

BRUNSWICK COUNTY
REQUEST FOR
QUALIFICATIONS

**Southport Evaluation and
Rehabilitation of
Wastewater System Project**

ISSUE DATE: January 08, 2025

DUE DATE: February 06, 2025



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

BRUNSWICK COUNTY PUBLIC UTILITIES
OPERATIONS CENTER

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SUPPLY, NORTH CAROLINA 28462

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January 08, 2025

Request for Qualifications Statements
Engineering Services
Southport Evaluation and Rehabilitation of Wastewater System Project

Pursuant to 2 C.F.R. § 200.320(b)(2)(iv), Brunswick County is requesting qualifications statements from qualified engineering, environmental, and water resource firms for professional services associated with the rehabilitation of the sewer collection system infrastructure within the city limits of Southport, North Carolina. The project will consist of a find it, fix it approach to evaluate and rehabilitate the wastewater collection system, to identify and correct defects in the sewer system, and to design a new approximately 8,000 linear foot 8-inch sewer force main. The overall goal of the project is to identify and correct defects in the system to improve the overall efficiency and effectiveness of the wastewater collections system.

Project Funding and Requirements

It is anticipated that the Southport Evaluation and Rehabilitation of Wastewater System Project will be funded, in whole or in part, with federal funds from the State Reserve Funds (“SRP”) grant from the American Rescue Plan Act (“ARPA”) through the North Carolina Department of Environmental Quality (“DEQ”) - Division of Water Infrastructure (“DWI”) as approved under the State Water Infrastructure Authority (“SWIA”) and through a State Revolving Fund (“SRF”) loan funded by the Environmental Protection Agency (“EPA”) through DEQ-DWI. Project Number SRP-W-ARP-0299 has been assigned to the Evaluation and Rehabilitation of Wastewater System for the SRP-ARPA grant. Project Number CS-370714-04 has been assigned to the Evaluation and Rehabilitation of Wastewater System for the SRF loan. The anticipated maximum amount of funding from DEQ-DWI is \$9,835,000.

By using SRP-ARPA and SRF funds, Brunswick County must comply with the grant award terms and conditions, regulations issued by the U.S. Department of the Treasury (“Treasury”) governing the expenditure of monies distributed pursuant to ARPA (including, without limitation, the Interim Final Rule (86 Fed. Reg. 26,786 (May 17, 2021) and Final Rule (87 Fed. Reg. 4,338 (January 27, 2022))), regulations issued by DEQ-DWI, and such other guidance as Treasury and/or DEQ-DWI has issued or may issue governing the expenditure of these SRP-ARPA and SRF funds (collectively, the “Regulatory Requirements”).

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 Treasury and/or DEQ-DWI. 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 to:

Post Office Delivery

Robert Miller
Brunswick County Public Utilities
P. O. Box 249
Bolivia, NC 28422

Hand Delivery or Alternate Shipping Service

Robert Miller
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 6, 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 Robert.Miller@brunswickcountync.gov or at 910-253-1759 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 and 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, state of incorporation/organization, primary office location, and a contact person should be noted on the title page.
- 2) Resumes for the employees and subcontractors that will be assigned to the project. The project manager and other key team members should be clearly identified along with their years of experience and office location. 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.
- 3) Experience on similar projects (3 projects minimum): Each project listed in the Experience section should include a description and contact person for the listed project. Projects should be similar in size and scope as the proposed 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, how challenges will be addressed, 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. Labor rates should **not** be provided.

Firms are required to have insurance as outlined in the Minimum Insurance Requirements attached hereto and incorporated herein by reference. Firms will be required to provide a Certificate of Insurance with the qualifications statement as evidence that they meet the minimum requirements.

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 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 will award the contract to the most qualified firm, pursuant to the evaluation and selection process set forth herein, subject to negotiation of fair and reasonable compensation. 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:

1. The firm's experience in providing similar services for similar projects;
2. The firm's experience with ARPA grant funding and compliance;
3. Qualifications and accessibility of key individuals identified in the qualifications statement that will be assigned to the project;
4. Ability to properly scope the project and the capability of firm to manage the work and to provide a project approach that best meets the project intent; and
5. Ability to meet established schedules.

Qualifications Selection Criteria	Qualifications Selection Criteria Weighting
	Max Points
The firm's experience in providing similar services for similar projects	20
The firm's experience with ARPA grant funding and compliance	10
Qualifications and accessibility of key individuals identified in the qualifications statement that will be assigned to the project	25
Ability to properly scope the project and the capability of firm to manage the work and to provide a project approach that best meets the project intent	30
Ability to meet established schedules	15
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 collectively 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

Firms are required to take all necessary “affirmative 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.

Robert M. Miller, PE, PMP, DBA
Project Manager

SCOPE OF WORK

Southport Evaluation and Rehabilitation of Wastewater System Project

1. BACKGROUND

The Southport Evaluation and Rehabilitation of Wastewater System Project will result in the identification and correction of deficiencies in the Southport wastewater collection system that impact the overall effectiveness of the system. Additionally, the project will design and construct a new approximately 8,000 linear foot, 8-inch force main. The force main shall connect to the County's existing force main at Hwy 211. The selected firm shall verify exact design of the force main. The selected firm will provide general project management and construction oversight in addition to the professional services to support the project through construction and project completion.

2. STUDY AND REPORT PHASE

The selected firm shall identify, evaluate, document, and provide preliminary construction cost estimates for the identification and correction of deficiencies. The firm shall identify potential easement locations along the force main route and shall consult with NCDOT concerning encroachments needed within DOT rights-of-way. The firm shall prepare an overview map of the force main route and items that have been identified through the find it fix it approach. 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.

3. WETLANDS DELINEATION

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.

4. GEOTECHNICAL INVESTIGATION

The firm shall perform geotechnical evaluation at necessary intervals to support a complete and thorough design. Geotechnical recommendations and soil boring logs shall be incorporated into the Contract Documents.

5. SURVEY

The firm shall provide base mapping of the necessary repair areas and the route for the new force main 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.

6. PRELIMINARY DESIGN

The firm shall prepare design drawings, details, and technical specifications adequate to apply for and receive all necessary permits and encroachments for the existing wastewater collections system that require repair and for the new force main that will redirect flow within the Southport sub-basin and connect to the existing wastewater transmission line along Hwy 211.

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. Preliminary drawings shall clearly indicate easement areas, shut-off valves, directional drill locations, bore and jack locations, air release valves, metering vaults, and bypass piping.

The collection system repairs or replacements and the new force main shall be designed in accordance with Brunswick County standards.

The firm will be responsible for the design of all systems for the project. The firm will design the new force main, and any recommended and accepted repairs identified through the find it fix it process. 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 NC DOT rights-of-way or in County-owned utility easements or within private access easements. Any easements or properties to be acquired must also be surveyed and plats suitable for recording prepared.

7. 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 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. Where possible, all regulatory agency comments that are received should be addressed at this project stage.

8. EASEMENT MAPS

Upon receipt of the NCDOT Encroachment Agreement or notice by 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 receive all signatures from Zoning Compliance Officers and Planning Department personnel necessary for recording of the maps. The firm shall also help identify and provide maps as necessary to secure permanent access to the proposed lines.

9. FINAL DESIGN

Upon receipt of the NCDOT Encroachment Agreement or notice by County, the firm shall prepare final design drawings, details, and Contract Documents for bidding purposes. Standard County “front end” documents shall be provided to the firm for use in preparing the final contract documents.

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. All bidding and contract documents must be approved by the County prior to advertising same.

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

10. BIDDING AND NEGOTIATING PHASE

All contracts and bidding documents must be approved by the County prior to advertising the project. The firm shall assist in advertising the project, conduct a pre-bid meeting, post bid documents to plan room internet sites, provide all necessary hard copy Contract Documents, respond to contractor questions, evaluate substitutions, prepare and distribute addenda and clarifications, attend bid opening; review bids, provide certified bid tabulation, assist with bid protests, make recommendation of award, consult with County on the acceptability of contractors, suppliers, and manufacturers, and assist County in negotiations with contractors.

11. CONSTRUCTION SERVICES

The firm shall provide sufficient project inspection and shall consult with the County Inspector sufficiently for the firm to provide all necessary certifications at the close of the project. The firm shall evaluate all test reports, review construction observation reports, ensure compliance with the Contract Documents, prepare conformed documents, conduct a pre-construction meeting, conduct monthly progress meetings, inspect the project no less than once per week and document inspection findings, review shop drawings and contract required submittals, review schedules, review Requests for Information, issue clarifications and interpretations of the Contract Documents, review and approve applications for payment, prepare change orders and work change directives, develop punch lists, review maintenance and operating instructions, review schedules, guarantees, and bonds, conduct final walk-throughs. The firm shall prepare Record Drawings showing appropriate record information based on project annotated record documents received from contractor and furnish such Record Drawings to County in both AutoCAD and paper format.

The firm shall prepare operation and maintenance manuals as required. The firm shall assist County in determining the date of Substantial Completion and Final Completion.

12. POST-CONSTRUCTION PHASE

The firm shall visit the project to observe any apparent defects in the work, assist County in consultations and discussions with contractor concerning correction of any such defects, and make recommendations as to replacement or correction of defective work, if any. The firm shall visit the project within one (1) month before the end of the construction contract's warranty period to ascertain whether any portion of the work is subject to correction and provide County a report of findings. The firm shall verify any warranty work completed by the contractor is in compliance with the Contract Documents.

13. GRANT COMPLIANCE

The firm shall support County to ensure compliance with 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.

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 coverages 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.

**NORTH CAROLINA
BRUNSWICK COUNTY**

**PROFESSIONAL SERVICES AGREEMENT
FOR ARCHITECTURAL, ENGINEERING
AND/OR SURVEYING SERVICES
(Mini-Brooks Act/Qualification-Based Selection)
[ARPA 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 “Architect,” “Engineer,” or “Surveyor,” as applicable*], party of the second part.

WHEREAS, County has received an allocation of funds from the Coronavirus State and Local Fiscal Recovery Funds (the “Fiscal Recovery Funds”) established pursuant to Sections 602 and 603 of the Social Security Act, as added by Section 9901 of the American Rescue Plan Act of 2021, Pub. L. No. 117-2 (“ARPA”), as amended; and

WHEREAS, County intends to fund this Agreement, in whole or in part, using monies received from the Fiscal Recovery Funds; and

WHEREAS, in using such funds, County must comply with the terms of ARPA, regulations issued by the U.S. Department of the Treasury (“Treasury”) governing the expenditure of monies distributed from the Fiscal Recovery Funds (including, without limitation, the Interim Final Rule (86 Fed. Reg. 26,786 (May 17, 2021) and Final Rule (87 Fed. Reg. 4,338 (January 27, 2022))), the Award Terms and Conditions applicable to the Fiscal Recovery Funds, and such other guidance as Treasury has issued or may issue governing the expenditure of monies distributed from the Fiscal Recovery Funds (collectively, the “Regulatory Requirements”); and

WHEREAS, pursuant to the Regulatory Requirements, County must comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury has determined or may determine are applicable to the Fiscal Recovery Funds; and

WHEREAS, pursuant to 2 C.F.R. § 200.327, County must include within this Agreement applicable provisions described in Appendix II to 2 C.F.R. Part 200, each of which is contained herein; and

WHEREAS, County shall not enter into this Agreement or make any distributions of funds to Provider using monies from the Fiscal Recovery Funds absent Provider’s agreement and adherence to each term and condition contained herein.

NOW THEREFORE, Provider and County do mutually agree as follows:

1. DEFINITIONS

Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them below:

- (1) “Administering Agency” shall have the meaning specified in 41 C.F.R. § 60-1.3.
- (2) “Applicant” shall have the meaning specified in 41 C.F.R. § 60-1.3, which is provided here for ease of reference: (“An applicant for Federal assistance involving a construction contract, or other participant in a program involving a construction contract as determined by regulation of an Administering Agency. The term also includes such persons after they become recipients of such Federal assistance.”).
- (3) “Construction Work” shall have the meaning specified in 41 C.F.R. § 60-1.3, which is provided here for ease of reference: (“[T]he construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.”).
- (4) “Federally Assisted Construction Contract” shall have the meaning specified in 41 C.F.R. § 60-1.3, which is provided here for ease of reference: (“[A]ny agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the government of the United States of America for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.”).
- (5) “Laborer” or “Mechanic” shall have the meaning specified in 29 C.F.R. § 5.2(m), which is provided here for ease of reference: (“The term *laborer* or *mechanic* includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term *laborer* or *mechanic* includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in part 541 of [Title 40 of the United States Code] are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of [Title 40 of the United States Code], are laborers and mechanics for the time so spent.”).
- (6) “Subcontract” shall mean any agreement entered into by a Subcontractor to furnish supplies or services for the performance of this Agreement or a Subcontract. It includes, but is not limited to, purchase orders and changes and modifications to purchase orders.

(7) “Subcontractor” shall mean an entity that receives a Subcontract.

(8) “Tier” shall have the meaning indicated in 2 C.F.R. Part 180 and illustrated in 2 C.F.R. Part 180, Appendix II.

2. 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.

3. 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, as applicable.

(2) *Time of Completion.* Notwithstanding the foregoing, Provider shall complete the Services in accordance with the schedule set forth herein (the “Time of Completion”), unless extended by mutual written agreement of the parties. Regardless of any extensions of this Agreement or the Time of Completion, pursuant to Sections 602(c)(1) and 603(c)(1) of ARPA, all Fiscal Recovery Funds must be obligated or costs incurred for the use of such funds between March 3, 2021, and December 31, 2024, and all Fiscal Recovery Funds must be fully expended by December 31, 2026 (hereinafter referred to as the “Period of Performance”). A cost shall be considered to have been incurred if a contract, agreement, or obligation with respect to such cost has been entered into by December 31, 2024. In accordance with the foregoing and notwithstanding anything else contained herein, neither the term of this Agreement nor the Time of Completion may extend beyond the expiration of the Period of Performance. **No work may commence under this Agreement until the Agreement has been fully executed by both parties.**

4. 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.

5. 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.

6. 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.

7. COMPENSATION

County agrees to pay fees as specified in the Exhibits attached hereto 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. NON-EXCLUSIVITY

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

17. 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. § 147-86.80 *et seq.*

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

- (1) Provider certifies to County, and Provider shall cause each Tier below it to certify to the Tier directly above such Tier, that it has not used and will not use federally 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. Provider shall, and shall cause each Tier below it, to disclose any lobbying with non-federally appropriated funds that takes place in connection with obtaining any federal award. Such disclosures (to be set forth on Standard Form-LLL, contained in 31 C.F.R. Part 21, Appendix B) shall be forwarded from Tier to Tier up to County, which will, in turn, forward the certification(s) to Treasury. Provider shall cause the language of this section to be included in all Subcontracts. This certification is a material representation of fact upon which County has relied when entering into this Agreement, and all liability arising from an erroneous representation shall be borne solely by Provider.
- (2) Providers that bid or apply for a contract exceeding \$100,000 (including this Agreement, if applicable) also must file the required certification with County.
- (3) Provider also shall cause any Subcontractor with a Subcontract (at any Tier) exceeding \$100,000 to file with the Tier above it the required certification.

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 County’s preceding fiscal year exceeded \$10,000.
- (2) 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.
- (3) Information about this requirement, along with the list of EPA-designated items, is available on EPA’s website.
- (4) Provider also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

20. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS

EQUIPMENT OR SERVICES

- (1) *Definitions*. Unless otherwise defined in this Agreement, capitalized terms used in this section shall have the meanings ascribed to them below:
- i. *Backhaul* means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).
 - ii. *Covered Foreign Country* means the People's Republic of China.
 - iii. *Covered Telecommunications Equipment or Services* means (a) telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); (b) for the purpose of public safety, security of federal government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); (c) telecommunications or video surveillance services provided by such entities or using such equipment; or (d) telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a Covered Foreign Country.
 - iv. *Critical Technology* means (1) defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations; (2) items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations and controlled (a) pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology, or (b) for reasons relating to regional stability or surreptitious listening; (3) specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities); (4) nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material); (5) select agents and toxins covered by part 331 of title 7, Code of Federal Regulations; part 121 of title 9 of such Code; or part 73 of title 42 of such Code; or (6) emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. § 4817).
 - v. *Interconnection Arrangements* means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand

off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

- vi. *Roaming* means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.
- vii. *Substantial or Essential Component* means any component necessary for the proper function or performance of a piece of equipment, system, or service.
- viii. *Telecommunications Equipment or Services* means telecommunications or video surveillance equipment or services, such as, but not limited to, mobile phones, land lines, internet, video surveillance, and cloud services.

(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 (including, without limitation, Fiscal Recovery Funds) received from a 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 Agreement, 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 Provider 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 its performance under this Agreement, or Provider is notified of such by a Subcontractor at any Tier or by any other source, Provider shall report the information in paragraph 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.

21. 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. Provider shall further cause any Subcontractor to include the requirements of this section in any Subcontracts.

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. ACCESS TO RECORDS

- (1) Provider agrees to provide County, the Department of the Treasury, the Treasury Office of Inspector General, the Government Accountability Office, and the Comptroller General of the United States, or any other authorized representatives of these entities, access to any books, documents, papers, and records (electronic or otherwise) of Provider which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, transcriptions, or other investigations.
- (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 retain all records covered by this section through December 31, 2031, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit, or other inquiry involving this Agreement.
- (4) Provider agrees to provide authorized representatives of the federal government access to construction or other work sites pertaining to the work being completed under this Agreement.
- (5) 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 authorized representatives of the federal government.

23. 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.

24. 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.

25. 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.

26. MISCELLANEOUS

- (1) *Increasing Seat Belt Use in the United States*. Pursuant to Executive Order 13043, 62 Fed. Reg. 19,216 (Apr. 18, 1997), County encourages Provider to adopt and enforce on-the-job seat belt policies and programs for its employees when operating company-owned, rented, or personally owned vehicles.
- (2) *Reducing Text Messaging While Driving*. Pursuant to Executive Order 13513, 74 Fed. Reg. 51,225 (Oct. 6, 2009), County encourages Provider to adopt and enforce policies that ban text messaging while driving.

27. SUSPENSION AND DEBARMENT

- (1) Due to its receipt of Fiscal Recovery Funds, County is a participant in a nonprocurement transaction (defined at 2 C.F.R. § 180.970) that is a covered transaction pursuant to 2 C.F.R. § 180.210 and 31 C.F.R. § 19.210. Therefore, this Agreement is a lower-Tier covered transaction for purposes of 2 C.F.R. Part 180 and 31 C.F.R. Part 19 if: (1) the amount of this Agreement is greater than or equal to \$25,000 (2 C.F.R. § 180.220(b)(1); 31 C.F.R. § 19.220(b)(1)); (2) the Agreement requires the consent of an official of the Department of the Treasury (2 C.F.R. § 180.220(b)(2); 31 C.F.R. § 19.220(b)(2)); or (3) this Agreement is for federally required audit services (2 C.F.R. § 180.220(b)(3); 31 C.F.R. § 19.220(b)(3)).
- (2) If this Agreement is a covered transaction as set forth above, Provider hereby certifies as of the date hereof that Provider, Provider's principals (defined at 2 C.F.R. § 180.995), and the affiliates (defined at 2 C.F.R. § 180.905) of both Provider and Provider's principals are not excluded (defined at 2 C.F.R. § 180.935) and are not disqualified (defined at 2 C.F.R. § 180.935). If any of the foregoing persons are excluded or disqualified and the Secretary of the Treasury has not granted an exception pursuant to 31 C.F.R. § 19.120(a), (1) this Agreement shall be void, (2) County shall not make any payments of federal financial assistance to Provider, and (3) County shall have no obligations to Provider under this Agreement.
- (3) Provider must comply with 2 C.F.R. Part 180, Subpart C and 31 C.F.R. Part 19 and must include a requirement to comply with these regulations in any lower-Tier covered

transaction into which it enters. This certification is a material representation of fact relied upon by County, and all liability arising from an erroneous representation shall be borne solely by Provider.

- (4) If it is later determined that Provider did not comply with 2 C.F.R. Part 180, Subpart C and 31 C.F.R. Part 19, in addition to remedies available to County, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

28. 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.

29. 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.

30. 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.

31. MINORITY BUSINESS ENTERPRISES

- (1) If Provider intends to let any Subcontracts, Provider 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.

- (2) 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. EQUAL EMPLOYMENT OPPORTUNITY

To the extent applicable, 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 to the Administering Agency, as defined in 41 C.F.R. § 60-1.3, and the Secretary of Labor 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 federal government contracts or Federally Assisted Construction

Contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965. 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.

County 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 County 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 this Agreement.

County 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.

County 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, federal 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, County 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 County under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from County; and refer the case to

the Department of Justice for appropriate legal proceedings.

38. COMPLIANCE WITH THE COPELAND “ANTI-KICKBACK” ACT

- (1) *Provider.* Provider and any Subcontractor performing work under this Agreement 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. County shall report all suspected or reported violations to Treasury.
- (2) *Subcontracts.* Provider or Subcontractor shall insert in any Subcontracts the clause above and such other clauses as Treasury may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower Tier Subcontracts. The prime contractor shall be responsible for the compliance by any Subcontractor or lower Tier Subcontractor with all of these contract clauses.
- (3) *Breach.* A breach of the Agreement clauses above may be grounds for termination of the Agreement, and for debarment as a contractor and Subcontractor as provided in 29 C.F.R. § 5.12.

39. 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.

40. 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 Treasury 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 provided by Treasury.

41. 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 Treasury 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 provided by Treasury.

42. 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 work under this Agreement 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 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.* 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.
- (5) *Payroll and Records.* 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 Agreement for all Laborers and Mechanics, including guards and watchmen, working on this Agreement. 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. 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 Department of the Treasury and the Department of Labor, and Provider or Subcontractor will permit such representatives to interview employees during working hours on the job.
- (6) *Exceptions.* None of the requirements of this section shall apply if this Agreement is an agreement: (1) for transportation by land, air, or water; (2) for the transmission of intelligence; (3) for the purchase of supplies, materials, or articles ordinarily available in the open market; or (4) in an amount that is equal to or less than \$100,000.

43. RIGHTS TO INVENTIONS

- (1) The federal government reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for “Government purposes,” any subject data or copyright described below. “Government purposes” means use only for the direct purposes of the federal government. Without the copyright owner’s consent, the government may not extend its federal license to any other party.
 - i. Any subject data developed under this Agreement, whether or not a copyright has been obtained, and
 - ii. Any rights of copyright purchased by Provider using federal assistance funded in whole or in part by the Department of the Treasury.
- (2) Unless Treasury determines otherwise, a Provider performing experimental, developmental, or research work required as part of this Agreement agrees to permit Treasury to make available to the public either (1) Treasury’s license in the copyright to any subject data developed in the course of the Agreement, or (2) a copy of the subject data first produced under the Agreement for which a copyright has not been obtained. If the experimental, developmental, or research work which is the subject of this Agreement is not completed for any reason whatsoever, all data developed under

the Agreement shall become subject data as defined herein and shall be delivered as the federal government may direct.

- (3) Unless prohibited by North Carolina law, upon request by the federal government, Provider agrees to indemnify, save, and hold harmless the federal government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Provider of proprietary rights, copyrights, or right of privacy arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Agreement. Provider shall be required to indemnify the federal government for any such liability arising out of the wrongful act of any employee, official, or agent of Provider.
- (4) Nothing contained in this clause shall imply a license to the federal government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the federal government under any patent.
- (5) Data developed by Provider and financed entirely without using federal assistance provided by the federal government that has been incorporated into work required by the underlying Agreement is exempt from the requirements herein, provided that Provider identifies that data in writing at the time of delivery of the work. Provider agrees to include these requirements in each Subcontract for experimental, developmental, or research work financed in whole or in part with federal assistance.
- (6) For the purposes of this section, “subject data” means “recorded information, whether or not copyrighted, . . . that is delivered or specified to be delivered as required by the contract.” Examples of “subject data” include, but are not limited to, “computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses or other similar information used for performance or administration of the contract.”

44. OWNERSHIP OF WORK PRODUCT

- (1) Unless otherwise set forth in the preceding section, 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.

45. 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.

46. 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.

47. 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.

48. 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.

49. 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.

50. 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.

51. 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.

52. 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.

53. 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.

54. 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.

55. 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.

56. 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: County Manager
P. O. Box 249
Bolivia, NC 28422
 - ii. For the Provider: {Vendor Name}
{Vendor Address}
{Vendor City}, {Vendor State or Territory} {Vendor Zip}

57. 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

Deputy Clerk to the Board

[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

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

EXHIBIT "A"
PROPOSAL/STATEMENT OF WORK