

## SCOPE OF WORK

### Spill Prevention Control and Countermeasures Plans for Brunswick County Public Utilities Sites

Provide engineering services to design SPCC plans for thirteen (13) Public Utilities sites located at the following locations primarily in Brunswick County, North Carolina:

King's Bluff Raw Water Plant (Bladen County)	Full
West Brunswick Regional Wastewater Treatment Facility	Full
211 Water Treatment Plant	Tier I
Booster Pump Station #6	Tier I
Booster Pump Station #9	Tier I
Northeast Wastewater Treatment Plant	Tier I
Ocean Isle Beach Wastewater Treatment Plant	Tier I
Sea Trail Wastewater Treatment Plant	Tier I
Southport Sandy Lane Lift Station	Tier I
Utilities Operations Center	Tier I
West Brunswick Mercer Mill/Oak Island Repump Site	Tier I
Booster Pump Station #8	Tier II
Northwest Water Treatment Plant	Tier II

It is anticipated the SPCC plan design process will include the following components:

#### INITIAL MEET WITH COUNTY STAFF

Meet with County staff to determine the sites requiring SPCC plans. The selected firm shall familiarize themselves with each SPCC plan location and shall determine the type of plan needed for each site. The selected firm shall work with NC DEQ staff to determine any issues that need to be addressed in the SPCC design process.

#### PRELIMINARY DRAFT PLANS

Prepare preliminary EPA SPCC plan draft phase documents. Prepared documents shall be in accordance with Section 311 (j)(1)(C) of the Clean Water Act as amended by the Oil Pollution Act of 1990, 40 CFR 112, consisting of location specific plans, preliminary drawings, and any necessary supporting documentation required for each location. Furnish five review copies of the preliminary draft phase documents and any other deliverables to the County for review.

#### REVISE DRAFT PLANS

Brunswick County will review the draft SPCC plans and documentation. Written comments will be provided for review by the selected firm. If necessary, a meeting will be scheduled to discuss any comments provided by the County.

#### FINALIZE PLANS AND DRAWINGS

After the approval of the preliminary draft documents, the selected firm will finalize the plans. The Consultant shall provide three (3) hard copies and one (1) electronic copy in .pdf format on USB stick of all documentation for each location.

**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 “County” or “Owner”), party of the first part and {Vendor Name}, (hereinafter referred to as “Engineer” or “Provider”), party of the second part.

**WITNESSETH:**

**1. SERVICES; FEES**

Provider agrees to perform the services (hereinafter referred to as the “Services”) in connection with the project (hereinafter referred to as the “Project”), as more fully set forth on Exhibit “A” and Exhibit “B” 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 AND TERMINATION**

The term of this Agreement begins one (1) business day after approval by the Brunswick County Board of Commissioners or execution of the Agreement by County, whichever is later (the “Effective Date”). Engineer shall complete the Services in accordance with the schedule set forth on Exhibit “B”, unless this Agreement is sooner terminated or amended as provided herein. The County may terminate this Agreement at any time without cause by giving written notice to Provider. The County may set the effective date of termination at a time up to thirty (30) days following notice to Engineer to allow Engineer ample time to complete tasks for which value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks and/or to assemble Project materials in orderly files. 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.

### **3. 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.

### **4. 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.

### **5. COMPENSATION**

The County agrees to pay Provider 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 sixty (60) 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, the 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, the 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.

### **6. 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 the 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 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 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 the Provider is responsible for all income taxes and social security payments thereon.

## **7. 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.

## **8. ACCOUNTING RECORDS**

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

## **9. PERMITS AND APPROVALS**

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. County shall be financially responsible for all necessary permits, licenses, approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

## **10. ENVIRONMENTAL CONDITIONS**

The parties acknowledge that Provider's scope of services does not include any services related to hazardous environmental conditions. County shall disclose to Provider the existence of all known and suspected hazardous substances, including, without limitation: asbestos; polychlorinated biphenyls (PCBs); petroleum; hazardous waste; or radioactive material located at or near the site where the Services are to be performed. If Provider discovers any undisclosed hazardous substances, or if investigative or remedial action or other professional services are necessary, Provider may, at its option and without liability for damages, suspend performance of the Services hereunder until County: (1) retains an appropriate specialist consultant or contractor to identify and, as appropriate, abate, remediate or remove the hazardous substances; and (2)

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

## **11. PROVIDER REPRESENTATIONS**

- a. 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;
- b. Provider has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
- c. 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;
- d. 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;
- e. Provider shall not violate any agreement with any third party by entering into or performing the Services under this Agreement;
- f. Provider has not engaged in corrupt, fraudulent or coercive practices in competing for or executing this Agreement;
- g. Provider will perform all Services in conformity with the specifications and requirements of this Agreement;
- h. 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);
- i. 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;
- j. 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;

- k. 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
- l. Provider shall ensure that whenever its employees or agents are on County property, they will strictly abide by all instructions and directions issued by the County with respect to rules, regulations, policies and security procedures applicable to work on the County's premises. Such rules, regulations, policies and security procedures shall include, but not be limited to: (i) not possessing any controlled substances; (ii) smoking only in designated smoking areas, if any; and (iii) not possessing weapons, except for weapons possessed by law enforcement officials.

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

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 Provider or its subcontractors or consultants. In the event that Provider causes damage to the 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.

## **13. 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 the County as a reference in response to requests for proposals and may identify County as a customer in presentations to potential customers.

## **14. NON-EXCLUSIVITY**

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

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

Provider hereby certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. § 147-86.81.

## **16. DEBARMENT**

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. Provider must notify County within thirty (30) days if debarred by any governmental entity during this Agreement.

## **17. INDEMNIFICATION**

Provider shall defend, 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 which may be brought or made against County or which County must pay and incur 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 Provider, its employees or agents. Provider further agrees to investigate, handle, respond to, defend and dispose of same at its sole cost and expense. 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.

## **18. 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.

## **19. 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.

## 20. REMEDIES

- a. **RIGHT TO COVER.** If Provider fails to meet any completion date or resolution time set forth, due to no fault of 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 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 the County's cost of obtaining or performing the Services exceed the amount due Provider, collect the amount due from Provider.
- b. **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.
- c. **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.
- d. **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.
- e. **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.

## 21. 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 the County, that all taxes and other charges are being properly paid.

## 22. 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.

### **23. NON-DISCRIMINATION IN EMPLOYMENT**

Provider shall not discriminate against any employee or applicant for employment because of race, ethnicity, gender, gender identity, sexual orientation, age, religion, national origin, disability, color, ancestry, citizenship, genetic information, political affiliation or military/veteran status, or any other status protected by federal, state or local law or other unlawful form of discrimination. Provider shall take affirmative action to ensure that applicants are employed and that employees are treated fairly during employment. In the event Provider is determined by the final order of an appropriate agency or court of competent jurisdiction to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Agreement may be cancelled, terminated or suspended in whole or in part by County, and Provider may be declared ineligible for further County agreements.

### **24. 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.

### **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**

- a. 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.
- b. 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.

- c. 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.

## **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 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**

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 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.

### **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 initial bid packet submitted by Contractor, if applicable, including, but not necessarily limited to: the Invitation to Bid; Notice to Bidders; Instructions to Bidders; General Conditions; Supplementary General Conditions; 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 Provider and County.

### **36. NOTICES**

- a. **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.

- b. **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.
- c. **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 }

[SIGNATURES APPEAR ON FOLLOWING PAGE]

**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 § 66-358.1 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: \_\_\_\_\_  
Frank Williams  
Chairman

[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.”

\_\_\_\_\_  
Julie A. Miller, Finance Director  
Brunswick County, North Carolina

APPROVED AS TO FORM

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

## **Consultant's Services**

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The Professional Services Agreement is supplemented to include the following agreement of the parties.

Consultant shall provide services in accordance with the Request for Qualifications, as applicable, and in accordance with the Basic and Additional Services as set forth below.

### **PART 1 – BASIC SERVICES**

#### *A1.01 Initial Meet With County Staff*

A. Consultant shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project and available data.
2. Advise Owner of any need for Owner to provide data or services which are not part of Consultant's Basic Services.
3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Consultant, including but not limited to mitigating measures identified in the environmental assessment.
4. Identify and evaluate alternate solutions available to Owner and, after consultation with Owner, recommend to Owner those solutions which in Consultant's judgment meet Owner's requirements for the Project.

B. Consultant's services under the Initial Meet With County Staff Phase will be considered complete on the date when the final documents to be delivered to the Owner have been determined.

#### *A1.02 Preliminary Draft Plans*

A. After meeting with the Owner, selection by Owner of a recommended solution and indication of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, and upon written authorization from Owner, Consultant shall:

1. Prepare Preliminary Draft documents consisting of SPCC plan form drafts, preliminary drawings, and any necessary supporting documentation required for each location.
2. If necessary, provide field surveys and topographic and utility mapping for SPCC design purposes. Utility mapping will be based upon information obtained from utility owners.
3. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
4. Furnish five review copies of the Preliminary Draft documents and any other deliverables to Owner.

- B. Consultant's services under the Preliminary Draft will be considered complete on the date when the Preliminary Draft documents, and any other deliverables have been delivered to Owner.

#### A1.03 *Revise Draft Plans*

- A. After acceptance by Owner of the Preliminary Design Phase documents:
  - 1. Within fourteen calendar days of receipt, Owner shall submit to Consultant any comments regarding the Preliminary Design Phase documents and any other deliverables.
  - 2. If necessary, a meeting will be scheduled to receive and discuss any comments provided by the Owner. The Consultant shall revise the Preliminary Draft documents and any other deliverables in response to Owner's comments, as appropriate, in accordance with the schedule outlined in Exhibit B.
- B. Consultant's services under the Revise Draft Plans Phase will be considered complete on the date when all revisions to the draft documents have been determined.

#### A1.04 *Finalize Plans and Drawings Phase*

- A. After acceptance by Owner of the Revised Draft Phase documents, and any other deliverables subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Consultant shall:
  - 1. Prepare final SPCC plans and drawings for each location that conform to Brunswick County Standards and EPA minimum design standards.
  - 2. Provide three (3) hard copies and one (1) electronic copy in .pdf format on USB stick of all documentation for each location, including technical criteria, written descriptions, and design data, as appropriate, for Owner's use in meeting requirements set forth by governmental authorities having jurisdiction over SPCC plans.
- B. Consultant's services under the Final Design Phase will be considered complete on the date when all appropriate documents have been delivered to Owner.

This is **EXHIBIT B**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Consultant for Professional Services** dated **Month Day, Year**.

**Payments to Consultant for Services**  
**Basic Services - Lump Sum**

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The Professional Services Agreement is supplemented to include the following agreement of the parties.

*Compensation for Basic Services - Method of Payment*

A. Owner shall pay Consultant for Basic Services as follows:

1. A Lump Sum amount based on the following estimated distribution of compensation:

	<u>Amount</u>	<u>Duration</u>
a. Initial Meet With Staff Phase	\$ _____	_____ days
b. Preliminary Draft	\$ _____	
c. Revised Draft Phase	\$ _____	_____ days
d. Finalize Plans and Drawings Phase	\$ _____	_____ days
Basic Services Total	\$ _____	_____ days

2. Consultant may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.
3. The Lump Sum includes compensation for Consultant's services and services of Consultant's Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.
4. The portion of the Lump Sum amount billed for Consultant's services will be based upon Consultant's estimate of the percentage of the total services actually completed during the billing period.
5. The date for project completion shall be determined by adding the above noted Total Duration, also known as the "Time for Completion" to the Effective Date of the agreement.
6. Effective Date of the Agreement.