

BRUNSWICK COUNTY
REQUEST FOR
QUALIFICATIONS

Engineering Services for
Whiteville Road Force Main

ISSUE DATE: **January 13, 2025**

DUE DATE: **February 18, 2025**



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

Request for Qualifications Statements

Engineering Services

Whiteville Road Force Main

Pursuant to 2 C.F.R. § 200.320(b)(2), Brunswick County (“County” or “Owner”) is requesting qualifications statements from qualified engineering, environmental, and water resource firms for the services associated with design of the Whiteville Road transmission system force main. The Whiteville Road Force Main Project will result in the construction of approximately 49,000 feet of force mains with 19,000 linear feet of 12” line and 30,000 linear feet of 16” line from U.S. Highway 17 along Whiteville Road in Brunswick County. The selected firm shall verify the exact size and design of the force main. Once constructed, the additional transmission capacity created by the project will expand wastewater services into currently unserved areas.

Project Funding and Requirements

It is anticipated that the Whiteville Road Force Main Project will be funded with federal grant funds from the Economic Development Initiative – Community Project Funding, a program under the U.S. Department of Housing and Urban Development (“HUD”), as more particularly set forth below, pursuant to the authority of the Consolidated Appropriations Act, 2023 (Public Law 117-328) (the “FY2023 Act”) and the Explanatory Statement for Division L of that Act, which was printed in the Senate section of the Congressional Record on December 20, 2022 (the “Explanatory Statement”). Brunswick County has received appropriations of \$1,052,500.00 from HUD to fund the design and engineering phase of the Project. Said funding is not intended to cover the bidding, construction administration, or post-construction administration phases of the Project.

Federal Award Identification Number (FAIN): B-23-CP-NC-0955

Assistance Listing Number and Name: 14.251 Economic Development Initiative, Community Project Funding, and Miscellaneous Grants

Project: Whiteville Road Force Main Project Design and Engineering

Period of Performance/Budget Period End Date: August 31, 2031

The grant award terms and conditions, the FY2023 Act, and the Explanatory Statement may be referred to collectively herein as the “Regulatory Requirements.” In using such federal grant funds, Brunswick County must comply with all Regulatory Requirements, as may be amended from time to time by HUD or the federal government, and any other such guidance as HUD has issued or may issue governing the expenditure of monies distributed pursuant to the above-referenced grant.

Pursuant to the Regulatory Requirements, 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.

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

Firms agreeing to all terms and conditions and interested in being considered for this work should submit their qualifications statement to:

Post Office Delivery

Regina Quintos-Pascual
Brunswick County Public Utilities
P. O. Box 249
Bolivia, NC 28422

Hand Delivery or Alternate Shipping Service

Regina Quintos-Pascual
Utilities Operations Center
250 Grey Water Road NE
Supply, NC 28462

For consideration, three (3) 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 close of business (4:30 p.m. ET) on **February 18, 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 to Regina Quintos-Pascual at Regina.Quintos@brunswickcountync.gov by 4:30 p.m. ET on **January 30, 2025**. A copy of all questions, further clarifications, and answers will be made in the form of an addendum to this Request for Qualifications that will be provided to all known interested firms. Any addendum will also be posted to the County website. Notwithstanding the foregoing, firms are responsible for ensuring that they have all addenda.

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, 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. County reserves the right to reject any subcontractor in its sole and absolute discretion. Any approved subcontractor must also agree to strictly adhere to all terms and conditions of this Request for Qualifications and the Professional Services Agreement.
 - 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 the aforementioned HUD grant and Federally-funded projects.
- 3) Experience on similar projects (3 projects minimum): The qualifications statement should include a description and contact person for projects that were similar in size and scope as this project.
- 4) A project schedule including key milestones should be included. The project schedule should start from the Notice to Proceed and include two-week review times for County staff reviews. A project schedule will be included in the contract for this work.
- 5) A brief description of the project approach to be used by the firm should be included.
 - a) In the firm's own words, describe the understanding of the project, the requirements of the project, the challenges associated with the project, the approach to handling the project challenges, and the anticipated outcome of the project.
 - b) Include a discussion of specific tasks expected from County staff and any other requirements of County resources.
 - c) List all assumptions made in preparing the project approach.
 - d) Discuss any additions, deletions, or changes to the Scope of Work which may improve the project. Discuss how these changes will affect the associated resources and schedule.
- 6) A brief discussion of the firm's ability to properly scope the project should be included. This includes an estimate of man-hours required to complete the various components of the project. Man-hour estimates should be broken down by tasks with separate columns for labor classifications. Each task shall be subtotaled in addition to project totals.
- 7) How the firm will support County to ensure compliance with grant award terms and conditions for the entire project through design. The firm must 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.

Brunswick County reserves the right to request financial information for any firm in order 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 firm that best meets its needs and negotiate a final Scope of Work 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.

A more detailed description of the work to be performed is contained in the enclosed Scope of Work. Firms submitting qualification 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.

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.

Qualifications Selection Criteria and Weighting

Statements of Qualifications will be evaluated based on the following criteria:

Qualifications Selection Criteria	Qualifications Selection Criteria Weighting
	Max Points
1. General information and overall staff experience	10
2. Relevant firm experience in providing services of similar scale for comparable projects.	30
3. The firm's experience with HUD grants and Federally-funded projects	10
4. Project schedule	10
5. Project understanding & approach	30
6. Firm's ability to properly scope the project (estimate of man-hours required to complete the various components of the project)	10
Total Points	100

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 determine who is the most qualified firm for the project based on the firm's demonstrated competence and qualifications without regard to price.

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)
- 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

Minority Business Enterprises

If subcontracts are to be let, firms are required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women’s business enterprises, and labor surplus area firms are used when possible. Firms shall: (1) place qualified small and minority businesses and women’s business enterprises on its solicitation lists; (2) assure that small and minority businesses and women’s business enterprises are solicited whenever they are potential

sources; (3) divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women’s business enterprises; (4) establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women’s business enterprises; (5) use the services and assistance, as appropriate, of the Small Business Administration, the Minority Business Development Agency of the Department of Commerce, and the North Carolina Office for Historically Underutilized Businesses.

For the purposes of this section, an entity shall qualify (1) as a “minority business” or “women’s business enterprise” 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 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.”

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 it cannot adhere to the requirements of the federal regulations noted above. Failure to comply with said provisions shall be considered a breach of contract.

Certification

The firm submitting a qualifications statement hereby certifies that it has carefully examined this Request for Qualifications and all attachments hereto, that it understands and accepts all terms and conditions and the scope of work, and that it has knowledge and expertise to complete the project.

If you have any questions, please call us at (910)-253-1714.

Regina Quintos-Pascual
Engineering Project Manager
Regina.Quintos@brunswickcountync.gov

SCOPE OF WORK
Whiteville Road Force Main Project Design and Engineering

1. STUDY AND REPORT PHASE

The Whiteville Road Force Main Project will result in the construction of approximately 49,000 feet of force mains with 19,000 linear feet of 12” line from Longwood Rd./Waccamaw School Rd. NW and Whiteville Rd. intersection extending until Madison Country Rd. NW, continuing with 30,000 linear feet of 16” line along Whiteville Road connecting to the existing force main at the U.S. Highway 17, in Brunswick County. The selected firm shall verify the exact size and design of the force main. Once constructed, the additional transmission capacity created by the project will expand wastewater services into currently unserved areas.

The Engineer shall identify, evaluate, document, and provide preliminary construction cost estimates for multiple (minimum of 3) potential routes. The Engineer shall identify potential easement locations along each route and shall consult with NCDOT concerning encroachments needed within DOT rights-of-way.

The Engineer shall prepare an overview map of the potential routes using the latest digital aerial photos and other record data. The overview map shall indicate existing utilities and potential easements. The Engineer shall provide a report to the Owner evaluating each alternative, including opinions of probable cost and conceptual design criteria, and make a recommendation of the best alternative. Consideration shall be given to cost, schedule, permit requirements, governmental requirements including mitigation efforts and cost, bore and jack locations, directional drill locations, ability to acquire easements and easement cost.

The Engineer shall provide copies of a Preliminary Report to the Owner and review it with the Owner. The Owner shall submit comments to the Engineer which shall be incorporated into the final report provided by the Engineer. A minimum of three (3) weeks shall be provided in the schedule for the Owner to evaluate the best alternative for each location and the ability to acquire the necessary easements. Approval of the final route alternate shall be given by the Owner prior to commencing design.

2. WETLANDS DELINEATION

Engineer 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.

3. GEOTECHNICAL INVESTIGATION

Engineer shall perform geotechnical evaluation at all likely directional drill locations, including, but not limited to, Shallotte River, Lookout Branch, Wet Ash Swamp, Milliken Swamp, Flat Branch, and Gore Branch. 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 directional drill, whichever is encountered first. Geotechnical recommendations and soil boring logs shall be provided on a fixed unit price basis.

4. SURVEY

Engineer shall provide base mapping of the route 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. Engineer 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.

5. PRELIMINARY DESIGN

Engineer shall prepare design drawings, details, and technical specifications adequate to apply for and receive all necessary permits and encroachments. The force main are estimated to be 12" and 16" in diameter as determined by the 2023 Brunswick County Comprehensive Wastewater Master Plan. The Engineer shall anticipate working with the County's existing hydraulic models to determine the optimal sizes of the lines. The proposed pipe sizes and hydraulic conditions within the pipes shall be evaluated as part of this project and may affect the pipe size chosen for design. It is expected that the design will include both open-cut and trenchless pipe installation methods. For directional drills, fusible PVC shall be used as the base bid and HDPE pipe shall be shown as an alternate. Directional drill piping shall be upsized to provide the best-match interior diameter to the piping installed by open cut methods. Preliminary drawing shall clearly indicate easement areas, shut-off valves, directional drill locations, bore and jack locations, air release valves, metering vaults, and bypass piping. The County shall submit comments to the Engineer which the Engineer shall then incorporate into the Preliminary Plans.

6. PERMITTING

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

- 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 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 Engineer shall perform field work, furnish plans and specifications, document preparation, regulatory meetings, responses, evaluate alternatives, and provide recommendations concerning wetland permitting.

7. EASEMENT MAPS

Upon receipt of the NCDOT Encroachment Agreement or notice by County, the Engineer shall prepare easement maps. Mapping shall comply with the requirements of the local zoning officer and the Brunswick County Planning Department. Engineer shall receive all signatures from Zoning Compliance Officers and Planning Department personnel necessary for recording of the maps. Approximately, thirty (30) easements will be required with provision in the final contract to add or delete easement maps as necessary on a fixed unit price basis. Engineer shall also help identify and provide maps as necessary to secure permanent access to the proposed lines.

8. FINAL DESIGN

Upon receipt of the NCDOT Encroachment Agreement or notice by County, the Engineer shall prepare final design drawings, details, and Contract Documents for bidding purposes. . The Engineer shall provide updated Opinion of Probable Cost. The County shall submit comments to the Engineer which the Engineer shall then incorporate into the Final Plans.

Standard County “front end” documents shall be provided to the Engineer for use in preparing the final Contract Documents. These shall be modified by the Engineer for items specific to the project. The Engineer shall review and utilize Brunswick County standard technical specifications when available and applicable and shall supplement Brunswick County technical specifications as needed. The Engineer shall ensure there is no overlap between the Engineer’s technical specifications and the County’s standard “front end” documents. All contract and bidding documents must be approved by the County.

9. GRANT COMPLIANCE

The Engineer shall support County to ensure compliance with the grant award terms and conditions for the entire project. The Engineer will thoroughly review all essential documents and ensure that all funding obligations are fulfilled throughout the project. The Engineer shall provide all required reports and documentation and ensure compliance as required in 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 ENGINEERING 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 “County” or “Owner”), party of the first part and {Vendor Name}, (hereinafter referred to as “Provider” or “Engineer”), party of the second part.

WITNESSETH:

1. SERVICES; FEES

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

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. Notwithstanding the foregoing, 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.

3. TERMINATION

County may terminate this Agreement at any time without cause by giving written notice to Provider. As soon as practicable after receipt of a written notice of termination without cause, Provider shall submit a statement to County showing in detail the work performed under this Agreement through the effective date of termination. County may terminate this Agreement for cause by giving written notice of a breach of the Agreement. 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, County may terminate this Agreement immediately and without notice to Provider if 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 Provider, or has a receiver or trustee appointed for substantially all of its property, or if 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 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 County to make payments under this Agreement for a given fiscal year, 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, County will promptly notify 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 County which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.

6. COMPENSATION

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

7. INDEPENDENT CONTRACTOR

Both County and Provider agree that Provider shall act as an independent contractor and shall not represent itself as an agent or employee of County for any purpose in the performance of its duties under this Agreement. Provider represents that it has or will secure, at its own expense, all personnel required in performing the Services under this Agreement. Accordingly, 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. Provider shall not be entitled to participate in any plans, arrangements or distributions by 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 Provider is, according to Internal Revenue Service guidelines, an employee subject to withholding and social security

contributions, then Provider hereby acknowledges that all payments hereunder are gross payments, and Provider is responsible for all income taxes and social security payments thereon.

8. OPINIONS OF COST

If applicable, 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 County. Such opinions of costs shall be representative of 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 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 County, 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 Provider without additional compensation.

9. PERMITS AND APPROVALS

If applicable, Provider shall provide 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. Provider shall prepare the necessary application forms, present documents requiring approval by County and submit documents with County approval to appropriate federal, state and local government or other agencies in a timely manner.

10. ENVIRONMENTAL CONDITIONS

County shall disclose to 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 Provider discovers any undisclosed hazardous substances, or if investigative or remedial action or other professional services are necessary, Provider may, at its option and without liability for damages, suspend performance of the Services hereunder until 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 Provider's duties under this Agreement, then 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 County.

11. PROVIDER REPRESENTATIONS

- (1) 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) 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 Provider to enter into and perform its obligations under this Agreement;
- (4) In connection with 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) Provider shall not violate any agreement with any third party by entering into or performing the Services under this Agreement;
- (6) Provider has not engaged in corrupt, fraudulent or coercive practices in competing for or executing this Agreement;
- (7) Provider will perform all Services in conformity with the specifications and requirements of this Agreement;
- (8) The Services provided by 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) 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) 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 Provider, its subcontractors or consultants and shall correct, at no additional cost to County, any and all errors, omissions, discrepancies, ambiguities, mistakes, deficiencies or conflicts;
- (11) 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) Provider shall ensure that whenever its employees or agents are on County property, they will strictly abide by all instructions and directions issued by County with respect to rules, regulations, policies and security procedures applicable to work on 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. Provider will comply with all applicable federal laws, regulations, executive orders, federal government policies, procedures, and directives.

13. DAMAGE TO EQUIPMENT, FACILITIES, PROPERTY OR DATA

Provider shall be solely responsible for any damage to or loss of County's equipment, facilities, property and/or data arising out of the negligent or willful act or omission of Provider or its subcontractors or consultants. In the event that Provider causes damage to County's equipment or facilities, 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.

14. NON-ENDORSEMENT AND PUBLICITY

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

15. NON-EXCLUSIVITY

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

16. DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL

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. § 147-86.81.

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

Contractors or Providers who apply or bid for an award of more than \$100,000 shall file the required certification, as more particularly set forth in 24 C.F.R. Part 87. 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.

18. PROCUREMENT OF RECOVERED MATERIALS

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

19. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES

- (1) *Definitions.* As used in this section, 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 meanings as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim) –
- (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 section applies, Provider and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the federal government 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 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 Agreement performance, or Provider is notified of such by a subcontractor at any tier or by any other source, Provider shall report the information in paragraph (4)ii. of this section to County, unless procedures for reporting the information are established elsewhere in this Agreement.
- ii. Provider shall report the following information pursuant to paragraph (4)i. of this section:

- 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 section: Any further available information about mitigation actions undertaken or recommended. In addition, 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*. Provider shall insert the substance of this clause, including this paragraph (5), in all subcontracts and other contractual instruments.

20. DOMESTIC PREFERENCE FOR PROCUREMENTS

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

21. ACCESS TO RECORDS

The following access to records requirements apply to this Agreement:

- (1) Provider agrees to provide County, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of Provider which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.

- (2) 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) Provider agrees to provide authorized representatives from 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, County and Provider acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by representatives of the federal government, including the Comptroller General of the United States.

21. CONFLICTS OF INTEREST; GIFTS AND FAVORS

- (1) Provider understands that: (1) County will use Fiscal Recovery Funds to pay for the cost of this Agreement, in whole or in part, and (2) the expenditure of Fiscal Recovery Funds is governed by County's Conflict of Interest Policy, Regulatory Requirements (including, without limitation, 2 C.F.R. § 200.318(c)(1)), and North Carolina law (including, without limitation, G.S. 14-234(a)(1) and -234.3(a)).
- (2) Provider certifies to County that as of the date hereof, to the best of its knowledge after reasonable inquiry, no employee, officer, or agent of County involved in the selection, award, or administration of this Agreement (each a "Covered Individual"); no member of a Covered Individual's immediate family; no partner of a Covered Individual; and no organization (including Provider) which employs or is about to employ a Covered Individual has a financial or other interest in, or has received a tangible personal benefit from, Provider. Should Provider obtain knowledge of any such interest or any tangible personal benefit described in the preceding sentence after the date hereof, Provider shall promptly disclose the same to County in writing.
- (3) Provider certifies to County that it has not provided, nor offered to provide, any gratuities, favors, or anything of value to an officer, employee, or agent of County. Should Provider obtain knowledge of the provision, or offer of any provision, of any gratuity, favor, or anything of value to an officer, employee, or agent described in the preceding sentence after the date hereof, Provider shall promptly disclose the same to County in writing.

22. ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Provider and any Subcontractor, or the successor, transferee, or assignee of Provider or any Subcontractor, shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. §§ 2000d *et seq.*), as implemented by the Department of the Treasury's Title VI regulations, 31 C.F.R. Part 22, which are herein incorporated by reference and made a part of this Agreement. Title VI also provides protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. §§ 2000d *et seq.*, as

implemented by Treasury's Title VI regulations, 31 C.F.R. Part 22, and herein incorporated by reference and made a part of this Agreement.

23. OTHER NON-DISCRIMINATION STATUTES

Provider acknowledges that County is bound by and agrees, to the extent applicable to Provider, to abide by the provisions contained in the federal statutes enumerated below and any other federal statutes and regulations that may be applicable to the expenditure of Fiscal Recovery Funds:

- (1) The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 *et seq.*), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
- (2) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
- (3) The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 *et seq.*), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
- (4) Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 *et seq.*), which prohibits discrimination on the basis of disability in programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

22. 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 Provider is required to verify that none of 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) 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 County. If it is later determined that 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 County, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the

period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

23. INDEMNIFICATION

Provider shall indemnify and hold harmless 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 County or which County must pay and incur arising out of this Agreement should fault or negligence on the part of Provider or its subcontractors or consultants be the proximate cause of such Claims. Provider shall be fully responsible to 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.

24. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

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

25. 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, Provider, or any other party pertaining to any matter resulting from the Agreement.

26. MINORITY BUSINESS ENTERPRISES

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

27. INSURANCE

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 County with limits acceptable to County. All insurance policies (with the exception of Workers' Compensation, if applicable, and Professional Liability) shall be endorsed, specifically or generally, to include County as an additional insured and as a certificate holder. 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 County. The Certificate will provide for thirty (30) days' advance notice in the event of termination or cancellation of coverage. Provider shall have no right of recovery or subrogation against 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.

28. WORKERS' COMPENSATION

To the extent required by law, 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 Provider is excluded from the requirements of such Act and does not voluntarily carry workers' compensation coverage, 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 Provider's obligations under this Agreement.

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

29. REMEDIES

- (1) **RIGHT TO COVER.** If Provider fails to meet any completion date or resolution time set forth, due to no fault of County, 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 Provider is again able to resume performance under this Agreement; and
 - ii. Deduct any and all expenses incurred by County in obtaining or performing the Services from any money then due or to become due Provider and, should County's cost of obtaining or performing the Services exceed the amount due Provider, collect the amount due from Provider.
- (2) **RIGHT TO WITHHOLD PAYMENT.** County reserves the right to withhold any portion, or all, of a scheduled payment if 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 County disputes in good faith an allegation of breach by Provider, notwithstanding anything to the contrary in this Agreement,

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.

30. TAXES

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

31. HEALTH AND SAFETY

Provider shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with performing the Services. 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.

32. EQUAL EMPLOYMENT OPPORTUNITY

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

- (1) Provider will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. 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. 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) Provider will, in all solicitations or advertisements for employees placed by or on behalf of 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) 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 Provider's legal duty to furnish information.

- (4) 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 Provider's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) 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) 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 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 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) 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. 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 a Provider becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, 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.

33. COMPLIANCE WITH THE COPELAND "ANTI-KICKBACK" ACT

- (1) *Provider.* If applicable, 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, 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.

34. COMPLIANCE WITH THE DAVIS-BACON ACT (AS AMENDED)

- (1) If applicable, all transactions regarding this Agreement shall be done in compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) and the requirements of 29 C.F.R. Part 5, as may be applicable. 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.

35. CLEAN AIR ACT

- (1) 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) Provider agrees to report each violation to County and understands and agrees that County will, in turn, report each violation as required to assure notification to County, the federal government, and the appropriate Environmental Protection Agency Regional Office.
- (3) Provider agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance.

36. FEDERAL WATER POLLUTION CONTROL ACT

- (1) 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) Provider agrees to report each violation to County and understands and agrees that County will, in turn, report each violation as required to assure notification to County, the federal government, and the appropriate Environmental Protection Agency Regional Office.
- (3) Provider agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance.

37. 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 Provider and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, 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, 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.* County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Provider or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) *Subcontracts.* Provider or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

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

- (1) 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 Provider or subcontractor for inspection, copying, or transcription by authorized representatives of the federal government, including, without limitation, the Department of Labor, and Provider or subcontractor will permit such representatives to interview employees

during working hours on the job.

38. COMPLIANCE WITH E-VERIFY PROGRAM

Pursuant to N.C.G.S. § 143-133.3, Provider understands that it is a requirement of this Agreement that 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, 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 Provider shall require its subcontractors and consultants to do the same. Upon request, Provider agrees to provide County with an affidavit of compliance or exemption.

39. 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.

40. OWNERSHIP OF WORK PRODUCT

- (1) All work product created by 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 County. County and Provider agree that such original works of authorship are "works made for hire" of which County is the author within the meaning of the United States Copyright Act. To the extent that County is not the owner of the intellectual property rights in and to such Work Product, Provider hereby irrevocably assigns to 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 County's request, 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 County. 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 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, Provider hereby grants to 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) County may use Work Product for any other purpose and on any other project without additional compensation to Provider. Notwithstanding the foregoing, the use of Work Product by County for any purpose other than as set forth in this Agreement shall be at County's risk.

41. NO ASSIGNMENT WITHOUT CONSENT

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

42. 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.

43. 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.

44. GOVERNMENTAL IMMUNITY

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.

45. NON-WAIVER

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

46. 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 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 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.

47. 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.

48. 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.

49. 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 Provider and County.

50. 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}

51. SIGNATURES

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

ATTEST:

BRUNSWICK COUNTY

Clerk to the Board

By: _____
Chairman, Board of Commissioners

[SEAL]

{VENDOR NAME}

By: _____

Printed Name: {Vendor Signatory Name}

Title: {Vendor Signatory Title}

Date: _____

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

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

APPROVED AS TO FORM

Robert V. Shaver, Jr., County Attorney /
Bryan W. Batton, Assistant County Attorney

EXHIBIT "A"
PROPOSAL/STATEMENT OF WORK