



# **REQUEST FOR PROPOSAL**

**FOR**

# **POST DISASTER AERIAL MOSQUITO CONTROL**

**ISSUE DATE: July 13, 2021**

**DUE DATE: July 20, 2021**

## **1. INTRODUCTION**

Brunswick County is soliciting proposals for aerial adulticide of mosquitoes for the County and its municipalities. The contractor is expected to be highly knowledgeable in Federal Aviation Administration regulations, guidelines, and operating policies. The contractor will serve as an advisor and support the County through a disaster recovery effort.

## **2. PROJECT OVERVIEW**

Brunswick County, North Carolina is located in the southernmost region of the state along the NC/SC border. The County is bordered on the west by South Carolina, the north by Columbus County, the east by New Hanover County, and the south by the Atlantic Ocean. The County is one of the largest counties in the state with a land area of approximately 856 square miles. The County has 19 municipalities. The last known fulltime population of Brunswick County is 142,820; however, during the summer this number swells to approximately 250,000. The safety of residents during and after a disaster is a top priority for Brunswick County Government. Part of ensuring the safety of citizens in the aftermath of a disaster is dependent upon timely mosquito suppression applications.

In the past, Brunswick County has been hit by tropical storms and hurricanes. Each of these resulted in minor damages, while some resulted in major damages to the County and its infrastructure. The aftermath of the storms, and the mosquito populations associated with them has overwhelmed the County in the past.

Dependent upon the storm and its impacts, the County Health Director may consider mosquitoes a threat to emergency workers, thereby significantly hampering response and recovery efforts. The threat may be caused by a significant increase in the mosquito population and/or the change in biting species.

Additionally, the County Health Director considers the potential for disease transmission and human exposure to disease carrying mosquitoes based on the detection of arboviral diseases in sentinel organisms in the impacted area prior to the storm event. This coupled with post storm verification from medical facilities within the affected area that an increase in the general public's exposure to mosquitoes has directly resulted in secondary infections, especially among those with weakened immune systems such as the elderly, the very young or the sick.

Because of the above considerations, Brunswick County is seeking to contract with a firm to perform aerial mosquito adulticide applications, on an as-needed basis in the aftermath of a disaster.

### 3. SCOPE OF WORK

Brunswick County has established the following objectives for this project. Any changes to the specifications or Scope of Work will be made in the form of an Addendum to this Request for Proposals and will be supplied to all prospective contractors and posted on the Brunswick County website. Brunswick County may negotiate and refine the final Scope of Work with the selected contractor. Brunswick County reserves the right to negotiate additional services with the selected contractor at any time after the initial contract award.

The Scope of Work for this contract consists of aerially treating approximately 323,000 acres of populated area in Brunswick County for mosquitoes. The actual treatment area may fluctuate based on the immediate emergency response needs of the County. The services to be performed will be on an as-needed basis during a disaster recovery period. The contract award does not authorize notice to proceed. If County requires services under the contract, the contract shall be activated under authority of the Local Health Director and upon issuance of a Notice to Proceed by Brunswick County. Activation will be based upon criteria found in the FEMA APPENDIX G: MOSQUITO ABATEMENT and in conjunction with the Brunswick County Mosquito Control Supervisor. Brunswick County will only pay for services performed after issuance of a Notice to Proceed.

#### General Specifications:

- The adulticide product to be used must be Dibrom concentrate (87.4% A.I.) containing 13.2 pounds of Naled per gallon at a rate of 0.66 ounces per acre. If United States Environmental Protection Agency (US EPA) regulations change during the contract term, the County reserves the right to change the product/rate to be used not exceeding the contract value.
- The contractor shall provide the adulticide product for this contract.
- The contractor shall provide a written summary of years of experience with Dibrom concentrate (87.4% A.I.) and experience during emergency response applications.
- The contractor shall provide the cost per acre for this service. The county will provide a map with acreage prior to activation of the contract. There will be no adjustment in cost due to labor rates, transportation or materials costs, except as provided by the Consumer Price Index (CPI) adjustment. In subsequent terms, an annual price change based on the Bureau of Labor Statistics, Consumer Price Index escalation may be considered on the anniversary of the term. Price changes should be based on the 12-month period ending in February preceding the adjustment date and not exceed 100% of the CPI. Proposers shall provide a proposed price schedule for all requested items 30 days prior to the renewal date. Proposals will be subject to the county's approval.

- All products shall be handled and applied by the contractor in strict accordance with label instructions and must meet all local, state and federal regulations, including any environmental concerns.
- The contractor shall be onsite within seventy-two (72) hours of the Notice to Proceed issued by Brunswick County.
- Brunswick County mosquito control staff shall have access to the contractor base of operations to review and certify contract specifications are being met.
- Contractor must have a North Carolina Aerial Pesticide Applicator's license. The contractor will provide a copy of the North Carolina Aerial Pesticide Applicator's license to Brunswick County.
- All North Carolina Department of Agriculture's (NCDA&CS) aerial calibration and certification requirements must be met. The contractor shall provide to Brunswick County which North Carolina airport will be used for the NCDA&CS inspections. A copy of the inspection report must be submitted to Brunswick County.
- The contractor shall conduct all spray missions from an airport within thirty (30) miles of the Brunswick County Mosquito Control Office located at 179 March 9, 1764 Drive NE, Bolivia, NC.
- The contractor must comply with all federal, state, territorial and local laws, ordinances and regulations concerning vector control.
- The federal laws applicable to and incorporated in this RFP are 2 C.F.R.200.326 as described in Appendix II to Part 200 – Contract Provisions for non-Federal Entity Contracts Under Federal Awards, FEMA Public Assistance Program and Policy Guide and any other federal rule, regulation or policy relating to mosquito abatement.
- The County will conduct all pre- and post-trapping data analysis for the aerial application.

Spray Schedule:

- The contractor shall notify Brunswick County of the flight(s) schedule and path(s) before work begins. To maximize abatement, spraying shall be done at peak target mosquito activity and when environmental conditions exist that are in accordance with label instruction. Flight times must be preapproved by Brunswick County.
- All adulticide spray missions will be conducted in the evenings between dusk and no later than 10:30 pm.
- Services shall be completed within a maximum of four (4) days should there be no adverse weather conditions.
- The contractor will be solely responsible for notifications and coordination of all operations with Federal Aviation Administration (FAA), initially for approval and

thereafter on a daily basis. Contractor must comply with all FAA rules and regulations.

- After every spray mission, the contractor must provide Brunswick County with the following information:
  - The flight path, date and times that each application was made.
  - Provide a global positioning system (GPS) map of the treated area in the format of a shapefile, congruent with Arch map or ESRI.

#### Special Aircraft Equipment:

- The following equipment must be present on the aircraft for monitoring location(s) of spray applications and the amount of insecticide applied:
  - A GPS system capable of automatically recording spray swath width and length for location(s) of treatment.
  - A device capable of automatically measuring and recording application rates and providing a printed record of this application shall be used to monitor the insecticide amounts being sprayed.
  - Weather equipment capable of automatically measuring wind speed and direction at ground level and actual spray elevation.
  - Flight guidance with offset technologies.
  - Aircraft must be equipped with spray optimization and guidance software that includes real-time meteorological data at the release height to optimize the treatment.
  - All aircraft shall have Micronair AU4000 Atomiser's or equivalent. The contractor shall provide the equivalent rotary atomizer specifications on all aircraft to be used.
- The contractor's planes must be multi-engine fixed winged aircraft equipped with ultra-low volume (ULV) dispersal of insecticides and certified to fly in congested air space and meet all FAA requirements.
- The contractor shall have an approved Congested Area Plan (CAP).
- Contractor must be FAA Part 137 compliant and exempt from dumping the load (fuel or insecticide) over congested areas.
- Brunswick County will supply the contractor with spray maps of the areas to be treated, the calculated number of acres within these spray block and any special provisions. Contractor may only spray in approved areas denoted on spray maps provided by Brunswick County. The date of commencement and date of completion of these services will be approved by Brunswick County.

Pilots:

- Pilots shall be equipped with at least military grade ANVIS-6 night vision goggles for use on all night time spray mission.
- Pilots must have a minimum of one thousand (1,000) hours as a pilot in command of fixed wing aircraft and five hundred (500) hours of mosquito adulticiding flight experience.

#### 4. PROPOSAL DEADLINE AND SUBMISSION REQUIREMENTS

4.1 All proposals must be received by Brunswick County by 4:00 pm ET on July 20, 2021.

4.2 All proposals must include the following:

- The proposal title and due date and time.
- A cover letter/letter of intent on contractor's letterhead, signed by an authorized representative of contractor, expressly agreeing to Brunswick County's terms and conditions contained in this Request for Proposal and its attachments.
- The contractor's name or company name, address and telephone number.
- The name, address and telephone number of company representatives with the authority to answer questions or provide clarification regarding the proposal's contents.
- A list of key personnel to be assigned to perform the services and each person's qualifications. Personnel should possess relevant and diverse knowledge and expertise in their respective fields.
- The names of any and all subcontractors expected to perform services in connection with the project and their qualifications. Include the estimated percentage of work that each subcontractor is expected to perform. **Brunswick County reserves the right to accept or reject any proposed subcontractor.**
- A detailed Form of Proposal in substantially the form attached hereto and incorporated herein by reference. The aerial mosquito control adulticide application shall be compensated at a price per acre rate.
- A full description of services and processes that will be implemented and ongoing to complete the project in the most efficient, timely and comprehensive manner. The description should include a detailed implementation plan and project schedule outlining the primary tasks, estimated hours, responsibility, major deliverables and timing, including an estimated start date. Additional project deliverables are set forth below.

- Any assistance requirements from Brunswick County.
- A detailed company description and history, including the areas of expertise related to the project.
- A list of at least five (5) similar projects, including the project approach, results and status. References for each of these five (5) similar projects including the contact person, address, email address and telephone number.
- The contractor shall provide a description of the company's ability to handle multiple contractual obligations in the event of a regional or statewide disaster involving several public entity clients under contract for similar support.
- The contractor shall provide a written emergency response action plan identifying action steps in the event of an emergency/accident or a chemical release/dump.
- The contractor shall provide with the proposal and at the time of activation of the contract a list of the individuals that are North Carolina Aerial Pesticide Applicators licensed.
- The contractor shall provide the name of the GPS system available for use.
- The contractor shall provide the name of the system that will be used to monitor the insecticide amounts being sprayed.
- The contractor shall provide the name of the system that will be used to measure wind speed, direction at ground level and actual spray elevation.
- The contractor shall provide the name of the flight guidance system that will be used.
- The contractor shall provide the name of the spray optimization and guidance software equipped on the aircraft that will be used.
- The contractor shall provide the number of multi-engine fixed winged aircraft equipped with ultra-low volume (ULV) dispersal of insecticides that are available for use.
- The contractor shall provide the number of planes they expect to provide if awarded the contract, and it is activated for the entire 323,000 acres.
- The contractor shall provide the number of sets of military grade ANVIS-6 night vision goggles that are available for use.
- The contractor shall provide the number of pilots available for these services.
- Certificate of Insurance as evidence that contractor meets the County's Minimum Insurance Requirements attached hereto.

Contractors shall provide documentation sufficient to clearly demonstrate that their firm meets or exceeds the requirements set forth in this Request for Proposal. Failure to provide such documentation may result in the proposal being deemed non-responsive.

In addition to the foregoing, Brunswick County reserves the right to request financial information for any contractor, in order to support the viability of the contractor.

Those interested should submit one (1) copy of the proposal. Proposals may be mailed, hand delivered or emailed to the following:

**Mail:** Brunswick County Operation Services  
Attn: Abram Young  
PO Box 249  
179 March 9, 1764 Drive NE  
Bolivia, NC 28422

**Hand Delivery:** Brunswick County Operation Services  
Attn: Abram Young  
179 March 9, 1964 Drive NE  
Bolivia, NC 28422

**Email:** [abram.young@brunswickcountync.gov](mailto:abram.young@brunswickcountync.gov)

**Proposals must be received no later than 4:00 pm ET on July 20, 2021. Brunswick County will not be responsible for the failure of any mail or delivery service to deliver a proposal prior to the stated date and time. Regardless of the manner of submission, any proposal received after the stated date and time will not be considered. Incomplete proposals or proposals inconsistent with the required format may be disqualified from consideration.**

## **5. EXPENSES**

Brunswick County will not be responsible for any costs or expenses incurred by the contractor in submitting a proposal or for any other activities associated with this procurement. Further, Brunswick County reserves the right to cancel the work described herein prior to issuance and acceptance of any contractual agreement even if the Board of Commissioners has formally accepted the recommendation.

## **6. RIGHT TO SUBMITTED PROPOSALS AND SUPPORTING DOCUMENTS**

All written correspondence, proposals and supporting documents received by Brunswick County in connection with this Request for Proposal will become the property of Brunswick County. Brunswick County reserves the right to use any ideas in a proposal or supporting documents regardless of whether the proposal is selected.



## **7. QUESTIONS/ADDENDA**

Questions or requests for further information regarding this Request for Proposal shall be submitted in writing to the attention of Abram Young, Project Coordinator, P.O. Box 249, Bolivia, NC 28422 or by email to [abram.young@brunswickcountync.gov](mailto:abram.young@brunswickcountync.gov) no later than 4:00 pm ET on July 16, 2021. A copy of all questions, further clarifications and answers will be made in the form of an Addendum to this Request for Proposal and will be provided to all contractors and posted on the County's website.

Contractors are expressly prohibited from contacting any Brunswick County official or employee regarding this Request for Proposal, except in the manner noted in this section. A violation of this provision is grounds for the immediate disqualification of the contractor.

## **8. FORM OF AGREEMENT**

In addition to the terms and conditions contained in this Request for Proposal, by submitting a proposal, contractor, if selected, agrees to enter into and be bound by the provisions of a 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 Proposal and the terms of the Services Agreement conflict, the terms of the Services Agreement shall prevail. No work shall commence until an agreement has been fully executed by the parties. Unless otherwise approved by Brunswick County, the contractor must begin performing services within thirty (30) days after an agreement is signed.

## **9. INSURANCE**

Contractor, and any of its approved subcontractors, must procure and maintain in full force and effect during the term of any agreement with Brunswick County, or the renewal of any agreement with Brunswick County, the insurance coverage set forth in the Minimum Insurance Requirements attached hereto and incorporated herein by reference.

In the event contractor, or any of its approved subcontractors, fails to maintain insurance as outlined herein, Brunswick County may, at its option, obtain the required insurance at the expense of the contractor.

## **10. PROPOSAL CONDITIONS**

10.1 Submission of a proposal indicates explicit acceptance by the contractor of the terms and conditions contained in this Request for Proposal and any attachments hereto. Brunswick County reserves the right to reject, without prejudice or

explanation, any or all proposals. Brunswick County reserves the right to waive informalities or to amend the specifications of this Request for Proposal and request new proposals at any time prior to the award of a contract. All decisions of Brunswick County shall be final and binding.

10.2 The contractor shall supply the following:

- A single point of contact through proposal acceptance. Brunswick County will communicate solely through this contact regarding all issues relating to the proposal through acceptance.
- A single Project Manager, after acceptance, dedicated and available for the entire duration of the project. The Project Manager may only be replaced upon approval by, or at the request of Brunswick County. At a minimum, the contractor's Project Manager shall be responsible for oversight and management of the Scope of Work as outlined above.

## **11. CONSIDERATION OF WITHDRAWAL**

### **11.1 Withdrawal**

After submission, no proposal may be withdrawn by the contractor for a period of ninety (90) days following the opening date. Until that time, the proposal will remain firm and irrevocable and any required bond will be forfeited.

## **12. AWARD**

Brunswick County reserves the right to award a contract, based on initial proposals received from contractors, without discussion and without conducting further negotiations. Brunswick County may also, in its sole discretion, initiate further discussions with contractors that it deems to fall within a competitive range. Award shall be made to the contractor who Brunswick County deems submits the best overall proposal. Brunswick County shall not be deemed to have finally selected a contractor until a contract has been successfully negotiated and signed by both parties. The contract term is intended to be a one (1) year with four (4) auto-renewal options, for a total maximum contract term of five (5) years.

## **13. NON-DISCLOSURE OF INFORMATION**

Contractor and its agents shall treat all data and information associated with this Request for Proposal, including, without limitation, the Request for Proposal, all reports,

recommendations, specifications and other data as confidential. Contractor and its agents shall not disclose or communicate any information to a third party or use such information in advertising, propaganda and/or in another job or jobs, unless prior written consent is obtained from Brunswick County.

**14. NORTH CAROLINA PUBLIC RECORDS**

All proposals received by Brunswick County shall be considered public information subject to lawful disclosure under North Carolina Public Records Law. Any proposal material deemed by the contractor to constitute either proprietary or trade secret material shall be designated as such, and each page or section of a page containing such material shall be so marked by the contractor. In addition, it shall be the sole responsibility of the contractor to demonstrate to a court of competent jurisdiction that their designation is proper. Brunswick County shall not make public any material determined by a court of competent jurisdiction to be proprietary or trade secret. Contractor hereby agrees to indemnify and hold Brunswick County harmless from any and all claims, suits, damages, penalties or expenses arising out of contractor's proprietary or trade secret designation.

**15. ADDITIONAL SERVICES**

Brunswick County reserves the right to negotiate additional services with contractor at any time after the initial contract award.

**16. DISCLAIMER OF FEDERAL GOVERNMENT OBLIGATIONS OR LIABILITY**

If applicable, the contractor, and any subcontractors, acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of a contract in connection with this Request for Proposal, absent the express written consent by the Federal Government, the Federal Government is not a party to this proposal or any subsequent agreement and shall not be subject to any obligations or liabilities to the contractor, or any other party (whether or not a party to this proposal or subsequent agreement) pertaining to any matter resulting from the proposal or subsequent agreement. It is further agreed that this clause shall be included in each subcontract and shall not be modified, except to identify the subcontractor who will be subject to its provision.

## **17. FEDERAL UNIFORM GUIDANCE**

If funding for this procurement is from a federal source, whether in whole or in part, the following provisions also apply, pursuant to 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II (as applicable):

- Equal Employment Opportunity (41 C.F.R. Part 60)
- Davis-Bacon Act (40 U.S.C. 3141-3148)
- Copeland “Anti-Kickback” Act (40 U.S.C. 3145)
- Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)
- Clean Air Act (42 U.S.C. 7401-7671q)
- Federal Water Pollution Control Act (33 U.S.C. 1251-1387)
- Debarment and Suspension (Executive Orders 12549 and 12689)
- Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)
- Procurement of Recovered Materials (2 C.F.R. § 200.322)
- Record Retention Requirements (2 C.F.R. § 200.324)

## **18. ENERGY CONSERVATION REQUIREMENTS**

Pursuant to 42 U.S.C. 6321 et seq., the contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

## **19. AMERICANS WITH DISABILITIES ACT (ADA)**

The contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC § 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; 49 USC § 5301(d); and any implementing requirements of the Federal Government. These regulations provide that no handicapped individual, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this proposal.

## **20. PRIVACY ACT**

The contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. The contractor agrees to obtain the express consent of the Federal Government before the contractor or its employees operate a system of records on behalf of the Federal Government. The contractor understands that the requirements of the Privacy

Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

The contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed, in whole or in part, with Federal assistance.

**21. DRUG-FREE WORK PLACE**

The contractor shall adhere to the Federal Drug Free Workplace requirements as outlined in 2 C.F.R. § 182. Contractor shall make good faith efforts to maintain a drug-free workplace, publish a workplace statement and establish drug-free awareness programs for employees. Contractor should take action concerning employees who are convicted of violating drug statutes in the workplace. Contractor shall contact Brunswick County if contractor cannot adhere to the requirements of the Federal Regulations noted above. Failure to comply with said provisions shall be considered a breach of contract.

**22. CERTIFICATION**

Contractor hereby certifies that it has carefully examined this Request for Proposal and all attachments hereto, that it understands and accepts all terms and conditions and the scope of work, and that it has knowledge and expertise to complete the project. By submitting a proposal, contractor certifies that its proposal is in all respects fair and without collusion or fraud.

**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 {Vendor Name}, (hereinafter referred to as “Provider”), 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**

The term of this Agreement begins on {Effective Date} (the “Effective Date”) and continues in effect until {Expiration Date}, unless sooner terminated as provided herein. The initial term shall be followed by four (4) successive options to renew for one (1) year each. Each renewal option is to be exercised automatically unless notice of termination is given by either party ninety (90) days prior to the end of the term. 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, Provider shall submit a statement to the County showing in detail the Services 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. 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.

#### **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, 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 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 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.

#### **5. 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.

#### **6. PROVIDER REPRESENTATIONS**

- (1) Provider is a duly organized entity or corporation qualified to do business and in good standing under the laws of the State of North Carolina;
- (2) Provider has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
- (3) No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for Provider to enter into and perform its obligations under this Agreement;
- (4) Provider shall not violate any agreement with any third party by entering into or performing the Services under this Agreement;

- (5) Provider will perform all Services in conformity with the specifications and requirements of this Agreement;
- (6) 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);
- (7) 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;
- (8) 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
- (9) 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.

**7. COMPLIANCE WITH FEDERAL LAWS, REGULATIONS, AND EXECUTIVE ORDERS**

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the Agreement. Provider will comply with all applicable federal laws, regulations, executive orders, FEMA policies, procedures, and directives.

**8. 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. 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.

**9. 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.

**10. NON-EXCLUSIVITY**

Provider acknowledges that County is not obligated to contract solely with Provider



for the Services covered under this Agreement.

#### **11. 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.

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

Contractors or Providers who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

#### **13. PROCUREMENT OF RECOVERED MATERIALS**

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

#### **14. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES**

- (1) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds

for Covered Telecommunications Equipment or Services (Interim), as used in this clause –

(2) *Prohibitions.*

- i. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
- ii. Unless an exception in paragraph (c) of this clause applies, Provider and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
  - a. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
  - b. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
  - c. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
  - d. Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(3) *Exceptions.*

- i. This clause does not prohibit contractors from providing –
  - a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
  - b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- ii. By necessary implication and regulation, the prohibitions also do not apply to:
  - a. Covered telecommunications equipment or services that:
    1. Are *not used* as a substantial or essential component of any system; *and*
    2. Are *not used* as critical technology of any system.

- b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(4) *Reporting requirement.*

- i. In the event Provider identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or Provider is notified of such by a subcontractor at any tier or by any other source, Provider shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
- ii. Provider shall report the following information pursuant to paragraph (d)(1) of this clause:
  - a. Within one (1) business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
  - b. Within ten (10) business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, Provider shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(5) *Subcontracts.* Provider shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

## **15. DOMESTIC PREFERENCE FOR PROCUREMENTS**

As appropriate, and to the extent consistent with law, Provider should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

*Produced in the United States* means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

*Manufactured products* mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride

pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

## **16. ACCESS TO RECORDS**

The following access to records requirements apply to this Agreement:

- (1) Provider agrees to provide County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of Provider which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) Provider agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) Provider agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the Agreement.
- (4) In compliance with the Disaster Recovery Act of 2018, County and Provider acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

## **17. DHS SEAL, LOGO, AND FLAGS**

Provider shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. Provider shall include this provision in any subcontracts.

## **18. SUSPENSION AND DEBARMENT**

- (1) This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such Provider is required to verify that none of the Provider's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) Provider must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by County. If it is later determined that Provider did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to FEMA and County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## **19. 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 and of persons either directly or indirectly employed by it. This Section shall survive any expiration or termination of this Agreement.

## **20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

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

## **21. NO OBLIGATION BY FEDERAL GOVERNMENT**

The federal government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-federal entity, Provider, or any other party pertaining to any matter resulting from the Agreement.

## **22. MINORITY BUSINESS ENTERPRISES**

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

## **23. INSURANCE**

Provider 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. 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.

## 24. 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.

## 25. REMEDIES

- (1) **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.
- (2) **RIGHT TO WITHHOLD PAYMENT.** County reserves the right to withhold any portion, or all, of a scheduled payment if Provider fails to perform under this Agreement until such breach has been fully cured.
- (3) **SETOFF.** Each party shall be entitled to set off and deduct from any amounts owed to the other party pursuant to this Agreement all damages and expenses incurred or reasonably anticipated as a result of the other party's breach of this Agreement.
- (4) **OTHER REMEDIES.** Upon breach of this Agreement, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently in addition to any other available remedy.
- (5) **NO SUSPENSION.** In the event that County disputes in good faith an allegation of breach by Provider, notwithstanding anything to the contrary in this Agreement, Provider agrees that it will not terminate this Agreement or suspend or limit any Services or warranties, unless: (i) the parties agree in writing; or (ii) an order of a court of competent jurisdiction determines otherwise; provided, however, this dispute period shall be limited to ninety (90) days.

## 26. 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.

## **27. 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.

## **28. EQUAL EMPLOYMENT OPPORTUNITY**

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

- (1) Provider will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Provider will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Provider agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) Provider will, in all solicitations or advertisements for employees placed by or on behalf of Provider, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) Provider will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Provider's legal duty to furnish information.
- (4) Provider will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Provider's commitments under this section and shall post copies of the notice in conspicuous places available to employees

and applicants for employment.

- (5) Provider will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) Provider will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of Provider's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and Provider may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) Provider will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Provider will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

*Provided*, however, that in the event a Provider becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, Provider may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract



modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

### **29. COMPLIANCE WITH THE COPELAND "ANTI-KICKBACK" ACT**

- (1) *Provider*. If applicable, Provider shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Agreement.
- (2) *Subcontracts*. If applicable, Provider or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (3) *Breach*. A breach of the Agreement clauses above may be grounds for termination of the Agreement, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

### **30. COMPLIANCE WITH THE DAVIS-BACON ACT (AS AMENDED)**

- (1) If applicable, all transactions regarding this Agreement shall be done in compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) and the requirements of 29 C.F.R. Part 5, as may be applicable. Provider shall comply with 40 U.S.C. §§ 3141-3144 and 3146-3148 and the requirements of 29 C.F.R. Part 5, as applicable.
- (2) Providers are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- (3) Additionally, Providers are required to pay wages not less than once a week.

### **31. CLEAN AIR ACT**

- (1) Provider agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) Provider agrees to report each violation to County and understands and agrees that County will, in turn, report each violation as required to assure notification to County, Federal

Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

- (3) Provider agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

### **32. FEDERAL WATER POLLUTION CONTROL ACT**

- (1) Provider agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) Provider agrees to report each violation to County and understands and agrees that County will, in turn, report each violation as required to assure notification to County, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) Provider agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

### **33. COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

Compliance with the Contract Work Hours and Safety Standards Act:

- (1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.
- (2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (1) of this section Provider and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Provider and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) *Withholding for unpaid wages and liquidated damages.* County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Provider or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for

unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

- (4) *Subcontracts.* Provider or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

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

- (1) Provider or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
- (2) Records to be maintained under this provision shall be made available by Provider or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and Provider or subcontractor will permit such representatives to interview employees during working hours on the job.

#### **34. 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 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 to do the same. Upon request, Provider agrees to provide County with an affidavit of compliance or exemption.

### **35. CONFIDENTIAL INFORMATION**

For purposes of this Agreement, the party disclosing Confidential Information is the “Discloser,” and the party receiving Confidential Information is the “Recipient.” “Confidential Information” shall mean any nonpublic information concerning the parties’ respective businesses including, but not limited to, all tangible, intangible, visual, electronic, present or future information such as: (a) trade secrets; (b) financial information, including pricing; (c) technical information, including research, development, procedures, algorithms, data, designs and know-how; (d) business information, including operations, planning, marketing interests and products; and (e) the terms of any agreement between the parties and the discussions, negotiations and proposals related thereto. Confidential Information disclosed to the other party must be clearly identified. Written Confidential Information must be clearly marked in a conspicuous place with an appropriate legend identifying the information as “Confidential.” Confidential Information that is not written must be identified as confidential at the time of disclosure and confirmed in writing delivered to Recipient within fifteen (15) days of disclosure.

The restrictions regarding the use and disclosure of Confidential Information do not apply to information that is:

- (1) in the public domain through no fault of the Recipient;
- (2) within the legitimate possession of the Recipient, with no confidentiality obligations to a third party;
- (3) lawfully received from a third party having rights in the information without restriction, and without notice of any restriction against its further disclosure;
- (4) independently developed by the Recipient without breaching this Agreement or by parties who have not had, either directly or indirectly, access to or knowledge of the Confidential Information;
- (5) disclosed with the prior written consent of the Discloser; or
- (6) required to be disclosed by law, regulation or court or governmental order, specifically including requests pursuant to the Public Records Laws of North Carolina contained in Chapter 132 of the North Carolina General Statutes. In the event Recipient receives such a request, it shall notify Discloser and Discloser shall have the opportunity to defend against production of such records at Discloser’s sole expense.

### **36. OWNERSHIP OF WORK PRODUCT**

Should Provider’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 Provider.

**37. 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.

**38. 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.

**39. 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.

**40. 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.

**41. 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.

**42. 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.

**43. 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.

**44. 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.

#### **45. AMENDMENTS**

Amendments or changes to this Agreement, or additional Proposals or Statements of Work, shall not be valid unless in writing and signed by authorized agents of both Provider and County.

#### **46. 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 }

[SIGNATURES APPEAR ON FOLLOWING PAGE]

**47. 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 /  
Deputy Clerk to the Board

By: \_\_\_\_\_  
Chairman, Board of Commissioners

[SEAL]

{VENDOR NAME}

By: \_\_\_\_\_

Printed Name: {Vendor Signatory Name}

Title: {Vendor Signatory Title}

Date: \_\_\_\_\_

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

\_\_\_\_\_  
Julie A. Miller, Director of Fiscal Operations  
Brunswick County, North Carolina

APPROVED AS TO FORM

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

**EXHIBIT "A"**  
**PROPOSAL/STATEMENT OF WORK/SCOPE OF SERVICES**



## MINIMUM INSURANCE REQUIREMENTS



### BRUNSWICK COUNTY MINIMUM INSURANCE COVERAGE REQUIREMENTS

At contractor's expense, contractor shall procure and maintain the following recommended lines of insurance according to the scope of work. The County may choose to elect higher or lower coverages according to the work performed. Contractors must be insured by a licensed agent in North Carolina and rated A-VII or better by A.M. Best.

**A. COMMERCIAL GENERAL LIABILITY**

Covering all operations involved in this Agreement.  
\$2,000,000 General Aggregate  
\$2,000,000 Products/Completed Operations Aggregate  
\$1,000,000 Each Occurrence  
\$1,000,000 Personal and Advertising Injury Limit  
\$ 5,000 Medical Expense Limit

**B. WORKERS' COMPENSATION**

Statutory limits covering all employees, including Employer's Liability with limits of:  
\$500,000 Each Accident  
\$500,000 Disease - Each Employee  
\$500,000 Disease - Policy Limit

**C. COMMERCIAL AUTOMOBILE LIABILITY**

\$1,000,000 Combined Single Limit – Any Auto

**D. PROFESSIONAL LIABILITY**

\$1,000,000 Per Occurrence

**E. POLLUTION LIABILITY INSURANCE**

\$1,000,000 Per Occurrence

When a contractor is required to bind pollution/environmental coverage, the contractor must provide evidence of continuation or renewal of liability insurance for a period of three (3) years following termination of the agreement.

### ADDITIONAL INSURANCE AND INDEMNIFICATION REQUIREMENTS

A. Contractor agrees to defend, indemnify, and hold harmless Brunswick County, its officers, employees, and agents from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees, or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind in connection with or arising out of this Agreement and/or the performance hereof that are due in part or in the entirety of Contractor, its employees or agents. Contractor further agrees to investigate, handle, respond to, defend and dispose of same at its sole expense and agrees to bear all other costs and expenses related thereto.

The Contractor's General Liability policy shall be endorsed, specifically or generally, to include the following as Additional Insured:

BRUNSWICK COUNTY, ITS OFFICERS, AGENTS AND EMPLOYEES ARE INCLUDED AS ADDITIONAL INSURED UNDER CONTRACTOR'S GENERAL LIABILITY INSURANCE.

- A. Before commencement of any work or event, Contractor shall provide a Certificate of Insurance in satisfactory form as evidence of the insurances required above.
- B. Contractor shall have no right of recovery or subrogation against Brunswick County (including its officers, agents and employees), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.
- C. Brunswick County shall have no liability with respect to Contractor's personal property whether insured or not insured. Any deductible or self-insured retention is the sole responsibility of Contractor.
- D. All certificates of insurance must provide that the policy or policies shall not be changed or cancelled without at least thirty (30) days prior written notice.
- E. The Certificate of Insurance should note in the Description of Operations the following:
  - Department: \_\_\_\_\_
  - Contract #: \_\_\_\_\_
- F. Insurance procured by Contractor shall not reduce nor limit Contractor's contractual obligation to indemnify, hold harmless and defend Brunswick County for claims made or suits brought which result from or are in connection with the performance of this Agreement.
- G. In the event Contractor receives Notice of Cancellation of Insurance required pursuant to this Agreement, Contractor shall immediately cease performance of all services and shall provide Notice to Brunswick County's Legal/Risk Management personnel within twenty-four (24) hours.
- H. Certificate Holder shall be listed as follows;
  - ATTENTION: Brunswick County Risk Manager
  - 30 Government Center Dr. NE
  - P.O. Box 249
  - Bolivia, NC 28422
- I. If Contractor is authorized to assign or subcontract any of its rights or duties hereunder and in fact does so, Contractor shall ensure that the assignee or subcontractor satisfies all requirements of this Agreement, including, but not limited to, maintenance of the required insurances coverage and provision of certificate(s) of insurance and additional insured endorsement(s), in proper form prior to commencement of services.

Revised 01/2015

**FORM OF PROPOSAL**

**Note to contractors: All costs proposed are to be inclusive of labor, materials, equipment, incidentals, etc. necessary to provide the scope of services outlined in this RFP for the below listed hourly rates. Rates proposed are also to include all expenses, including general overhead, equipment, field overhead, profit, travel per diem, all necessary food, water, restroom and lodging facilities needed to provide these services.**

**Cost Per Acre: \$ \_\_\_\_\_**

\_\_\_\_\_  
**Contractor Name**

\_\_\_\_\_  
**Printed Name**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

**CONTRACTOR INFORMATION**

**Name of Company** \_\_\_\_\_

**Address** \_\_\_\_\_

\_\_\_\_\_

**Phone No.** \_\_\_\_\_ **Fax No.** \_\_\_\_\_

**E-Mail Address** \_\_\_\_\_

**Federal I.D. No.** \_\_\_\_\_

**SDBE, Minority or Woman Owned Business Enterprise** \_\_\_\_\_ **Yes** \_\_\_\_\_ **No**

**Proposal Submitted By:** \_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Signature)

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_