

**BRUNSWICK COUNTY**  
**REQUEST FOR**  
**QUALIFICATIONS**

**Sewer Pump Stations  
Rehabilitation Project**

ISSUE DATE: **July 17, 2025**

DUE DATE: **August 21, 2025**



**[BRUNSWICKCOUNTYNC.GOV/BID](https://www.brunswickcountync.gov/bid)**

## **Request for Qualifications Statements Sewer Pump Stations Rehabilitation Project**

Pursuant to 2 C.F.R. § 200.320(b)(2), Brunswick County is requesting qualifications statements from qualified engineering firms to assess up to twelve (12) sewer pump stations within Brunswick County and provide engineering services to produce the technical documentation necessary for the rehabilitation of the sewer pump stations. The sewer pump stations are as follows: Brunswick Plantation Main, Winding River Main, St. James Main, Meadowlands #1, Mercantile, Hamptons, Sandy Lane, Sandy Creek, Oceanside Place, Winding River #2, and Food Lion located at 7595 High Market Street, Sunset Beach, NC. The foregoing sewer pump stations are listed in order of priority based on current condition and impact should the sewer pump station become inoperable. The overall objective of the project is to assess the condition of each pump station, including all components and items ancillary to the operation of the station, and to design any upgrades as necessary. The project also includes rehabilitation of each station to address items in need of repair as well as bring them up to current Brunswick County standards to improve and optimize the operating efficiency of each pump station. Upgrades should provide for bypass pumping and eliminate any existing operations and maintenance concerns.

Services will include, but not necessarily be limited to, professional engineering, design, drafting, consulting, project management, surveying, and grant management. Bidding and construction services **ARE NOT** included in the Scope of Work for this project.

A more detailed description of the work to be performed is contained in the enclosed Scope of Work. Firms submitting qualifications statements should use the enclosed Scope of Work as a guide but may develop their own scope based upon their experiences on similar projects. The County will negotiate and refine a final Scope of Work with the selected firm. The firm's final contract shall be based on a **fixed-price**, lump sum amount, inclusive of permit application fees and other expenses (printing, mileage, per diem, etc.). No additional compensation shall be made for these items.

### **Project Funding and Requirements**

It is anticipated that the Sewer Pump Stations Rehabilitation project will be funded in part with federal funds from the U.S. Environmental Protection Agency ("EPA") in the amount of \$1,000,000.00, which is an 80% cost-share based on the total allowable project cost, pursuant to the Community Grants Program: Grant Number (FAIN) 03D34725 and as directed in the Consolidated Appropriations Act. The total allowable project cost is \$1,250,000.00, resulting in a Brunswick County match of \$250,000.00, or a 20% cost-share. The Period of Performance for the grant is February 1, 2025, until October 31, 2027.

In addition to the EPA grant award terms, conditions, and restrictions, and the assurances and certifications, all as set forth in the Notice of Award from the EPA, Brunswick County must comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, which includes, without limitation, applicable provisions described in Appendix II to 2 C.F.R. Part 200, each of which is contained in this Request for Qualifications or in the Professional Services Agreement in substantially the form attached hereto, and such other requirements as may be mandated by EPA from time to time (collectively the "Regulatory Requirements").

**In accordance with the foregoing, firms interested in being considered for this work must agree to strictly adhere to all Regulatory Requirements and the terms and conditions contained herein and in the Professional Services Agreement attached hereto, each as may be amended from time to time, as required by the EPA. Firms not agreeing to all Regulatory Requirements and the terms and conditions are expressly prohibited from submitting a qualifications statement for consideration.**

**EPA Certification.** By accepting this contract, the contractor acknowledges and agrees to the terms provided in the [DBRA Requirements for Contractors and Subcontractors Under EPA Grants](#).

Firms interested in being considered for this work should submit their qualifications statement to:

Post Office Delivery

Bobby Sweat  
Brunswick County  
Utilities Operations Center  
P.O. Box 249  
Bolivia, NC 28422

Hand Delivery or Alternate Shipping Service

Bobby Sweat  
Brunswick County  
Utilities Operations Center  
250 Grey Water Road NE  
Supply, NC 28462

For consideration, four (4) hard copies and one (1) electronic copy on a USB drive of the response to this Request for Qualifications must be received by the County by 3:00 p.m. ET on Thursday, August 21, 2025. Brunswick County will not be responsible for the failure of any mail or delivery service to deliver responses prior to the stated date and time. Regardless of the manner of submission, any response received after the stated date and time will not be considered. Incomplete responses or responses inconsistent with the required format may be disqualified from consideration.

All questions or comments shall be submitted in writing to Bobby Sweat at [bobby.sweat@brunswickcountync.gov](mailto:bobby.sweat@brunswickcountync.gov) by Thursday, August 7, 2025, at 3:00 p.m. ET. A copy of all questions, further clarifications, and answers will be made in the form of an addendum to this Request for Qualifications and will be provided to all known interested firms. Any addendum will also be posted on the County's website. Notwithstanding the foregoing, firms are responsible for ensuring they have all addenda. **Interested firms are expressly prohibited from contacting any Brunswick County official or employee regarding this Request for Qualifications, except in the manner noted in this section. A violation of this provision is grounds for the immediate disqualification of the firm.**

Sections shall be **divided by tabs** that indicate the title of each section. At a minimum, the qualifications statement should include the following information:

- 1) The company's full legal name, state of organization or incorporation, primary office location, office location of project personnel, years of experience, and a contact person.
- 2) Qualifications of the employees who will be assigned to the project. The project manager and other key team members should be clearly identified. If subcontractors are to be used for any portion of the work, they should be identified, and their qualifications included. Brunswick County reserves the right to reject any subcontractors in its sole and absolute discretion.
  - a) The qualifications statement shall clearly indicate who will oversee the project as well as the roles that each individual shall perform.
  - b) Special emphasis shall be provided on the individuals' backgrounds, qualifications, certifications, and experience on related, and/or similar projects.
  - c) The firm's qualifications and experience with EPA grants and federally funded projects.
- 3) Firms should provide experience with similar projects. The qualifications statement should include a description and contact person for at least three (3) projects that were similar in size and scope



Firms must also have and maintain for the duration of the project an active registration in the federal System for Award Management (SAM.gov). Firms must provide proof of such registration with the qualifications statement.

Brunswick County reserves the right to request financial information for any firm to support the viability of the firm.

Brunswick County reserves the right to refuse or reject any or all qualifications and to waive any and all formalities, irregularities, or technicalities. Brunswick County reserves the right to select the most qualified firm that best meets its needs, pursuant to the evaluation criteria and selection process set forth herein. Brunswick County will negotiate a final Scope of Work with the selected firm that reflects the work to be done and the budget constraints. Based upon the number of qualifications statements received, the County may subsequently request oral presentations as a part of the selection process. All firms submitting a qualifications statement will receive notification once the contract has been awarded.

Brunswick County will not be responsible for any costs or expenses incurred by any firm in submitting a response. Brunswick County reserves the right to cancel the work described herein prior to the issuance and acceptance of any contractual agreement even if the Board of Commissioners has formally accepted the recommendation.

In addition to the terms and conditions contained in this Request for Qualifications, by submitting a response, if selected, the firm agrees to enter into and be bound by the provisions of a Professional Services Agreement in substantially the form attached hereto and incorporated herein by reference. To the extent that any of the terms of this Request for Qualifications and the terms of the Professional Services Agreement conflict, the terms of the Professional Services Agreement shall prevail. No work shall commence until an agreement has been fully executed by the parties.

#### **Compliance with Federal Laws, Regulations, and Executive Orders**

Firms submitting a qualifications statement hereby acknowledge that federal financial assistance will be used to fund all or a portion of this procurement. As such, firms shall comply with all applicable federal laws, regulations, executive orders, federal government policies, procedures, directives, and the terms and conditions of the funding award. Firms further acknowledge that funding is contingent upon compliance with the foregoing.

#### **Disclaimer of Federal Government Obligations or Liability**

Firms submitting a qualifications statement, and any subcontractors, acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of a contract in connection with this Request for Qualifications, absent the express written consent by the federal government, the federal government is not a party to this procurement or any subsequent agreement and shall not be subject to any obligations or liabilities to the firm, or any other party pertaining to any matter resulting from the Request for Qualifications or subsequent agreement. It is further agreed that this clause shall be included in each subcontract and shall not be modified, except to identify the subcontractor who will be subject to its provision.

#### **Federal Uniform Guidance**

As funding for this procurement is from a federal source, the following provisions also apply (as applicable):

- Equal Employment Opportunity (41 C.F.R. Part 60)
- Davis-Bacon Act (40 U.S.C. 3141-3148)
- Copeland “Anti-Kickback” Act (40 U.S.C. 3145)
- Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)
- Clean Air Act (42 U.S.C. 7401-7671q)
- Clean Water Act (Titles III, IV, and V, Pub. L. 92-500)
- Federal Water Pollution Control Act (33 U.S.C. 1251-1387)
- Debarment and Suspension (Executive Orders 12549 and 12689)
- Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)
- Domestic Preference for Procurements (2 C.F.R. § 200.322)
- Procurement of Recovered Materials (2 C.F.R. § 200.323)
- Record Retention Requirements (2 C.F.R. § 200.334)
- Prohibition on Contracting for Covered Telecommunications Equipment or Services (2 C.F.R. § 200.216)
- Title VI of the Civil Rights Act of 1964
- Section 504 of the Rehabilitation Act of 1973
- The Age Discrimination Act of 1975
- Archeological and Historic Preservation Act, as amended (Pub. L. 93-291)
- Coastal Barrier Resources Act (Pub. L. 97-348)
- Coastal Zone Management Act, as amended (Pub. L. 92-583)
- Endangered Species Act, as amended (Pub. L. 93-205)
- Environmental Justice (Executive Order 12898)
- Flood Plain Management (Executive Order 11988, as amended by Executive Order 12148)
- Protection of Wetlands (Executive Order 11990, as amended by Executive Order 12608)
- Farmland Protection Policy Act (Pub. L. 97-98)
- Fish and Wildlife Coordination Act, as amended (Pub. L. 85-624)
- Magnuson-Stevens Fishery Conservation and Management Act (Pub. L. 94-265)
- National Environmental Policy Act (Pub. L. 91-190)
- National Historic Preservation Act, as amended (Pub. L. 89-655), as amended
- Safe Drinking Water Act, as amended (Pub. L. 93-523)
- Wild and Scenic Rivers Act, as amended (Pub. L. 90-54)
- OSHA Worker Health and Safety Standards
- Demonstration Cities and Metropolitan Development Act, as amended (Pub. L. 89 -754)
- Government Neutrality Toward Contractor’s Labor Relations (Executive Order 13202, as amended by Executive Order 13208)
- New Restrictions on Lobbying (Section 319 of Pub. L. 101-121)
- Prohibitions relating to violations of the Clean Water Act or Clean Air Act with respect to Federal contracts, grants, or loans (under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, and Executive Order 11738)
- Uniform Relocation and Real Property Acquisition Policies Act, as amended (Pub. L. 91-646)
- EPA’s Investing in America Signage (RAIN-2023-G1)
- Small Unmanned Aircraft Systems a/k/a Drones Purchases and Operations (14 C.F.R. § 107, et seq.)

The foregoing provisions are incorporated by reference to the extent permitted by applicable statute. They may also be set forth in more detail in the attached Form of Agreement. By submitting a qualifications statement, firms agree to be bound by all applicable provisions.

### **Minority Business Enterprises**

Pursuant to 2 C.F.R. § 200.321(a) and (b)(1)-(6), when possible, firms are required to ensure that small businesses, minority businesses, women’s business enterprises, veteran-owned businesses, and labor surplus area firms are considered. Such consideration includes: (1) including the aforementioned business types on solicitation lists; (2) soliciting the aforementioned business types whenever they are deemed eligible as potential sources; (3) dividing procurement transactions into separate procurements to permit maximum participation by the aforementioned business types; (4) establishing delivery schedules (for example, the percentage of an order to be delivered by a given date of each month) that encourage participation by the aforementioned business types; (5) utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and (6) applying this section and its requirements to all subcontracts.

For the purposes of this section, an entity shall qualify if it is currently certified as a North Carolina “historically underutilized business” under Chapter 143, Section 128.4(a) of the North Carolina General Statutes, and (2) as a “small business” if it is independently owned and operated and is qualified under the Small Business Administration criteria and size standards at 13 C.F.R. Part 21.

### **Utilization of Small Business Concerns**

Pursuant to 48 C.F.R. § 52.219-8:

- (a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.
- (b) The firm hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The firm further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the firm’s compliance with this clause.
- (c) *Definitions.* As used herein –
  - HUBZone small business concern* means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.
  - Service-disabled veteran-owned small business concern* –
    - (1) Means a small business concern –
      - (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

- (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.
- (2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

*Small business concern* means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

*Small, disadvantaged business concern* means a small business concern that represents, as part of its offer that—

- (1)
  - (i) It has received certification as a small, disadvantaged business concern consistent with 13 CFR part 124, subpart B;
  - (ii) No material change in disadvantaged ownership and control has occurred since its certification;
  - (iii) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
  - (iv) It is identified, on the date of its representation, as a certified small, disadvantaged business in the CCR Dynamic Small Business Search database maintained by the Small Business Administration, or
- (2) It represents in writing that it qualifies as a small, disadvantaged business (SDB) for any Federal subcontracting program and believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals and meets the SDB eligibility criteria of 13 CFR 124.1002.

*Veteran-owned small business concern* means a small business concern –

- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
- (2) The management and daily business operations of which are controlled by one or more veterans.

*Women-owned small business concern* means a small business concern –

- (1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
  - (2) Whose management and daily business operations are controlled by one or more women.
- (d)
- (1) Firms acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a small, disadvantaged business concern, or a women-owned small business concern.
  - (2) The firm shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the System for Award Management database or by contacting the SBA. Options for contacting the SBA include –

- (i) HUBZone small business database search application Web page at [http://dsbs.sba.gov/dsbs/search/dsp\\_searchhubzone.cfm](http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm) or <http://www.sba.gov/hubzone>;
- (ii) In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC 20416; or
- (iii) The SBA HUBZone Help Desk at [hubzone@sba.gov](mailto:hubzone@sba.gov).”

### **Build America, Buy America**

To the extent applicable, the firm agrees to comply with all requirements of the Build America, Buy America (“BABA”) Act. The Act requires that “none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the **iron, steel, manufactured products, and construction materials** used in the project are produced in the United States.” (Build America, Buy America Act, Pub. L. 117-58 §§ 70911 – 70917). For the purposes of BABA:

- 1) “Construction materials” includes an article, material, or supply – other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives-that is or consists primarily of:
  - Non-ferrous materials
  - Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
  - Glass (including optic glass);
  - Lumber; or
  - Drywall
- 2) “Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.
- 3) “Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

### **American Iron and Steel (“AIS”)**

To the extent applicable, the firm agrees to use iron and steel products that are produced in the United States for the construction, alteration, maintenance, or repair of a public water system or treatment works. AIS requires, in part:

- 1) All iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States; and
- 2) All manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless

another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and

- 3) All construction materials (excluding cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives) are manufactured in the United States. All manufacturing processes for the construction material occurred in the United States; and
- 4) The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

### **Energy Conservation Requirements**

Pursuant to 42 U.S.C. 6321 et seq., firms agree to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

### **American with Disabilities Act (ADA)**

Firms agree to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC § 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; 49 USC § 5301(d); and any implementing requirements of the federal government. These regulations provide that no handicapped individual, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this proposal.

### **Privacy Act**

Firms agree to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Firms agree to obtain the express consent of the federal government before the firm, or its employees operate a system of records on behalf of the federal government. Firms understand that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

Firms also agree to include these requirements in each subcontract to administer any system of records on behalf of the federal government financed, in whole or in part, with federal assistance.

### **Drug Free Workplace**

Firms shall adhere to the Federal Drug Free Workplace requirements as outlined in 2 C.F.R. § 182. Firms shall make good faith efforts to maintain a drug-free workplace, publish a workplace statement and establish drug-free awareness programs for employees. Firms should take action concerning employees who are convicted of violating drug statutes in the workplace. Firms shall contact Brunswick County if they cannot adhere to the requirements of the federal regulations noted above. Failure to comply with the said provisions shall be considered a breach of contract.

## **Qualifications Selection Criteria and Weighting**

Statements of Qualifications will be evaluated on the firm's ability to meet the requirements of this Request for Qualifications. Evaluation criteria will include, without limitation:

1. Qualifications and accessibility of key individuals identified in the qualifications statement that will be assigned to the project.
2. The firm's experience on providing similar services for similar projects.
3. Ability to establish a project schedule that covers design through completion of the project.
4. Ability of the firm to properly scope the project and the capability of the firm to manage the work
5. Provide a project approach that best meets the project intent.
6. The firm's experience with EPA grant funding and compliance.

<b>Qualifications Selection Criteria</b>	<b>Qualifications Selection Criteria Weighting</b>
	Max Points
Qualifications and accessibility of key individuals identified in the qualifications statement that will be assigned to the project	20
The firm's experience in providing similar services for similar projects	25
Ability to establish a project schedule that covers design through completion of the project	15
Ability to properly scope the project and the capability of firm to manage the work	15
Provide a project approach that best meets the project intent	15
The firm's experience with EPA grant funding and compliance	10
<b>Total Points</b>	<b>100</b>

The firm will be selected based on the above criteria and weighting scale. A panel will review and score the responses individually. The panel will then meet to discuss and compare their individual criteria weighting to rank respondents and collectively determine who is the most qualified firm for the project based on the firm's demonstrated competence and qualifications without regard to price. The County will then commence contract negotiations to determine fair and reasonable compensation with the most highly qualified firm based on a clear understanding of the project scope, complexity, professional nature, and the estimated value of the services to be rendered. If negotiations are not successful, the County will commence negotiations with the second most qualified firm.

## **Certification**

**The firm submitting a Statement of Qualifications hereby certifies that it has carefully examined this Request for Qualifications and all attachments hereto, including, without limitation, the Professional Services Agreement. The firm submitting the Statement of Qualifications further certifies that it understands and accepts all terms and conditions contained in the Request for Qualifications, including, without limitation, the Professional Services Agreement, and the scope of work, and that it has knowledge and expertise to complete the project. By submitting a Statement of Qualifications, the firm further certifies that its submittal is fair in all respects and without collusion or fraud.**

## SCOPE OF WORK

### 1. BACKGROUND

The project includes producing design and all necessary construction bid documents for the rehabilitation of the following sewer pump stations: Brunswick Plantation Main, Winding River Main, St. James Main, Meadowlands #1, Mercantile, Hamptons, Sandy Lane, Sandy Creek, Oceanside Place, Winding River #2, and Food Lion at 7595 High Market Street, Sunset Beach, NC. The foregoing sewer pump stations are listed in order of priority based on current conditions and potential impact should the sewer pump station become inoperable. The overall objective of the project is to assess the condition of each sewer pump station, including all components and items ancillary to the operation of the station, and to produce design drawings, technical specifications, and any other items necessary to obtain all required permits as well as produce all documents required for bidding and construction of the pump stations. The selected firm will provide general project management and design services, as well as grant administration. Work related to bidding and construction is specifically excluded from this Scope of Work.

### 2. STUDY AND REPORT PHASE

The selected firm shall identify, evaluate the existing assets at each site, document, and provide preliminary construction cost estimates for the identification and correction of deficiencies. The firm is to perform drawdown testing of the stations to determine capacity and review runtime and rainfall records to determine average and maximum daily flow rates. The firm shall identify any potential easement locations and shall consult with NCDOT concerning encroachments needed within DOT rights-of-way. The firm shall prepare an overview map of the project area. The firm shall provide copies of the overview map and review the map with the County.

The firm will also generate a report based on preliminary engineering to identify the deficiencies and to discuss their recommendations for repair or replacement. The report should include an evaluation of each alternative, including opinions of probable cost and conceptual design criteria, and a final recommendation of the best alternative. Consideration shall be given to cost, schedule, permit requirements, governmental requirements including mitigation efforts and cost, ability to acquire easements and easement costs. The firm shall provide copies of the Preliminary Report to the Owner and review it with the Owner. The Owner shall submit comments to the firm which shall be incorporated into the final report provided by the firm. A minimum of two weeks shall be provided in the schedule for the Owner to evaluate the report. Approval of the alternative shall be given by the Owner prior to commencing design.

### 3. PRELIMINARY DESIGN

The firm shall prepare design drawings, details, and technical specifications adequate to apply for and receive all necessary permits and encroachments. The preliminary design package should include 30% of the design for the County's review including an updated opinion of probable cost.

The proposed pipe sizes shall be evaluated using hydraulic modeling software. If required, directional drill piping shall be upsized to provide the best-match interior diameter to the piping installed by open cut methods. The firm shall meet with Brunswick County staff to understand the history and operation and maintenance challenges of each pump station site, and conduct site visits as necessary to inspect each station and the operational components. The selected firm shall perform draw-down tests, and any other tests needed to determine pump station capacity.

All modifications to existing infrastructure or design of new infrastructure shall be designed in accordance with Brunswick County standards. The firm is to coordinate with Brunswick County to gather any required

documents or data needed to complete a Technical Memorandum (TM) and provide recommendations for rehabilitation and opinion of probable cost for each pump station site.

The firm will be responsible for the design of all systems for the project. The design should show all existing utilities located within the project area and the location should be based upon information from the affected utility. It is anticipated that construction will occur in NCDOT rights-of-way or in County-owned utility easements or within private access easements.

4. SURVEY

The firm shall provide base mapping of the necessary repair areas inclusive of all above-ground and underground features. All above-ground features shall be surveyed, including, without limitation, breaks in elevation (centerline and top of ditch, etc.). An adequate number of elevation points shall be surveyed to develop contours of the area. The firm shall clearly indicate all utilities, indicating size, type, and owner information. Survey data shall be supplemented by existing maps, as-builts, and utility locates. Base mapping will indicate both edges of pavement and existing utilities on both sides of the roadway. Additionally, edges of wetlands and geotechnical boring sites shall be surveyed and clearly shown on the base mapping. Adjacent properties shall be identified by owner and parcel ID number. The survey should include enough information for use in obtaining all necessary permits including the NC DOT and NC DEQ permits.

Any easements or properties to be acquired must also be surveyed and plats suitable for recording prepared.

5. WETLANDS DELINEATION

As applicable, the firm shall perform wetlands delineation sufficient for receipt of all Army Corps of Engineers and NCDEQ permitting. Wetland areas that are sufficiently dry shall be evaluated for pipe installation using open trench techniques.

6. GEOTECHNICAL INVESTIGATION

As applicable, the firm shall perform geotechnical evaluation at necessary intervals to support a complete and thorough design. The firm shall perform geotechnical evaluations at all likely directional drill locations and, if determined prudent, provide geotechnical evaluations at bore and jack locations and for structures having significant foundations or significant embedment into the existing ground. Geotechnical borings shall be advanced to refusal or 5' below the maximum depth of the installation, whichever is encountered first. Geotechnical recommendations and soil boring logs shall be incorporated into the Contract Documents. The cost for geotechnical investigations shall be provided on a per each basis.

7. FINAL DESIGN

Upon receipt of notice by County, the firm shall prepare final design drawings, details, and construction bid Documents for bidding purposes. Standard County "front-end" documents shall be provided to the firm for use in preparing the final construction bid documents. The firm shall modify these documents to create a final bid package specific to the project.

The firm shall review and utilize Brunswick County standard technical specifications when available and applicable and shall supplement Brunswick County technical specifications as needed. The firm shall ensure there is no overlap between the technical specifications and the County's standard "front-end" documents. The bid documents shall be prepared to a state where they are ready for advertisement. Provide three (3) hard copies and one (1) electronic copy of the final bid documents to the County. Bidding and contract documents must be approved by the County prior to advertising the same.

The firm shall prepare an updated Opinion of Probable Cost. County will supply the firm with comments for inclusion in the final design.

#### 8. PERMITTING

Upon approval of the Preliminary Drawings, the firm shall prepare and submit permits and permit fees to regulatory agencies. At a minimum, these shall include (if required):

- NCDOT Encroachment Agreement
- US Army Corps of Engineers Permits and/or Notifications (401/404 Permits)
- NCDEQ Division of Water Quality Wetlands Permits
- NCDEQ Division of Water Quality Sewer Fast Track Application
- NCDEQ Division of Water Quality Water Supply Section Permit
- NCDEQ Division of Land Resources Erosion and Sediment Control Permit
- NCDEQ Division of Water Quality Stormwater Permit
- Brunswick County Stormwater Permit
- Brunswick County Zoning and Planning Approval inclusive of all required Departmental Approvals (Engineering, Fire Marshal, etc.)
- Other Permits as required by all Federal, State and Local authorities.

The firm shall perform field work, furnish plans and specifications, document preparation, regulatory meetings, responses, evaluate alternatives, and provide recommendations concerning permitting. The firm will also solicit comments from the appropriate regulatory agencies during the preliminary design process. Assist Owner in consultation with permitting agencies and revise drawings and specifications in response to directives received by the agencies.

#### 9. EASEMENTS

Upon receipt of notice by the County, the firm shall prepare easement maps. Mapping shall comply with the requirements of the local zoning officer and the Brunswick County Planning Department. The firm shall also help identify and provide maps as necessary to secure permanent access to the proposed lines. Preliminary easement maps shall be provided during preliminary design phase. Final plats, suitable for recording, shall be provided during the final design phase. The County will secure all signatures on the final plats and will perform recordation of the easement plats and utility easement agreements.

#### 10. GRANT COMPLIANCE

The firm shall ensure compliance with the Regulatory Requirements, defined herein, including the grant award terms and conditions for the entire project. The firm will thoroughly review all essential documents and ensure that all funding obligations are fulfilled throughout the project. The firm shall provide all required reports and documentation and ensure compliance as required by the grant, including but not limited to, the provisions and requirements contained in this RFQ.

## FORM OF AGREEMENT

NORTH CAROLINA  
BRUNSWICK COUNTY

**PROFESSIONAL SERVICES AGREEMENT  
FOR ARCHITECTURAL, ENGINEERING  
AND/OR SURVEYING SERVICES  
(Mini-Brooks Act/Qualification Based Selection)  
[Federal Funding]**

**THIS PROFESSIONAL SERVICES 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 the “County” or the “Owner”), party of the first part and {Vendor Name}, (hereinafter referred to as the “Provider”) [*or the “Architect,” “Engineer,” or “Surveyor”*], party of the second part.

### WITNESSETH:

#### 1. SERVICES; FEES

The Provider agrees to perform the services (hereinafter referred to as the “Services”) in connection with the project (hereinafter referred to as the “Project”) at the agreed upon fees, all as more fully 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.

#### 2. TERM OF AGREEMENT; TIME OF COMPLETION

- (1) *Term.* The term of this Agreement begins one (1) business day after approval by the Brunswick County Board of Commissioners (the “Effective Date”) and continues in effect until {Expiration Date}, unless extended or sooner terminated as provided for herein or in the General Conditions of the Contract.
- (2) *Time of Completion.* Notwithstanding the foregoing, the Provider shall complete the Services in accordance with the schedule set forth herein (the “Time of Completion”), unless extended as provided for in the General Conditions of the Contract. **No work may commence under this Agreement until the Agreement has been fully executed by both parties.**

#### 3. TERMINATION

The County may terminate this Agreement at any time without cause by giving written notice to the Provider. As soon as practicable after receipt of a written notice of termination without cause, the Provider shall submit a statement to the County showing in detail the work performed under this Agreement through the effective date of termination. The County may terminate this Agreement for cause by giving written notice of a breach of the Agreement. The Provider shall have fifteen (15) days to cure the breach following receipt of the notification. Failure to cure the breach within the fifteen (15) days shall result in the immediate termination of the Agreement. Notwithstanding the foregoing, the County may terminate this Agreement

immediately and without notice to the Provider if the Provider becomes insolvent, makes or has made an assignment for the benefit of creditors, is the subject of proceedings in voluntary or involuntary bankruptcy instituted on behalf of or against the Provider, or has a receiver or trustee appointed for substantially all of its property, or if the Provider allows any final judgment to stand against it unsatisfied for a period of forty-eight (48) hours.

#### **4. BRUNSWICK COUNTY GENERAL CONDITIONS OF THE CONTRACT**

If applicable, this Agreement, in addition to any construction documents prepared hereunder, shall be subject to the Brunswick County, North Carolina General Conditions of the Contract (for construction contracts), unless the County directs otherwise. In the event of a conflict between the General Conditions of the Contract and this Agreement, this Agreement shall prevail.

#### **5. NONAPPROPRIATION**

If the Board of County Commissioners does not appropriate the funding needed by the County to make payments under this Agreement for a given fiscal year, the County will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the County will promptly notify the Provider 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 the County which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.

#### **6. COMPENSATION**

The County agrees to pay fees as specified in Exhibit "A" or as set out above for the Services satisfactorily performed in accordance with this Agreement. Unless otherwise specified, the Provider shall submit monthly invoices to the County and include detail of all Services delivered or performed under the terms of this Agreement. The County shall pay all undisputed and properly completed invoices within forty-five (45) days of receipt. Notwithstanding the foregoing, the County will not pay late fees on any charges under this Agreement. If the County disputes any portion of the charges on any invoice received from the Provider, the County shall inform the Provider in writing of the disputed charges. Once the dispute has been resolved, the Provider shall re-invoice the County for the previously disputed charges, and, per any resolution between the County and the Provider, the County shall pay those charges in full at that time. No advance payment shall be made for the Services to be performed by the Provider under this Agreement.

#### **7. INDEPENDENT CONTRACTOR**

Both the County and the Provider agree that the Provider shall act as an independent contractor and shall not represent itself as an agent or employee of the County for any purpose in the performance of its duties under this Agreement. The Provider represents that it has or will secure, at its own expense, all personnel required in performing the Services under this Agreement. Accordingly, the Provider shall be responsible for payment of all federal, state, and local taxes arising out of its activities in accordance with this Agreement, including, without limitation, federal and state income tax, social security tax, unemployment insurance taxes and any other taxes or business license fees as required. The Provider shall not be entitled to participate in any

plans, arrangements, or distributions by the County pertaining to or in connection with any pension, stock, bonus, profit sharing or other benefit extended to County employees.

In the event the Internal Revenue Service should determine that the Provider is, according to Internal Revenue Service guidelines, an employee subject to withholding and social security contributions, then the Provider hereby acknowledges that all payments hereunder are gross payments, and the Provider is responsible for all income taxes and social security payments thereon.

## **8. OPINIONS OF PROBABLE COST**

If applicable, the Provider shall provide opinions of probable construction costs, including but not limited to, designer fees, costs of construction, costs of equipment, furnishings, signage, permit fees and appropriate contingencies, at Project intervals determined by the County. Such opinions of costs shall be representative of the Provider's best judgment as an experienced and qualified professional generally familiar with the construction industry. The parties acknowledge that actual bids, proposals, and costs may vary from the Provider's opinions of costs based on the cost of labor, materials, equipment, or services furnished by others, differing methods for determining prices, competitive bidding, or other market conditions. When requested by the County, the Provider shall participate in rebidding, renegotiation, and design adjustments to the extent such are necessary to reduce Project costs. Such services shall be performed by the Provider without additional compensation.

## **9. PERMITS AND APPROVALS**

If applicable, the Provider shall provide the County with a schedule of all required approvals and the dates by which application for such approvals must be made in order to avoid any risk of delay to the Project. The Provider shall prepare the necessary application forms, present documents requiring approval by the County and submit documents with the County approval to appropriate federal, state, and local government or other agencies in a timely manner.

## **10. ENVIRONMENTAL CONDITIONS**

The County shall disclose to the Provider the existence of all known and suspected hazardous substances, including, without limitation: asbestos; polychlorinated biphenyls (PCBs); petroleum; hazardous waste; or radioactive material located at or near the site where the Services are to be performed. If the Provider discovers any undisclosed hazardous substances, or if investigative or remedial action or other professional services are necessary, the Provider may, at its option and without liability for damages, suspend performance of the Services hereunder until the County: (1) retains an appropriate specialist consultant or contractor to identify and, as appropriate, abate, remediate or remove the hazardous substances; and (2) warrants that the site where the Services are to be performed are in full compliance with applicable laws and regulations. Notwithstanding the foregoing, if the presence of any hazardous materials adversely affects the performance of the Provider's duties under this Agreement, then the Provider shall have the option of: (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause upon thirty (30) days' written notice to the County.

## 11. PROVIDER REPRESENTATIONS

- (1) The Provider is a duly organized entity or corporation qualified to do business and in good standing under the laws of the State of North Carolina;
- (2) The Provider has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
- (3) No approval, authorization, or consent of any governmental or regulatory authority is required to be obtained or made by it in order for the Provider to enter into and perform its obligations under this Agreement;
- (4) In connection with the Provider's obligations under this Agreement, it shall comply with all applicable federal, state, and local laws and regulations and shall obtain all applicable permits and licenses;
- (5) The Provider shall not violate any agreement with any third party by entering into or performing the Services under this Agreement;
- (6) The Provider has not engaged in corrupt, fraudulent, or coercive practices in competing for or executing this Agreement;
- (7) The Provider will perform all Services in conformity with the specifications and requirements of this Agreement;
- (8) The Services provided by the Provider under this Agreement 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);
- (9) The Provider shall exercise reasonable care and diligence when performing the Services hereunder and will ensure that it adheres to the highest generally accepted standards in the industry when performing said Services;
- (10) The Provider shall be responsible for all errors, omissions, or deficiencies in technical accuracy in any drawings, specifications or other documents prepared or services rendered by the Provider, its subcontractors or consultants and shall correct, at no additional cost to the County, any and all errors, omissions, discrepancies, ambiguities, mistakes, deficiencies or conflicts;
- (11) The Provider acknowledges that if any specific licenses, certifications, or related credentials are required in its performance of the Services, it will ensure that such credentials remain current and active and not in a state of suspension or revocation; and
- (12) The Provider shall ensure that whenever its employees or agents are on County property, they will strictly abide by all instructions and directions issued by the County with respect to rules, regulations, policies, and security procedures applicable to work on the County's premises. Such rules, regulations, policies, and security procedures shall include, but not be limited to: (i) not possessing any controlled substances; (ii)

smoking only in designated smoking areas, if any; and (iii) not possessing weapons, except for weapons possessed by law enforcement officials.

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

This is an acknowledgment that federal financial assistance will be used to fund all or a portion of the Agreement. The Provider will comply with all applicable federal laws, regulations, executive orders, federal government policies, procedures, and directives.

## **13. EPA CERTIFICATION**

By accepting this Agreement, the Provider acknowledges and agrees to the terms provided in the [DBRA Requirements for Contractors and Subcontractors Under EPA Grants](#).

## **14. DAMAGE TO EQUIPMENT, FACILITIES, PROPERTY OR DATA**

The Provider shall be solely responsible for any damage to or loss of the County's equipment, facilities, property, and/or data arising out of the negligent or willful act or omission of the Provider or its subcontractors or consultants. In the event that the Provider causes damage to the County's equipment or facilities, the Provider shall, at its own expense, promptly repair or replace such damaged items to restore them to the same level of functionality that they possessed prior to such damage.

## **15. NON-ENDORSEMENT AND PUBLICITY**

The County is not endorsing the Provider or its Services, and the Provider is not permitted to reference this Agreement or the County in any manner without the prior written consent of the County. Notwithstanding the foregoing, the parties agree that the Provider may list the County as a reference in response to requests for proposals and may identify the County as a customer in presentations to potential customers.

## **16. NON-EXCLUSIVITY**

The Provider acknowledges that the County is not obligated to contract solely with the Provider for the Services covered under this Agreement.

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

The Provider 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. § 147-86.80 *et seq.*

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

Providers who apply or bid for an award of more than \$100,000 shall file a 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.

## **19. PROCUREMENT OF RECOVERED MATERIALS**

- (1) The provisions of this section shall apply if: (1) this Agreement involves the purchase of an item designated by the Environmental Protection Agency (“EPA”) in 40 C.F.R. Part 247 that exceeds \$10,000, or (2) the total value of such designated items acquired during the County’s preceding fiscal year exceeded \$10,000.
- (2) In the performance of this Agreement, the Provider shall make maximum use of products containing recovered materials that are EPA-designated items, as set forth in 40 C.F.R. Part 247, that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, 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.
- (3) The Provider shall establish an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. Information about this requirement, along with the list of EPA-designated items, is available on EPA’s website and in 40 C.F.R. Part 247.
- (4) The Provider also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6962). This shall include, without limitation, procuring solid waste management services in a manner that maximizes energy and resource recovery.
- (5) The Provider should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products. See Executive Order 14057, section 101, Policy.

## **20. 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 August 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 (3) of this clause applies, the Provider 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 the Provider 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 the Provider is notified of such by a subcontractor at any tier or by any other source, the Provider shall report the information in paragraph (4)ii. of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
- ii. The Provider shall report the following information pursuant to paragraph (4)i. 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 (4)ii.a. of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Provider 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.* The Provider shall insert the substance of this clause, including this paragraph (5), in all subcontracts and other contractual instruments.

## **21. DOMESTIC PREFERENCE FOR PROCUREMENTS**

As appropriate, and to the extent consistent with law, the Provider 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.

## **22. BUILD AMERICA, BUY AMERICA ACT**

To the extent applicable, the Provider and its subcontractors agree to incorporate the Buy America Preference into planning and design when providing architectural and/or engineering professional services for infrastructure projects. Consistent with the Build America, Buy America Act (“BABAA”) Pub. L. 117-58 §§ 70901-52, no federal financial assistance funding for infrastructure projects will be used unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States

## **23. ACCESS TO RECORDS**

The following access to records requirements apply to this Agreement:

- (1) The Provider agrees to provide the County, the Federal Government, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Provider which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The Provider agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The Provider agrees to provide authorized representatives of the Federal Government access to construction or other work sites pertaining to the work being completed under the Agreement.
- (4) In compliance with Section 1225 of the Disaster Recovery Act of 2018, the County and the Provider acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the Federal Government or the Comptroller General of the United States.

## **24. 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 the Provider is required to verify that none of the Provider’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

- (2) The Provider must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by the County. If it is later determined that the Provider did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Federal Government and the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The Provider 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.

## **25. INDEMNIFICATION**

The Provider shall indemnify and hold harmless the County, its officers, officials, agents and employees from and against all actions, liability, claims, suits, damages, costs or expenses of any kind (collectively, "Claims") which may be brought or made against the County or which the County must pay and incur arising out of this Agreement should fault or negligence on the part of the Provider or its subcontractors or consultants be the proximate cause of such Claims. The Provider shall be fully responsible to the County for the acts and omissions of its subcontractors or consultants and of persons either directly or indirectly employed by it. This Section shall survive any expiration or termination of this Agreement.

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

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

## **27. 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, the Provider, or any other party pertaining to any matter resulting from the Agreement.

## **28. SOCIOECONOMIC CONTRACTING**

The Provider is encouraged to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms are considered when possible.

## **29. INSURANCE**

The Provider shall procure and maintain in full force and effect at all times and at its sole cost and expense, and shall ensure that any of its consultants maintains in full force and effect at all times and at its sole cost and expense, Commercial General Liability, Commercial Automobile

Liability, Professional Liability and Workers' Compensation insurance, if applicable, and any additional insurance as may be required by the County with limits acceptable to the County. All insurance policies (with the exception of Workers' Compensation, if applicable, and Professional Liability) shall be endorsed, specifically or generally, to include the County as an additional insured and as a certificate holder. The Provider shall furnish a Certificate of Insurance from a licensed insurance agent in North Carolina with a rating of A-VII or better by A.M. Best verifying the existence of any insurance coverage required by the County. The Certificate will provide for thirty (30) days' advance notice in the event of termination or cancellation of coverage. The Provider shall have no right of recovery or subrogation against the County (including its officers, agents, and employees), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the aforementioned insurance.

### **30. WORKERS' COMPENSATION**

To the extent required by law, the Provider shall comply with the North Carolina Workers' Compensation Act and shall provide for the payment of workers' compensation to its employees in the manner and to the extent required by such Act. In the event the Provider is excluded from the requirements of such Act and does not voluntarily carry workers' compensation coverage, the Provider shall carry or cause its employees to carry adequate medical/accident insurance to cover any injuries sustained by its employees or agents while fulfilling the Provider's obligations under this Agreement.

The Provider agrees to furnish the County proof of compliance with said Act or adequate medical/ accident insurance coverage upon request.

### **31. REMEDIES**

- (1) *Right to Cover.* If the Provider fails to meet any completion date or resolution time set forth, due to no fault of the County, the County may take any of the following actions with or without terminating this Agreement, and in addition to, and without limiting, any other remedies it may have:
  - i. Employ such means as it may deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and the Provider is again able to resume performance under this Agreement; and
  - ii. Deduct any and all expenses incurred by the County in obtaining or performing the Services from any money then due or to become due the Provider and, should the County's cost of obtaining or performing the Services exceed the amount due the Provider, collect the amount due from the Provider.
- (2) *Right to Withhold Payment.* The County reserves the right to withhold any portion, or all, of a scheduled payment if the Provider fails to perform under this Agreement until such breach has been fully cured.
- (3) *Setoff.* Each party shall be entitled to set off and deduct from any amounts owed to the other party pursuant to this Agreement all damages and expenses incurred or reasonably anticipated as a result of the other party's breach of this Agreement.

- (4) *Other Remedies.* Upon breach of this Agreement, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently in addition to any other available remedy.
- (5) *No Suspension.* In the event that the County disputes in good faith an allegation of breach by the Provider, notwithstanding anything to the contrary in this Agreement, the Provider agrees that it will not terminate this Agreement or suspend or limit any Services or warranties, unless: (i) the parties agree in writing; or (ii) an order of a court of competent jurisdiction determines otherwise; provided, however, this dispute period shall be limited to ninety (90) days.

### **32. TAXES**

The Provider shall be responsible for paying all taxes, fees, assessments, and premiums of any kind payable on its employees and operations. The Provider shall substantiate, on demand by the County, that all taxes and other charges are being properly paid.

### **33. HEALTH AND SAFETY**

The Provider shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with performing the Services. The Provider shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to all employees in connection with performing the Services and other persons who may be affected thereby.

### **34. EQUAL EMPLOYMENT OPPORTUNITY**

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

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

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

- (2) The Provider will, in all solicitations or advertisements for employees placed by or on behalf of the Provider, state that all qualified applicants will receive consideration for

employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

- (3) The Provider will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Provider's legal duty to furnish information.
- (4) The Provider will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Provider's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The Provider will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The Provider will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the Provider'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 the Provider may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The Provider will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Provider 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 the Provider becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the

administering agency, the Provider 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.

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

- (1) *Provider*. If applicable, the Provider shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this Agreement.
- (2) *Subcontracts*. If applicable, the Provider or subcontractor shall insert in any subcontracts the clause above and such other clauses as may be required, 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.

### **36. COMPLIANCE WITH THE DAVIS-BACON ACT**

- (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. The Provider 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) Providers are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- (3) Additionally, Providers are required to pay wages not less than once a week.

### **37. CLEAN AIR ACT**

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

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

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

### **39. BUY CLEAN**

The County encourages the use of environmentally friendly construction practices in the performance of this Agreement. In particular, the County encourages that the performance of this Agreement include considering the use of low-carbon materials which have substantially lower levels of embodied greenhouse-gas emissions associated with all relevant stages of production, use, and disposal, as compared to estimated industry averages of similar materials or products as demonstrated by their environmental product declaration.

#### **40. 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 the Provider and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Provider 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 \$32 or the current amount statutorily required by 29 C.F.R. § 5.5(b)(2) as may be amended from time to time, 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.*
  - (i) *Withholding Process.* The recipient or subrecipient may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Provider so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section, 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 that is held by the same prime contractor (as defined in § 5.2 thereof). The necessary funds may be withheld from the Provider under this Agreement, any other federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the Provider liability for which the funds were withheld.
  - (ii) *Priority to withheld funds.* The Department of Labor has priority to funds withheld or to be withheld in accordance with this section, over claims to those funds by:

- (A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
  - (B) A contracting agency for its reprocurement costs;
  - (C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
  - (D) A contractor's assignee(s);
  - (E) A contractor's successor(s); or
  - (F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.
- (4) *Subcontracts.* The Provider or subcontractor shall insert in any subcontracts the clauses set forth in 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 this section. In the event of any violations of these clauses, the prime contractor, and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.
- (5) *Anti-retaliation.* It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:
- (i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;
  - (ii) Filing any complaint, initiating, or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;
  - (iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or
  - (iv) Informing any other person about their rights under CWHSSA or this part.

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

- (1) The Provider 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 the Provider 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 the Provider or subcontractor will permit such representatives to interview employees during working hours on the job.

#### **41. CREATING GOOD JOBS**

The Provider will comply with all applicable federal labor and employment laws. To maximize cost efficiency and quality of work, the Provider commits to strong labor standards and protections for the project workforce by creating an effective plan for ensuring high-quality jobs and complying with federal labor and employment laws. The Provider acknowledges applicable minimum wage, overtime, prevailing wage, and health and safety requirements, and will incorporate Good Jobs Principles wherever appropriate and to the greatest extent practicable.

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

Pursuant to N.C.G.S. § 143-133.3, the Provider understands that it is a requirement of this Agreement that the Provider and its subcontractors or consultants must comply with the provisions of Article 2 of Chapter 64 of the North Carolina General Statutes. In doing so, the Provider 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 the Provider shall require its subcontractors and consultants to do the same. Upon request, the Provider agrees to provide the County with an affidavit of compliance or exemption.

#### **43. 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 thereto. 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:

- (1) in the public domain through no fault of the Recipient;
- (2) within the legitimate possession of the Recipient, with no confidentiality obligations to a third party;
- (3) lawfully received from a third party having rights in the information without restriction, and without notice of any restriction against its further disclosure;
- (4) 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;
- (5) disclosed with the prior written consent of the Discloser; or
- (6) 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 sole expense.

#### **44. OWNERSHIP OF WORK PRODUCT**

- (1) All work product created by the Provider pursuant to this Agreement, including, without limitation, design drawings, construction documents, photographs and models and any derivative works and compilations, and whether or not such work product is considered a "work made for hire" or an employment to invent (hereinafter referred to collectively as "Work Product") shall be the exclusive property of the County. The County and the Provider agree that such original works of authorship are "works made for hire" of which the County is the author within the meaning of the United States Copyright Act. To the extent that the County is not the owner of the intellectual property rights in and to such Work Product, the Provider hereby irrevocably assigns to the County any and all of its rights, title and interest in and to all original Work Product created pursuant to this Agreement, whether arising from copyright, patent, trademark, trade secret or any other state or federal intellectual property law or doctrine. Upon the County's request, the Provider shall execute such further documents and instruments or obtain such documents from third parties, including consultants and subcontractors, if applicable, necessary to fully vest such rights in the County. The Provider forever waives any and all rights relating to original Work Product created pursuant to this Agreement, including without limitation, any and all rights arising under 17 U.S.C. § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
- (2) In the event the use of any of the Provider's intellectual property, including any derivative work created with the use of third-party intellectual property, is necessary for the use of any Work Product, the Provider hereby grants to the County an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the intellectual property for the purposes set forth in this Agreement and will ensure that any third-party grants the same.

- (3) The County may use Work Product for any other purpose and on any other project without additional compensation to the Provider. Notwithstanding the foregoing, the use of Work Product by the County for any purpose other than as set forth in this Agreement shall be at the County's risk.

#### **45. LICENSE AND DELIVERY OF WORKS SUBJECT TO COPYRIGHT**

In addition to the foregoing Section and notwithstanding anything to the contrary contained therein, if the Provider or its subcontractors produce copyrightable subject matter for the County under this Agreement, the Provider and its subcontractors shall comply with the obligations set forth in 2 C.F.R. § 200.315(b) and (d). If applicable, the Provider grants to the County a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this Agreement to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the Agreement but not first produced in the performance of this Agreement, the Provider will identify such data and grant to the County, or acquire on its behalf, a license of the same scope as for data first produced in the performance of this Agreement. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the termination or expiration of this Agreement, the Provider will deliver to the County data first produced in the performance of this Agreement and data required by the Agreement but not first produced in the performance of this Agreement in formats acceptable to the County.

#### **46. 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 the County shall not recognize any assignment in violation of this provision.

#### **47. 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.

#### **48. 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.

#### **49. GOVERNMENTAL IMMUNITY**

The County, to the extent applicable, does not waive 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.

#### **50. NON-WAIVER**

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

#### **51. 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. Notwithstanding the foregoing, all documents included in the Request for Qualifications and the qualifications statement submitted by the Provider, if applicable, including, but not necessarily limited to: General Conditions; Supplementary General Conditions; Scope of Work; Specifications; Addenda; Accepted Proposal; Notice to Proceed; Performance Bond; Payment Bond; MBE forms; Power of Attorney; Insurance Certificates; Approval by the County Commissioners; Tax Statement and Certification; Notice of Substantial Completion; Notice of Final Completion and Acceptance; and Drawings are incorporated herein by reference and made an integral part of this Agreement. To the extent the terms of such documents conflict with the terms of this Agreement, the terms of this Agreement shall prevail.

#### **52. 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.

#### **53. 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.

#### **54. 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 the Provider and the County.

## 55. NOTICES

(1) *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.

(2) *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.

(3) *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 the Provider: {Vendor Name}  
{Vendor Address}  
{Vendor City}, {Vendor State or Territory} {Vendor Zip}

## 56. 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.

[SIGNATURE PAGE FOLLOWS]

ATTEST:

**BRUNSWICK COUNTY**

\_\_\_\_\_  
Clerk to the Board /  
Deputy Clerk to the Board

By: \_\_\_\_\_  
Chairman, Board of Commissioners

Date: \_\_\_\_\_

[SEAL]

{VENDOR NAME}

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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

\_\_\_\_\_  
Aaron C. Smith, Finance Director  
Brunswick County, North Carolina

Date: \_\_\_\_\_

APPROVED AS TO FORM

\_\_\_\_\_  
Bryan W. Batton, County Attorney /  
Ryan S. King, Assistant County Attorney

Date: \_\_\_\_\_

**EXHIBIT "A"**  
**PROPOSAL/STATEMENT OF WORK**

**[TBD]**

## **BRUNSWICK COUNTY MINIMUM INSURANCE COVERAGE REQUIREMENTS**

At contractor's expense, contractor shall procure and maintain the following recommended lines of insurance according to the scope of work. The County may choose to elect higher or lower coverage according to the work performed. Contractors must be insured by a licensed agent in North Carolina and rated A-VII or better by A.M. Best.

### **A. COMMERCIAL GENERAL LIABILITY**

Covering all operations involved in this Agreement.  
\$2,000,000 General Aggregate  
\$2,000,000 Products/Completed Operations Aggregate  
\$1,000,000 Each Occurrence  
\$1,000,000 Personal and Advertising Injury Limit  
\$ 5,000 Medical Expense Limit

### **B. WORKERS' COMPENSATION**

Statutory limits covering all employees, including Employer's Liability with limits of:  
\$500,000 Each Accident  
\$500,000 Disease - Each Employee  
\$500,000 Disease - Policy Limit

### **C. COMMERCIAL AUTOMOBILE LIABILITY**

\$1,000,000 Combined Single Limit – Any Auto

### **D. PROFESSIONAL LIABILITY**

\$1,000,000 Per Occurrence

### **E. POLLUTION LIABILITY INSURANCE**

\$1,000,000 Per Occurrence

When a contractor is required to bind pollution/environmental coverage, the contractor must provide evidence of continuation or renewal of liability insurance for a period of three (3) years following termination of the agreement.

## **ADDITIONAL INSURANCE AND INDEMNIFICATION REQUIREMENTS**

- A. Contractor agrees to defend, indemnify, and hold harmless Brunswick County, its officers, employees, and agents from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees, or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind in connection with or arising out of this Agreement and/or the performance hereof that are due in part or in the entirety of Contractor, its employees or agents. Contractor further agrees to investigate, handle, respond to, defend and dispose of same at its sole expense and agrees to bear all other costs and expenses related thereto. The Contractor's General Liability policy shall be endorsed, specifically or generally, to include the following as Additional Insured:

BRUNSWICK COUNTY, ITS OFFICERS, AGENTS AND EMPLOYEES ARE INCLUDED AS ADDITIONAL INSURED UNDER CONTRACTOR'S GENERAL LIABILITY INSURANCE.

- B. Before commencement of any work or event, Contractor shall provide a Certificate of Insurance in satisfactory form as evidence of the insurances required above.
- C. Contractor shall have no right of recovery or subrogation against Brunswick County (including its officers, agents and employees), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.
- D. Brunswick County shall have no liability with respect to Contractor's personal property whether insured or not insured. Any deductible or self-insured retention is the sole responsibility of Contractor.
- E. All certificates of insurance must provide that the policy or policies shall not be changed or cancelled without at least thirty (30) days prior written notice.
- F. The Certificate of Insurance should note in the Description of Operations the following:
  - Department: \_\_\_\_\_
  - Contract #: \_\_\_\_\_
- G. Insurance procured by Contractor shall not reduce nor limit Contractor's contractual obligation to indemnify, hold harmless and defend Brunswick County for claims made or suits brought which result from or are in connection with the performance of this Agreement.
- H. In the event Contractor receives Notice of Cancellation of Insurance required pursuant to this Agreement, Contractor shall immediately cease performance of all services and shall provide Notice to Brunswick County's Legal/Risk Management personnel within twenty-four (24) hours.
- I. Certificate Holder shall be listed as follows:
  - ATTENTION: Brunswick County Risk Manager
  - 30 Government Center Dr. NE
  - P.O. Box 249
  - Bolivia, NC 28422
- J. If Contractor is authorized to assign or subcontract any of its rights or duties hereunder and in fact does so, Contractor shall ensure that the assignee or subcontractor satisfies all requirements of this Agreement, including, but not limited to, maintenance of the required insurances coverage and provision of certificate(s) of insurance and additional insured endorsement(s), in proper form prior to commencement of services.