

BRUNSWICK COUNTY
REQUEST FOR
QUALIFICATIONS

**National Pollutant Discharge
Elimination System (NPDES) Permit
for the Ocean Isle Beach
Wastewater Treatment Plant**

ISSUE DATE: **May 12, 2025**

DUE DATE: **June 12, 2025**



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

Request for Qualifications Statements

National Pollutant Discharge Elimination System (NPDES) permit for the Ocean Isle Beach Wastewater Treatment Plant (OIB WWTP)

Brunswick County is requesting qualifications statements from qualified engineering, environmental, and water resource firms for professional services to obtain a National Pollutant Discharge Elimination System (NPDES) permit for the planned expansion of the Ocean Isle Beach Wastewater Treatment Plant (OIB WWTP).

The selected Consultant will systematically gather and analyze all pertinent information to identify a viable solution for discharging into surface water while ensuring full compliance with environmental standards and regulatory requirements. A key focus will be on the recently enacted North Carolina Senate Bill 802 (S802), Session Law 2024-44, which establishes a regulatory framework for low-flow or zero-flow discharges. The selected Consultant will identify potential challenges and opportunities presented by S802 and other relevant policies to ensure alignment with the County's long-term expansion plans for the OIB WWTP.

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.

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

Post Office Delivery

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

Hand Delivery or Alternate Shipping Service

Regina Quintos-Pascual, PMP
Brunswick County
Utilities Operations Center
250 Grey Water Road NE
Supply, NC 28462
Contact: 910-253-1714

For consideration, *four (4)* hard copies and *one (1)* electronic copy on a USB drive of the response to this Request for Qualifications must be received by the County by 4:30 p.m. ET on **June 12, 2025**.

Brunswick County will not be responsible for the failure of any mail or delivery service to deliver responses prior to the stated date and time. Regardless of the manner of submission, any response received after the stated date and time will not be considered. Incomplete responses or responses inconsistent with the required format may be disqualified from consideration.

All questions or comments shall be submitted to Regina.Quintos@brunswickcountync.gov or at 910-253-1714 by **May 26, 2025** at 4:30 p.m. ET. A copy of all questions, further clarifications, and answers will be made in the form of an addendum to this Request for Qualifications and will be provided to all known interested firms. Any addendum will also be posted on the County's website. Firms are responsible for ensuring they have all addenda. **Interested firms are expressly prohibited from contacting any Brunswick County official or employee regarding this Request for Qualifications, except in the manner noted in this section. A violation of this provision is grounds for the immediate disqualification of the firm.**

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

- 1) The company's full legal name, state of organization or incorporation, primary office location, office location of project personnel, years of experience, and a contact person.
- 2) Qualifications of the employees who will be assigned to the project. The project manager and other key team members should be clearly identified. If subcontractors are to be used for any portion of the work, they should be identified, and their qualifications included. Brunswick County reserves the right to reject any subcontractors in its sole and absolute discretion.
 - a) The qualifications statement shall clearly indicate who will oversee the project as well as the roles that each individual shall perform.
 - b) Special emphasis shall be provided on the individuals' backgrounds, qualifications, certifications, and experience on related and or similar projects.
- 3) Firm should present experience with similar projects. The qualifications statement should include a description and contact person for projects that were similar in size and scope as this project. For each project experience listed, list the role played by each of the current team members.
- 4) A project schedule including key milestones should be included. The project schedule should start from the Notice to Proceed and include two-week review times for County staff reviews. A project schedule will be included in the contract for this work.
- 5) A brief description of the project approach to be used by the firm should be included.
 - a) In the firm's own words, describe the understanding of the project, the requirements of the project, the challenges associated with the project, the approach to handling any project challenges, and the anticipated outcome of the project.
 - b) List all assumptions made in preparing the project approach.

- c) 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 a project total provided.

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

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

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

1. Qualifications and accessibility of key individuals identified in the qualifications statement that will be assigned to the project.
2. The firm's experience in providing similar services for similar projects.
3. Ability to establish a project schedule and deliver within budget.
4. Ability of the firm to properly scope the project and the capability of the firm to manage the work and to provide a project approach that best meets the project intent.

Qualifications Selection Criteria	Qualifications Selection Criteria Weighting
	Max Points
Qualifications and accessibility of key individuals identified in the qualifications statement that will be assigned to the project	30
The firm's experience in providing similar services for similar projects	20
Ability to establish a project schedule and deliver within budget	20
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 (estimate man-hours required to complete various components of the project).	30
Total Points	100

Certification

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

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

Regina Quintos-Pascual, PMP
Engineering Project Manger

SCOPE OF WORK
National Pollutant Discharge Elimination System (NPDES) permit
for the Ocean Isle Beach Wastewater Treatment Plant (OIB WWTP)

1. BACKGROUND

The Ocean Isle Beach Wastewater Treatment Plant (OIB WWTP) is currently permitted to treat 1.05 million gallons per day (MGD) under Permit No. WQ0006085, with treated effluent applied to designated tree farms and golf courses. As Brunswick County plans for the OIB WWTP's future expansion to approximately 5.0 million gallons per day (MGD), the County is seeking support in securing a National Pollutant Discharge Elimination System (NPDES) permit. The recent enactment of North Carolina Senate Bill 802 (S802), Session Law 2024-44 offers a new regulatory pathway for low-flow or zero-flow discharges, providing an opportunity to explore additional discharge solutions that align with the County's long-term growth and compliance goals.

The Consultant will also review all relevant documents and meet with County staff to document the goals and objectives for the project. The County will provide a copy of the following documents for review and use by the Consultant:

- OIB WWTP PER 2024
- 2023 Wastewater Master Plan study
- NPDES Permit for Carolina Shores WWTP and Northeast Brunswick WWTP
- Alabama Admin. Code r. 335-6-10-.09, Section 335-6-10-.09 Specific Water Quality Criteria

2. STUDY AND REPORT PHASE

PHASE 1

- A. The Consultant will review the North Carolina Senate Bill 802 (S802), Session Law 2024-44, the rules that establish methodologies and permitting requirements for discharge of treated water to surface water and other relevant regulations to identify potential pathways for obtaining the NPDES permit. This includes evaluating the criteria for wastewater discharges into surface waters including wetlands, perennial streams, unnamed tributaries of named and classified streams with low or zero flow, restrictions on discharges into shellfish waters, tidal waters, and water supply waters, as well as provisions for exploring alternative permitting approaches.
- B. The Consultant shall engage in close cooperation with all relevant agencies to ensure the acquisition of the most current and comprehensive information necessary for the completion of the analysis. These agencies shall include, but not be limited to, the North Carolina Department of Environmental Quality (DEQ), the Environmental Management Commission (EMC), and the United States Environmental Protection Agency (EPA). The Consultant shall set up/attend meetings and establish effective communication channels with these entities to facilitate the timely exchange of data, regulatory updates, and technical guidance.

- C. The Consultant shall review case studies from other states with regulations similar to North Carolina Senate Bill 802 (S802), including but not limited to the state of Alabama and comparable jurisdictions to identify best practices, challenges, and outcomes.
- D. Upon completing the regulatory analysis, the Consultant will deliver a comprehensive report and Opinion of Probable Cost (OPC) to Brunswick County, including a detailed and actionable plan for obtaining the NPDES permit. This plan will clearly outline the specific steps required to meet the permitting criteria established in S802, providing a structured timeline and identifying key milestones to track progress. It will also include a thorough assessment and shortlisting of potential discharge locations suitable for the discharge of treated water, considering environmental impact, technical feasibility, and long-term sustainability.
- E. The report will present well-documented findings, including the data sources, methodologies, and analytical approaches used in the regulatory analysis. It will highlight key insights and recommendations, ensuring transparency and clarity.
- F. The Consultant will maintain consistent engagement with relevant regulatory agencies, to align the permitting strategy with current regulatory expectations. The Consultant will also conduct thorough research into similar legislative implementations and case studies to ensure the proposed approach reflects best practices and remains adaptable to potential regulatory changes.

PHASE 2

- G. Upon receiving approval from Brunswick County, the Consultant will initiate the execution of the action plan, overseeing the implementation of all outlined steps and providing ongoing support to address any issues or adjustments required to meet compliance objectives.
- H. Environmental & Technical Studies - The Consultant will conduct site-specific hydrological and environmental impact assessments to support the NPDES permit application as identified in the report, as required by the State. This may include, but is not limited to, water quality modeling and sampling to demonstrate compliance with discharge criteria for the expanded OIB WWTP. The Consultant will determine what testing, modeling, studies, etc. efforts are required to obtain an NPDES Permit.

The Consultant will also assess the potential environmental impact on nearby wetlands, perennial streams, and tributaries. These studies will be used to substantiate the permit application and ensure adherence to environmental regulations.

- I. The Consultant shall conduct site-specific requirement identified in the Study and Report Phase.

3. STAKEHOLDER COORDINATION & PUBLIC ENGAGEMENT

The Consultant will assist Brunswick County in maintaining communication with key regulatory agencies, during the permitting process. The Consultant may also be required to assist with public

engagement efforts, such as facilitating public meetings or addressing concerns related to the NPDES permitting process and its environmental impact.

4. PERMIT APPLICATION PACKAGE

The Consultant will assist Brunswick County by preparing a comprehensive NPDES permit application package for the expanded OIB WWTP. This will include completing all necessary technical forms, supporting documents, and regulatory compliance statements. The Consultant will coordinate closely with the North Carolina Department of Environmental Quality (DEQ) and other relevant agencies throughout the application process to ensure all required steps are followed for timely approval. The Consultant will address any questions that DEQ has in order to obtain the permit.

5. PROJECT MANAGEMENT & DELIVERABLES

The Consultant will provide a detailed project timeline outlining key milestones in the permit application process, with regular progress reports/updates to Brunswick County Public Utilities team. All final documents, including technical studies, the NPDES permit application, and compliance reports, will be delivered in both digital and hard copy formats. The Consultant shall make revisions as required by the reviewing agency.

**NORTH CAROLINA
BRUNSWICK COUNTY**

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

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter referred to as the “Agreement”) is made and entered into by and between Brunswick County, a body politic and corporate of the State of North Carolina, (hereinafter referred to as the “County” or “Owner”), party of the first part and {Vendor Name}, (hereinafter referred to as the “Provider”) [*or the “Architect,” “Engineer,” or “Surveyor”*], party of the second part.

WITNESSETH:

1. SERVICES; FEES

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

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

2. TERM OF AGREEMENT; TIME OF COMPLETION

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

3. TERMINATION

The County may terminate this Agreement at any time without cause by giving sixty (60) days’ written notice to the Provider. As soon as practicable after receipt of a written notice of termination without cause, the Provider shall submit a statement to the County showing in detail the work performed under this Agreement through the effective date of termination. The County may terminate this Agreement for cause by giving written notice of a breach of the Agreement. The Provider shall have fifteen (15) days to cure the breach following receipt of the notification. Failure to cure the breach within the fifteen (15) days shall result in the immediate termination of the Agreement. Notwithstanding the foregoing, the County may terminate this Agreement immediately and without notice to the Provider if the Provider becomes insolvent, makes or has

made an assignment for the benefit of creditors, is the subject of proceedings in voluntary or involuntary bankruptcy instituted on behalf of or against the Provider, or has a receiver or trustee appointed for substantially all of its property, or if the Provider allows any final judgment to stand against it unsatisfied for a period of forty-eight (48) hours.

4. BRUNSWICK COUNTY GENERAL CONDITIONS OF THE CONTRACT

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

5. NONAPPROPRIATION

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

6. COMPENSATION

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

7. INDEPENDENT CONTRACTOR

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

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

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

8. OPINIONS OF COST

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

9. ACCOUNTING RECORDS

The Provider shall maintain accounting records in accordance with generally accepted accounting practices and shall make such records available for inspection by the County upon reasonable request and during normal business hours for a period of three (3) years following completion of the Services.

10. PERMITS AND APPROVALS

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

11. ENVIRONMENTAL CONDITIONS

The County shall disclose to the Provider the existence of all known and suspected hazardous substances, including, without limitation: asbestos; polychlorinated biphenyls (PCBs); petroleum; hazardous waste; or radioactive material located at or near the site where the Services are to be performed. If the Provider discovers any undisclosed hazardous substances, or if investigative or remedial action or other professional services are necessary, the Provider may, at its option and without liability for damages, suspend performance of the Services hereunder until the County: (1) retains an appropriate specialist consultant or contractor to identify and, as

appropriate, abate, remediate or remove the hazardous substances; and (2) warrants that the site where the Services are to be performed are in full compliance with applicable laws and regulations. Notwithstanding the foregoing, if the presence of any hazardous materials adversely affects the performance of the Provider's duties under this Agreement, then the Provider shall have the option of: (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause upon thirty (30) days' written notice to the County.

12. PROVIDER REPRESENTATIONS

- (1) The Provider is a duly organized entity or corporation qualified to do business and in good standing under the laws of the State of North Carolina;
- (2) The Provider has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
- (3) No approval, authorization, or consent of any governmental or regulatory authority is required to be obtained or made by it in order for the Provider to enter into and perform its obligations under this Agreement;
- (4) In connection with the Provider's obligations under this Agreement, it shall comply with all applicable federal, state, and local laws and regulations and shall obtain all applicable permits and licenses;
- (5) The Provider shall not violate any agreement with any third party by entering into or performing the Services under this Agreement;
- (6) The Provider has not engaged in corrupt, fraudulent, or coercive practices in competing for or executing this Agreement;
- (7) The Provider will perform all Services in conformity with the specifications and requirements of this Agreement;
- (8) The Services provided by the Provider under this Agreement will not violate, infringe, or misappropriate any patent, copyright, trademark, or trade secret rights of any third party, or any other third-party rights (including, without limitation, non-compete agreements);
- (9) The Provider shall exercise reasonable care and diligence when performing the Services hereunder and will ensure that it adheres to the highest generally accepted standards in the industry when performing said Services;
- (10) The Provider shall be responsible for all errors, omissions, or deficiencies in technical accuracy in any drawings, specifications, or other documents prepared or services rendered by the Provider, its subcontractors or consultants and shall correct, at no additional cost to the County, any and all errors, omissions, discrepancies, ambiguities, mistakes, deficiencies or conflicts;

- (11) The Provider acknowledges that if any specific licenses, certifications, or related credentials are required in its performance of the Services, it will ensure that such credentials remain current and active and not in a state of suspension or revocation; and
- (12) The Provider shall ensure that whenever its employees or agents are on the County property, they will strictly abide by all instructions and directions issued by the County with respect to rules, regulations, policies, and security procedures applicable to work on the County's premises. Such rules, regulations, policies, and security procedures shall include, but not be limited to: (i) not possessing any controlled substances; (ii) smoking only in designated smoking areas, if any; and (iii) not possessing weapons, except for weapons possessed by law enforcement officials.

13. DAMAGE TO EQUIPMENT, FACILITIES, PROPERTY OR DATA

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

14. NON-ENDORSEMENT AND PUBLICITY

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

15. NON-EXCLUSIVITY

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

16. DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL

The Provider hereby certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. § 147-86.80 *et seq.*

17. DEBARMENT

The Provider hereby certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this Agreement by any governmental department or agency. The Provider must notify the County within thirty (30) days if debarred by any governmental entity during this Agreement.

18. INDEMNIFICATION

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

19. INSURANCE

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

20. WORKERS' COMPENSATION

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

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

21. REMEDIES

- (1) *Right to Cover.* If the Provider fails to meet any completion date or resolution time set forth, due to no fault of the County, the County may take any of the following actions

with or without terminating this Agreement, and in addition to, and without limiting, any other remedies it may have:

- i. Employ such means as it may deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and the Provider is again able to resume performance under this Agreement; and
 - ii. Deduct any and all expenses incurred by the County in obtaining or performing the Services from any money then due or to become due the Provider and, should the County's cost of obtaining or performing the Services exceed the amount due the Provider, collect the amount due from the Provider.
- (2) *Right to Withhold Payment.* The County reserves the right to withhold any portion, or all, of a scheduled payment if the Provider fails to perform under this Agreement until such breach has been fully cured.
- (3) *Setoff.* Each party shall be entitled to set off and deduct from any amounts owed to the other party pursuant to this Agreement all damages and expenses incurred or reasonably anticipated as a result of the other party's breach of this Agreement.
- (4) *Other Remedies.* Upon breach of this Agreement, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently in addition to any other available remedy.
- (5) *No Suspension.* In the event that the County disputes in good faith an allegation of breach by the Provider, notwithstanding anything to the contrary in this Agreement, the Provider agrees that it will not terminate this Agreement or suspend or limit any Services or warranties, unless: (i) the parties agree in writing; or (ii) an order of a court of competent jurisdiction determines otherwise; provided, however, this dispute period shall be limited to ninety (90) days.

22. TAXES

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

23. HEALTH AND SAFETY

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

24. COMPLIANCE WITH E-VERIFY PROGRAM

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

25. 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:

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

such a request, it shall notify Discloser and Discloser shall have the opportunity to defend against production of such records at Discloser's sole expense.

26. OWNERSHIP OF WORK PRODUCT

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

27. NO ASSIGNMENT WITHOUT CONSENT

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

28. 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.

29. 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.

30. GOVERNMENTAL IMMUNITY

The County, to the extent applicable, does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

31. NON-WAIVER

Failure by the County at any time to require the performance by the Provider of any of the provisions of this Agreement shall in no way affect the County's right hereunder to enforce the same, or shall any waiver by the County of any breach be held to be a waiver of any succeeding breach or a waiver of this Section.

32. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties with respect to the subject matter herein. There are no other representations, understandings or agreements between the parties with respect to such subject matter. This Agreement supersedes all prior agreements, negotiations, representations and proposals, written or oral. Notwithstanding the foregoing, all documents included in the Request for Qualifications and the qualifications statement submitted by the Provider, if applicable, including, but not necessarily limited to: General Conditions; Supplementary General Conditions; Scope of Work; Specifications; Addenda; Accepted Proposal; Notice to Proceed; Performance Bond; Payment Bond; MBE forms; Power of Attorney; Insurance Certificates; Approval by 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.

33. 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.

34. 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.

35. AMENDMENTS

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

36. NOTICES

(1) *Delivery of Notices.* Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by facsimile to the intended recipient at the address set forth below.

(2) *Effective Date of Notices.* Any notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by facsimile or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier.

(3) *Notice Address.* Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment or waiver of any provision of this Agreement shall be sent to:

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

ii. For the Provider: {Vendor Name}
{Vendor Address}
{Vendor City}, {Vendor State or Territory} {Vendor Zip}

37. 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 /
Deputy Clerk to the Board

By: _____
Chairman, Board of Commissioners

Date: _____

[SEAL]

{VENDOR NAME}

By: _____

Printed Name: _____

Title: _____

Date: _____

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

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

Date: _____

APPROVED AS TO FORM

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

Date: _____

EXHIBIT "A"
PROPOSAL/STATEMENT OF WORK