

SCOPE OF WORK

Testing Residential and Commercial Backflow Prevention Assemblies

Brunswick County is requesting proposals for the testing of residential and commercial backflow prevention assemblies countywide. The County has approximately 10,000 customers that have testable backflow prevention assemblies. Brunswick County notifies all customers that they are required to have their backflow assemblies tested once every other year as per the County Cross-Connection Program. Although each customer may employ a certified backflow assembly tester of their own, Brunswick County offers this service which will be performed by the selected Contractor. It is anticipated, but not guaranteed that approximately 5,000-6,000 backflow prevention assembly tests will need to be performed annually by the selected Contractor.

Work orders (Exhibit B) will be provided at the beginning of each month and are expected to be completed by the end of the month. The number of tests is expected to vary from approximately 250 to 600 per month. Monthly, copies of completed test reports and invoices must be provided to the Cross-Connection Coordinator designated by Brunswick County for review and approval. Payment will be made per each test performed regardless of pass/fail result. The price provided in the Form of Proposal is to be for testing of residential and commercial assemblies regardless of pipe diameter size, location, and type of assembly.

In the event of a failed test, the Contractor is to notify the customer via a Brunswick County-supplied door hanger (Exhibit C).

To be considered, bidders must provide the following information along with Exhibit A "Form of Proposal":

- Copy of current North Carolina Rural Water Association (NCRWA) Backflow Tester Certificate. *Please note that Cross-Connection/ORC Certification does not satisfy this requirement. All Contractor personnel performing tests must have the required certification.*
- Test kit(s) brand, model, and serial number.
- Test kit(s) current calibration certificates as confirmation that the kit(s) are calibrated annually. *Calibration on all test kits must be performed annually by a qualified instrumentation calibration company.*

**EXHIBIT 1
FORM OF AGREEMENT**

NORTH CAROLINA

SERVICES AGREEMENT

BRUNSWICK COUNTY

THIS 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”), party of the first part, and {Contractor Name}, (hereinafter referred to as “Contractor”), party of the second part.

WITNESSETH:

1. SERVICES; FEES

The services to be performed under this Agreement (hereinafter referred to collectively as “Services”) and the agreed upon fees for said Services are 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 AND TERMINATION

This Agreement begins upon issuance of a Notice of Award by Brunswick County and continues in effect for an initial term of two (2) years, unless sooner terminated as provided herein. This Agreement may be extended for an additional one (1) year term by mutual written agreement of the parties. The County may terminate this Agreement at any time without cause by giving sixty (60) days’ written notice to Contractor. As soon as practicable after receipt of a written notice of termination without cause, Contractor 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. Contractor 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 Contractor if Contractor 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 Contractor, or has a receiver or trustee appointed for substantially all of its property, or if Contractor allows any final judgment to stand against it unsatisfied for a period of forty-eight (48) hours.

3. 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 Contractor 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.

4. 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, Contractor 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 thirty (30) 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 Contractor, the County shall inform Contractor in writing of the disputed charges. Once the dispute has been resolved, Contractor shall re-invoice County for the previously disputed charges, and, per any resolution between County and Contractor, the County shall pay those charges in full at that time. No advance payment shall be made for the Services to be performed by Contractor under this Agreement.

5. INDEPENDENT CONTRACTOR

Both County and Contractor agree that Contractor 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. Contractor represents that it has or will secure, at its own expense, all personnel required in performing the Services under this Agreement. Accordingly, Contractor 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. Contractor 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 Contractor is, according to Internal Revenue Service guidelines, an employee subject to withholding and social security contributions, then Contractor hereby acknowledges that all payments hereunder are gross payments, and the Contractor is responsible for all income taxes and social security payments thereon.

6. CONTRACTOR REPRESENTATIONS

- a. Contractor 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. Contractor 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 Contractor to enter into and perform its obligations under this Agreement;

- d. In connection with Contractor'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. Contractor shall not violate any agreement with any third party by entering into or performing the Services under this Agreement;
- f. Contractor will perform all Services in conformity with the specifications and requirements of this Agreement;
- g. The Services provided by Contractor 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);
- h. Contractor 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;
- i. Contractor 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
- j. Contractor 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.

7. DAMAGE TO EQUIPMENT, FACILITIES, PROPERTY OR DATA

Contractor 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 Contractor or its subcontractors. In the event that Contractor causes damage to the County's equipment or facilities, Contractor 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.

8. NON-ENDORSEMENT AND PUBLICITY

County is not endorsing Contractor or its Services, and Contractor 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 Contractor 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.

9. NON-EXCLUSIVITY

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

10. DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL

Contractor 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.

11. DEBARMENT

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

12. INDEMNIFICATION

Contractor 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 Contractor, its employees or agents. Contractor further agrees to investigate, handle, respond to, defend and dispose of same at its sole cost and expense. Contractor shall be fully responsible to County for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by it. This Section shall survive any expiration or termination of this Agreement.

13. INSURANCE

Contractor shall procure and maintain 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. Contractor 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. Contractor 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.

14. WORKERS' COMPENSATION

To the extent required by law, Contractor 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 Contractor is excluded from the requirements of such Act and does not voluntarily carry workers' compensation coverage, Contractor shall carry or cause its employees to carry adequate medical/accident insurance to cover any injuries sustained by its employees or agents while fulfilling Contractor's obligations under this Agreement.

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

15. REMEDIES

- a. **RIGHT TO COVER.** If Contractor 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 Contractor 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 Contractor and, should the County's cost of obtaining or performing the Services exceed the amount due Contractor, collect the amount due from Contractor.
- b. **RIGHT TO WITHHOLD PAYMENT.** County reserves the right to withhold any portion, or all, of a scheduled payment if Contractor 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 Contractor, notwithstanding anything to the contrary in this Agreement, Contractor 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.

16. TAXES

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

17. HEALTH AND SAFETY

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

18. NON-DISCRIMINATION IN EMPLOYMENT

Contractor 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. Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated fairly during employment. In the event Contractor 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 Contractor may be declared ineligible for further County agreements.

19. COMPLIANCE WITH E-VERIFY PROGRAM

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

20. 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.

21. OWNERSHIP OF WORK PRODUCT

Should Contractor's performance under this Agreement generate documents or other work product that are specific to the Services hereunder, such documents or work product shall become the property of County and may be used by County on other projects without additional compensation to Contractor.

22. 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.

23. 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.

24. 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.

25. 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.

26. NON-WAIVER

Failure by County at any time to require the performance by Contractor 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.

27. 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.

28. 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.

29. 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.

30. 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 Contractor and County.

31. 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 Contractor: {Contractor Name}
{Contractor Address}
{Contractor City}, {Contractor State or Territory}
{Contractor Zip}

[SIGNATURES APPEAR ON FOLLOWING PAGE]

32. 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]

{CONTRACTOR NAME}

By: _____

Printed Name: {Contractor Signatory Name}

Title: {Contractor 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

EXHIBIT "A"

FORM OF PROPOSAL

Description	Qty. (Each)	Unit Price (\$/Each)	Total Amount Bid (Quantity x Unit Price)
Perform Backflow Prevention Assembly Test as per included Request for Proposals and Scope of Work	6,000	\$ _____	\$ _____

THE ESTIMATED QUANTITY SHOWN IS FOR BIDDING PURPOSES ONLY. PAYMENT WILL BE MADE BASED ON THE NUMBER OF TESTS PERFORMED.

Name of Company _____

Mailing Address _____

Phone No. _____

E-Mail Address _____

Bid Submitted By: _____

(Printed Name)

(Signature)

Title: _____

Date: _____



Exhibit "B"

BRUNSWICK COUNTY PUBLIC UTILITIES
CROSS-CONNECTION
 PO Box 249
 Bolivia, NC 28422
 Phone: 910-253-2683

Backflow Prevention Assembly
Test Report

Planting Address

Test Due:
 Device #:

Service Address

Address:
 City:
 State:
 Zip:

Serial #:
 Manufacturer:
 Model:
 Type:
 Size:

Backflow Device Located M L R

Hazard #: 1 of 1

	Reduced Pressure Principle Assembly			RP	DCDA
	Double Check Valve Assembly			DC	RPDA
	Check Valve #1	Check Valve #2	Relief Valve	DCPA	Air Gap
				SVB	AVB
				PVB/SVB	
Initial	Leaked	Leaked	Did not Open	AIR INLET	
Test	Closed Tight	Closed Tight	Opened At PSID	Did Not Open	
	Held at PSID	Held at PSID		Opened at PSID	
Repairs	Cleaned	Cleaned	Cleaned	CHECK VALVE	
	Replaced	Replaced	Replaced	Leaked	
Details				Held at PSID	
				Cleaned	
				Replaced	
				AIR INLET	
				Opened at PSID	
Final				CHECK VALVE	
Test	Held at PSID	Held at PSID	Opened at PSID	Held at PSID	
Buffer =				Line Pressure	
Comments				Held Backpressure	
				#2 Shutoff	
				Relief Valve Exercised	
The above report is certified to be true.					

	Date/Time	Tester	Signature	Tester #	Test Kit	Passed	Failed
Initial Test						<input type="checkbox"/>	<input type="checkbox"/>
Repairs						<input type="checkbox"/>	<input type="checkbox"/>
Final Test						<input type="checkbox"/>	<input type="checkbox"/>

Exhibit "C"



Brunswick County Public Utilities
P. O. Box 249, Bolivia, NC 28422
Utilities Operations Center
250 Grey Water Road, Supply, NC

Monday – Friday: (910) 253-2657
After Hours: (910) 755-7921
(910) 371-3490

(Date/Time)

Dear Customer:

This is to inform you that your backflow prevention assembly has failed its test for this year. In order to continue using water for irrigation or commercial purposes, you will need to have your assembly repaired and retested. Brunswick County can provide you with a list of certified contractors who can assist you with your repairs. Please contact Cody Knox, Cross-Connection Control Coordinator with Brunswick County Public Utilities, with any questions or concerns you may have.

Office: 910-253-2683

Email: cody.knox@brunswickcountync.gov