period, then records must be retained for five years after the litigation, claim or audit is resolved.

9. **Confidential Information:** Any reports, information, data, etc., given to, prepared by, or assembled by the Contractor under this Contract, which the Grantee or the State requests to be kept confidential, shall not be made available to any individual or organization by the Contractor without prior written approval of the Grantee or the State, as applicable.
10. **Reporting of Fraudulent Activity:** If at any time during the term of this Contract anyone has reason to believe by whatever means that, under this or any other program administered by the State, a recipient of funds has improperly or fraudulently applied for or received benefits, monies or services pursuant to this Contract or any other contract, such information shall be reported immediately to the appropriate authorities.
11. **Political Activity:** None of the funds, materials, property or services provided directly or indirectly under this Contract shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office or otherwise in violation of the provisions of Section 8-13-765 of the Code of Laws of South Carolina, 1976, as amended.
12. **Conflicts of Interest and Ethical Standards, South Carolina Consolidated Procurement Code:** The following provisions regarding "conflicts of interest" apply to the use and expenditure of CDBG funds by the Grantee and its subrecipients, including the Contractor.

In the procurement of supplies, equipment, construction and services, the more restrictive conflict of interest provisions of the State of South Carolina Ethics, Government Accountability and Campaign Reform Act of 1991 or of the Contractor shall apply.

In cases not governed by the above, such as the acquisition and disposition of real property and the provision of CDBG assistance to individuals, businesses and other private entities, the following provisions shall apply.

Except for eligible administrative or personnel costs, the general rule is that no person who is an employee, agent, consultant, officer, or elected or appointed official of the State or a unit of general local government or any designated public agencies or subrecipient which are receiving CDBG funds who exercise or have exercised any function or responsibilities with respect to CDBG activities assisted herein or are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder either for themselves or those with whom they have family or business ties during their tenure or for one year thereafter. Exceptions may be granted by the State on a case by case basis as requested upon full disclosure in writing.

Should any governmental entity, contractor, subcontractor, employee or official know or perceive any breach of ethical standards or conflict of interest under the CDBG grant awarded to the Grantee or any other CDBG grant, they shall immediately notify in writing the Department of Commerce, Grants Administration, 1201 Main Street, Suite 1600, Columbia, South Carolina, 29201. If the State finds any circumstances that may give rise to

a breach of ethical standards or conflict of interest, under any grant, they shall notify the participating governmental entity and the State Ethics Commission as appropriate. The State may undertake any administrative remedies it deems appropriate, where there is a breach of ethical standards or conflict of interest under the regulations governing the CDBG Program and the State policies.

13. **Applicable Law:** In addition to the applicable Federal laws and regulations, this Contract is also made under and shall be construed in accordance with the laws of the State. By execution of this Contract, the Contractor agrees to submit to the jurisdiction of the State for all matters arising or to arise hereunder, including but not limited to performance of said Contract and payment of all licenses and taxes of whatever kind or nature applicable hereto.
14. **Limitation of Liability:** The Contractor will not assert in any legal action by claim or defense, or take the position in any administrative or legal procedures that he is an agent or employee of the Owner. This provision is not applicable to contracts for CDBG administration services where the Contractor is a Council of Government. The State shall not be liable for failure on the part of the Grantee or any other party to perform all work in accordance with all applicable laws and regulations. The Grantee agrees to defend, indemnify, and hold harmless the State from and against all claims, demands, judgments, damages, actions, causes of actions, injuries, administrative orders, consent agreement and orders, liabilities, penalties, costs, and expenses of any kind whatsoever, including, without limitation, claims arising out of loss of life, injury to persons, property, or business or damage to natural resources in connection with the activities of the Grantee and any other third parties in a contractual relationship with the Grantee, or a subsidiary, whether or not occasioned wholly or in part by any condition, accident, or event caused by any act or omission of the State as a result of the Assistance.
15. **Legal Services:** No attorney-at-law shall be engaged through the use of any funds provided under this Contract in any legal action or proceeding against the State, the Grantee, any local public body or any political subdivision.
16. **Contract:** If any provision in this Contract shall be held to be invalid or unenforceable, the remaining portions shall remain in effect. In the event such invalid or unenforceable provision is considered an essential element of this Contract, the parties shall promptly negotiate a replacement provision, which addresses the intent of such provision.
17. **Amendments:** Any changes to this Contract affecting the scope of work of the Project must be approved, in writing, by the Owner and the Contractor and shall be incorporated in writing into this Contract. Any amendments of the original contract must have written approval by the State prior to execution.
18. **Termination for Convenience:** This Contract may be terminated for convenience in accordance with 2 CFR Part 200.
19. **Sanctions:** If the Contractor fails or refuses to comply with the provisions set forth herein, the State or Owner may take any or all of the following actions: cancel, terminate or suspend in whole or in any part the contract, or refrain from extending any further funds to the Contractor until such time as the Contractor is in full compliance.
20. **Subcontracting:** If any part of the work covered by this Contract is to be subcontracted, the Contractor shall identify the subcontracting organization and the contractual arrangements

made therewith to the Owner and to the State. All subcontracts must be approved by the Owner and the State to insure they are not debarred or suspended by the Federal or State governments and to insure the Owner and the State understand the arrangements.

- 21. Subcontracting with Small and Minority Firms, Women's Business Enterprise and Labor Surplus Areas:** It is national policy to award a fair share of contracts to disadvantaged business enterprises (DBEs), small business enterprises (SBEs), minority business enterprises (MBEs) and women's business enterprises (WBEs). Accordingly, affirmative steps must be taken to assure that DBEs, SBEs, MBEs and WBEs are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:
- (a) Including qualified DBEs, SBEs, MBEs and WBEs on solicitation lists;
 - (b) Assuring that DBEs, SBEs, MBEs and WBEs are solicited whenever they are potential sources;
 - (c) Whenever economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by DBEs, SBEs, MBEs and WBEs;
 - (d) Where the requirement permits, establishing delivery schedules which will encourage participation by DBEs, SBEs, MBEs and WBEs;
 - (e) Using the services and assistance of the Small Business Administration, Minority Business Development Agency, the State Office of Small and Minority Business Assistance, the U.S. Department of Commerce and the Community Services Administration as required; and
 - (f) Requiring the subcontractor, if any, to take the affirmative actions outlined in (1) – (5) above.
- 22. Debarment Certification:** The Contractor must comply with Executive Orders 12549 and 12689 regarding Federal debarment and suspension regulations prior to entering into a financial agreement for any transaction as outlined below.
- (a) Any procurement contract for goods and services, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold (which is \$100,000 and is cumulative amount from all federal funding sources).
 - (b) Any procurement contract for goods and services, regardless of amount, under which the Contractor will have a critical influence on or substantive control over the transaction.
- In addition, no contract may be awarded to any contractors who are ineligible to receive contracts under any applicable regulations of the State.
- 23. South Carolina Illegal Immigration Reform Act:** The Owner and the Contractor are required to comply with the South Carolina Illegal Immigration Reform Act (signed June 4, 2008) requiring verification of lawful presence in the United States of any alien eighteen years of age or older who has applied for state or local public benefits, as defined in 8 U.S.C. Section 1621, or for federal public benefits, as defined in U.S.C. Section 1611.
- 24. Equal Employment Opportunity:** The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the State.

In carrying out the Project, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor must take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State setting forth the provisions of this non-discrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin. The Contractor will, in all solicitations or advertisements for employees by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin. The Contractor shall incorporate the foregoing requirements of this paragraph in all of its subcontracts for the Project unless exempted by rules, regulations, or orders of the State issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor.

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

The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the State, or pursuant thereto, and will permit access to its books, records, and accounts by HUD and the State for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

In the event of the Contractor's noncompliance with the non-discrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further State government contracts or federally assisted construction contract procedures authorized in Executive Order 11246 of September 24, 1965, or by rules, regulations, or orders of the State, or as otherwise provided by law.

25. **Age Discrimination:** In accordance with 45 CFR, Parts 90 and 91, the Contractor agrees there shall be no bias or age discrimination as to benefits and participation under this Contract.
26. **Section 109 of the Housing and Community Development Act of 1974:** No person in the United States shall on the grounds of race, color, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under the CDBG program of the State.
27. **Section 504 of the Rehabilitation Act of 1973, as amended:** The Contractor agrees that no otherwise qualified individual with disabilities shall, solely by reason of his disability, be

denied the benefits, or be subjected to discrimination including discrimination in employment, any program or activity that receives the benefits from the Assistance.

28. **Section 3, Compliance and Provision of Training, Employment and Business Opportunities:** 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 USC § 1701u). 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.

The parties to this said Contract agree to comply with HUD's regulations in 24 CFR Part 75, which implement Section 3. As evidenced by their execution of this Contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the 24 CFR Part 75 regulations.

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 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 person(s) taking applications for each of the positions; and the anticipated date the work shall begin. The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 75. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 75.

The Contractor will certify that any vacant employment positions including training positions, that are filled (1) after the Contractor is selected but before this Contract has been executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 75 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR Part 75.

The Contractor agrees to submit such reports as required to document compliance with 24 CFR Part 75. Noncompliance with the regulations in 24 CFR Part 75 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted contracts.

29. **Lead-Based Paint:** The construction or rehabilitation of residential structures with any portion of the Assistance is subject to the HUD Lead-Based Paint regulations found at 24 CFR Part 35. Any grants or loans made by the Grantee for the rehabilitation of residential structures with any portion of the Assistance shall be made subject to the provisions for the elimination of lead-base paint hazards under subpart B of said regulations, and the Grantee shall be responsible for the inspections and certifications required under Section 35.14(f) thereof.

30. Compliance with Air and Water Acts: (Applicable to construction contracts and related subcontracts exceeding \$100,000) This Contract is subject to the requirements of the Clean Air Act, as amended, 42 USC § 7401 et seq., the Federal Water Pollution Control Act (Clean Water Act), as amended, 33 USC § 1251 et seq., and the regulations of the Environmental Protection Agency with respect to 40 CFR Part 15, as amended from time to time, and the South Carolina Stormwater Management and Sediment Reduction Act. In particular, the following are required:

- (a) A stipulation by the Contractor or subcontractor that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the List of Violating Facilities, issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR § 15.20.
- (b) Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended (42 USC § 7414) and Section 308 of the Federal Water Pollution Control Act, as amended (33 USC § 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Sections 114 and 308, and all regulations and guidelines issued thereunder.
- (c) A stipulation that as a condition of award of contract prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the contract under consideration is to be listed on the EPA list of Violating Facilities.
- (d) Agreement by the Contractor that the Contractor will include or cause to be included the criteria and requirements in these subparagraphs (1) through (4), in every nonexempt subcontract and requiring that the Contractor will take such action as the State may direct as a means of enforcing such provisions.

In no event shall any amount of the Assistance be utilized with respect to a facility which has given rise to a conviction under section 113(c)(1) of the Clean Air Act or Section 309(c) of the Federal Water Pollution Control Act.

31. Federal Labor Standards Provisions: *(Applicable to construction contracts in excess of \$2,000 or residential rehabilitation contracts involving more than eight units)*

The Project or program to which the construction work covered by this Contract pertains is being assisted by the United States of America and the Federal Labor Standards Provisions as set forth on Attachment 1 are included in this Contract pursuant to the provisions applicable to such Federal assistance. These provisions must be complied with or sanctions will be instituted.

Attachment 1

U.S. Department of Housing and Urban Development, Office of Labor Relations form HUD-4010 (06/2009) ref. Handbook 1344.1

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached thereto and made a part thereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5 (a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification of the time actually work therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1)** The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2)** The classification is utilized in the area by the construction industry; and
- (3)** The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so

advise HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1214-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee 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 the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federal-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension or any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for an on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three

years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1 (b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment of provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices and trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) the contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget Under OMB Control Number 1215-0129.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays for supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR 5.5 (a)(3)(i) and that such information is correct and complete;

(2) That each laborer or mechanic (including each apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment Training Administration, Office of Apprenticeship Training, Employer and Training Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as state above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ration permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every Trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 of this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, 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 the contract clauses in this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause

include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provided in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration . . . makes, utters or publishes any statement knowing the same to be false . . . shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee 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 under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(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 laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 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 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 subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violations of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the

Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract, or any other Federal contract with the same prime contract, 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 subparagraph (2) of this paragraph.

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

C. Health and Safety. The provisions of this paragraph C are applicable only where the amount of the prime contract exceeds \$100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to this health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, 40 USC 3701 et. seq.

(3) The Contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.