



**REQUEST FOR PROPOSALS**

**FOR**

**EMERGENCY OPERATIONS PLAN**  
**AND**  
**CONTINUITY OF OPERATIONS PLAN**  
**UPDATE**

**ISSUE DATE: May 9, 2022**

**DUE DATE: May 23, 2022**

## **1. INTRODUCTION**

Brunswick County is soliciting proposals for consultation services to update the County Emergency Operations Plan (EOP) and Continuity of Operations Plan (COOP).

## **2. PROJECT OVERVIEW**

Brunswick County Emergency Management (BC EM) seeks a consultant to update the existing Brunswick County (BC) Emergency Operations Plan (EOP), review/integrate the EOPs of the nineteen (19) municipalities within its jurisdictional boundaries, and to review/revise sections of the County's Continuity of Operations (COOP) planning documents with departments and agencies that are scheduled during the performance period of the project.

## **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.

### **Project 1: Emergency Operations Plan**

The Emergency Operations Plan project will result in one singular document, highlighting regional collaboration and coordination, while allowing the municipalities to maintain their autonomy in maintenance and execution of the plan, when needed. It is important to note that this is not solely a Threat and Hazard Identification Risk Analysis (THIRA) on its own (as modeled by Comprehensive Preparedness Guide 201, 3rd Ed. processes), but rather a review and update of existing EOP structure designed to include additional partners who are at different levels of building their own EOP documents integrating THIRA concepts and details and to ensure alignment with the North Carolina Emergency Management (NCEM) EOP crosswalk(s) and resource guide(s).

### **Project 2: Continuity of Operations Plan**

The COOP Project will result in updates to the existing departmental level COOP documents and the existing County level COOP plan. The project will provide baseline templated resources that can be used to support future exercise opportunities to test

departmental and County-level COOP plans. This process will follow advice and best practices as offered by the Federal Emergency Management Agency National Continuity Programs Office, the Community guidance, and current Homeland Security Exercise Evaluation Program resources.

### **EOP Task – 1 Project Management, Coordination, Expectations**

Prepare an updated County EOP. This includes the following and any other duties that might be necessary to complete the scope of services:

- Gather and analyze data with BC EM Staff and the BC EOP Working Group.
- Facilitate a kickoff meeting with BC EM Staff and the BC EOP Working Group.
- Facilitate the Working Group meetings as needed and developed during the kickoff meeting.
- Capture and provide meeting minutes and other project management assets from meetings and collaboration sessions.
- Prepare and provide a draft version of the EOP to BC EM and the BC EOP Working Group for review. This will include a review and update to the existing BC EOP document, cross walking from the previous Emergency Support Function (ESF) formatting to a traditional functional hybrid format with flexibility to adapt to the wide variety of natural, technological, and human-caused threats and hazards common to the Southeast North Carolina area. This will include:
  - The Basic Plan
  - Functional Annexes
  - Hazard- or Incident- Specific Annexes
    - This section may vary per municipality, depending on threats and hazards identified
- Prepare and provide a final Basic Plan to the County for approval four (4) months from the anticipated contract start date and no later January 2023.
- Prepare and provide final EOP Annexes to the County for approval no later than March 2023.
- Prepare and provide final EOP hazard- or incident- specific annexes for approval no later than March 2023.

The selected consultant will coordinate staff meetings from appropriate departments, BC Schools, organizations, municipalities, and the public to gather the necessary information to successfully research, write and complete the plan. The selected consultant will attend and lead meetings, clarify any outstanding issues, and respond to any comments from BC and the nineteen (19) participating municipalities represented on the BC EOP Working Group. The selected consultant will prepare progress reports to any comments from BC and the Working Group and will update the project schedule as required.

## **EOP Task 2 – Integrated Emergency Plans**

The selected consultant will review the existing BC EOP and review/develop one (1) EOP to include Brunswick County and the nineteen (19) participating municipalities using an integrated framework that is consistent with the latest NCEM EOP structure and reflect the core concepts and ideals of FEMA CPG 201 guidance, while reflecting the wide variety of natural, technological, and human-caused threats and hazards common to the Southeast North Carolina area.

- All portions of the plan will address the needs of all within the jurisdictional boundaries of Brunswick County and its municipalities, including persons with access and functional needs, pets, children, and other population subsets identified through research.
- Plans for specific functions shall include appropriate tasks, checklists, references, and other resources necessary for County and municipal staff members to fulfill their duties, whether they are functioning in the BC EOC aspect or within their own municipal EOCs. This is important to ensure the most effective execution of the plan by persons who may not have Emergency Management as their primary daily role.
- The Plan shall contain the following components:
  - Demographics of the communities within the area covered by the plan.
  - Geography and the area covered by the plan.
  - Inclusion of Threat Hazard Identification and Risk Assessment consistent with the Southeast Regional Hazard Mitigation Plan.
  - Emergency Management Organization consistent with NIMS and ICS principles and reflecting the National Response Framework but reflecting local resources.
  - Role of municipal and County governments, their departments, and staff.
  - Role of private sector, including non-profit organizations, local businesses, the public, and other constituencies consistent with NCEM and FEMA policies and guidance.
  - All-Hazard emergency response plan.
  - Hazard- or Incident- Specific Annexes including, but not limited to, review and comments on the following:
    - Emergency Sheltering Plan
    - Evacuation Plan
    - Debris Management Plan
    - Donations and Volunteer Management
    - Plan Point of Distribution Plan
    - Community Feeding Plan
    - Communicable Disease Plan
    - Family Assistance Center/Family Reunification Center Plan

- Joint Information Center Plan
- Emergency Shelter Plan
- Hazard Specific Annexes to include but not limited to:
  - Hazardous Materials
  - Flooding
  - Aircraft Accidents
  - Resource Shortage
  - Water Contamination
  - Winter Weather
  - Terrorism/Acts of Violence
  - Hurricane
  - Heat
  - Radiological Emergencies \*
  - Earthquake
  - Wildfire

[\*These plans have separate planning documents. Development of these EOP sections shall include reference and direction to these plans and do not require an extensive plan review and development of these plans.]

- Resources and checklists necessary to implement the components of the Plan.
- The EOP shall be updated for compliance with the following laws and requirements:
  - FEMA’s CPG Comprehensive Preparedness Guide 201, 3rd Ed. Processes.
  - North Carolina General Statutes, Chapter 166-A and other NC Statutes as applicable.
  - Current NCEM Crosswalk shall be utilized to ensure all required fields are captured in the document.

**BC requires entire Project 1 completion by March 1, 2023; deliverable due dates are:**

- Draft of Basic Plan and completion of the Hurricane Annex by November 1, 2022.
- Final Basic Plan four (4) months from contract start date.
- Draft update to Functional Annexes, to include Countywide Annexes, by or before five (5) months with final annexes delivered by or before seven (7) months from contract start date.
- Draft update to Hazard- or Incident- Specific Annexes to include Countywide Annexes, by or before seven (7) months with final annexes delivered by or before March 1, 2023.

## **COOP (Continuity of Operations Plan) Project**

The COOP Project will result in updates to existing departmental level COOP documents and the existing County level COOP plan. Additionally, the project will provide baseline templated resources that can be used to support future exercise opportunities to test departmental and County-level COOP plans. This process will follow advice and best practices as offered by the Federal Emergency Management Agency's National Continuity Programs Office, the Continuity Guidance Circular (February 2018 or any available updated version), and current Homeland Security Exercise Evaluation Program resources.

### **Anticipated Scope of Work**

#### **COOP Task 1 – Project Management, Coordination, Expectations**

Review and update existing department COOP plans and the existing Brunswick County COOP plan.

- The end project shall include processes and consideration for reconstituting operations and resuming normal operations after an event that has caused activation of the department and/or County COOP plan.
- While including considerations for events/incidents that would activate a COOP plan, such as an impact to the physical building operations that may occur, impact to employees that work in a department within or outside of the physical building, and general IT technology issues, the final plan shall include processes and consideration for cybersecurity and cyber-attacks which disrupt normal operations. This portion of the plans will align to the County's Information Technology department's cybersecurity procedures. The County's cybersecurity procedures, or relevant portions thereof, will only be shared on a need-to-know basis in order for the selected consultant to fulfill its obligations under the contracted Scope of Work. The selected consultant will be required to sign a separate Confidentiality Agreement prior to the County sharing any information related to its cybersecurity procedures.
- The selected consultant will coordinate staff meetings from appropriate departments to gather the necessary information to successfully update the department plans and the overarching County COOP plan. The selected consultant will attend and lead meetings, clarify any outstanding issues, and respond to any comments from NHC department designees. The selected consultant will prepare progress reports of any comments from BC to BC EM and will update the project schedule as required.

- The selected vendor shall provide the following resources to BC EM:
  - Meeting Agendas and Minutes
  - Progress Reports
  - Project Schedule for each component
  - Review and adequately respond to comments
  - Deliver each component (report/plan) on time
  - Deliver approved final County COOP and departmental COOPs to BC EM in Microsoft Word format.

**BC requires entire Project 2 completion by March 1, 2023; deliverable due dates are:**

- Review and updates to all department COOP plans completed no later than four (4) weeks before the end of the project period. This includes reviews and updates for:
  - County Manager
  - Finance
  - County Commission & Clerk
  - Communications
  - Tax
  - Human Resources
  - Parks & Recreation
  - Information Technology
  - Cooperative Extension
  - Emergency Services
  - Engineering
  - Sheriff's Office
  - Health & Human Services
  - Operations Services
  - Senior Resource Center
  - Veteran Services
  - Legal
  - Risk Management
  - Planning & Land Use
  - Register of Deeds Building Safety Board of Elections
  - Utilities
  - Code Administration

- Final draft of County COOP plan – no later than two (2) weeks before end of the project period
- Completion of training template to be used for future COOP exercises – no later than two (2) weeks before the end of the project period
- Completion of revision/updates to the County COOP plan – no later than March 1, 2023

**Term of Project:** It is anticipated that a project period of eight (8) months may be needed for this project; however, the entire project must be completed and invoiced by March 1, 2023. This timeline may be changed at the discretion of BC EM.

#### 4. PROPOSAL DEADLINE AND SUBMISSION REQUIREMENTS

4.1 All proposals must be received by Brunswick County by 5:00 PM ET, Monday, May 23, 2022.

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 Proposals 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.**
- Detailed project pricing.
- 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 reference list of at least three (3) current projects or projects completed within the past twenty-four (24) months for projects of similar size and scope, including the name and telephone number of a contact person for each reference listed.
- 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 Proposals. 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) hard copy and one (1) electronic copy of the proposal. Hard copy proposals may be mailed, or hand delivered to the following:

**Mail:** Edward W. Conrow, Director of Emergency Services  
Brunswick County Emergency Services  
PO Box 249  
3325 Old Ocean Highway  
Bolivia, NC 28422

**Hand Delivery:** Edward W. Conrow, Director of Emergency Services  
Brunswick County Emergency Services  
3325 Old Ocean Highway  
Bolivia, NC 28422

**Email:** [Edward.conrow@brunswickcountync.gov](mailto:Edward.conrow@brunswickcountync.gov)

**Proposals must be received no later than 5:00 PM ET on Monday, May 23, 2022. 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 Proposals 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 Proposals shall be submitted in writing to the attention of Edward Conrow no later than May 16, 2022 at 5:00 PM ET. A copy of all questions, further clarifications and answers will be made in the form of an Addendum to this Request for Proposals 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 Proposals, 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 Proposals, 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 Proposals 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 Proposals 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 Proposals 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 AND/OR REJECTION OF PROPOSAL**

### **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.

## 11.2 Rejection

A proposal may be rejected if the contractor fails to:

- Submit the proposal in the format specified.
- Supply the minimum information requested.
- Submit all addenda, addenda responses and templates.
- Submit the proposal by the date and time required.
- Submit a cost proposal with unbundled, detailed and itemized pricing.
- Provide truthful and accurate information in the proposal.

## 11.3 No Acceptance

Brunswick County reserves the exclusive right to reject any or all proposals, to waive any informalities or technical defects in proposals, and to accept any proposal deemed most favorable to Brunswick County.

## 11.4 Competency of Contractor

Brunswick County shall make such investigation as it deems necessary to determine the ability of the contractor to perform the work, and/or provide the services required by this Request for Proposals. Upon request by Brunswick County, the contractor shall furnish satisfactory evidence that it has the necessary facilities, ability and financial resources to fulfill the specifications and conditions of the proposal.

## **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 Brunswick County deems to have submitted the best overall proposal, in accordance with the selection process and evaluation criteria set forth herein. Brunswick County shall not be deemed to have finally selected a contractor until a contract has been successfully negotiated and signed by all parties.

## Selection Process

A selection committee, which may include representatives from Brunswick County, the Brunswick County Sheriff's Office, Brunswick County Schools, each of the participating nineteen (19) municipalities, and the Fire Chief's Association will evaluate all proposals prior to the award of any contract. The selection committee will evaluate proposals based on the following criteria:

- Consultant history, experience, and qualifications – 70%
  - Description and brief history/background of company. Included should be the number of years in business. Also identify the qualifications and experience of the key team member(s) that will work on the project. Emphasize the specific qualifications and experience from projects similar to this project for the key team members. Key team members are expected to be committed for the duration of the project. Replacement of key team members will not be permitted without prior consultation with and approval by BC EM. Experience and qualifications of key field personnel should be included. Any current or past contracts with government agencies can be listed and described in this section. Licensing and certification shall also be described in this section. Attention to the details provided in the Scope of Work should be considered with your response.
- Pricing/Rate Proposal – 15%
  - Provide information on how costs will be controlled to ensure all work is completed within the negotiated budget for the project. Provide a cost/budget for each phase of the project. Include the name and title of the individual responsible for cost control.
- Work Plan and Schedule – 15%
  - Information on how each task of the project will be conducted to include identification of deliverables for each task and a schedule. The work plan should be a three (3) phase format with Phase 1 designated as EOP Update, Phase 2 designated as Functional Annexes Update and Phase 3 as Hazard- or Incident- Specific Annex Update. Each phase of the work plan should be in sufficient detail to demonstrate a clear understanding of the project. The schedule should show the expected sequence of tasks and include durations for the performance of each task.

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

Contractor and its agents shall treat all data and information associated with this Request for Proposals, including, without limitation, the Request for Proposals, 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. WORK/CHANGE ORDERS**

After a project is awarded to a contractor and the parties enter into a formal agreement, a change order will be required for any changes in scope to the project that add, delete or modify any billable component(s). Each work/change order will contain the date of issue and a unique number used for identification and cross-reference purposes.

### **16. PROJECT DELIVERABLES**

Contractor shall complete the following:

- Weekly or bi-weekly project conference calls to be held throughout the project, with meeting agendas and minutes provided by the contractor.
- Ongoing action item list maintained by the contractor.
- Template and procedure for formal reporting of issues provided by the contractor.
- Final Report that summarizes the engagement.

**17. PROTEST PROCEDURES**

Protests related to this Request for Proposals must be addressed to the Brunswick County Deputy County Manager, P. O. Box 249, Bolivia, NC 28422 and must be received, in writing, within five (5) calendar days of award. Responses will be provided no later than (7) calendar days following receipt of said protest.

**18. ADDITIONAL SERVICES**

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

**19. 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.

## 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 {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 County may terminate this Agreement at any time without cause by giving sixty (60) days’ written notice to Provider. As soon as practicable after receipt of a written notice of termination without cause, Provider shall submit a statement to County showing in detail the work performed under this Agreement through the effective date of termination. County may terminate this Agreement for cause by giving written notice of a breach of the Agreement. Provider shall have fifteen (15) days to cure the breach following receipt of the notification. Failure to cure the breach within the fifteen (15) days shall result in the immediate termination of the Agreement. Notwithstanding the foregoing, County may terminate this Agreement immediately and without notice to Provider if Provider becomes insolvent, makes or has made an assignment for the benefit of creditors, is the subject of proceedings in voluntary or involuntary bankruptcy instituted on behalf of or against Provider, or has a receiver or trustee appointed for substantially all of its property, or if Provider allows any final judgment to stand against it unsatisfied for a period of forty-eight (48) hours.

#### 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**

- a. Provider is a duly organized entity or corporation qualified to do business and in good standing under the laws of the State of North Carolina;
- b. Provider has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;

- c. No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for Provider to enter into and perform its obligations under this Agreement;
- d. In connection with Provider's obligations under this Agreement, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses;
- e. Provider shall not violate any agreement with any third party by entering into or performing the Services under this Agreement;
- f. Provider will perform all Services in conformity with the specifications and requirements of this Agreement;
- g. 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);
- h. 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;
- i. 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
- j. 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. 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.

## **8. 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.

## **9. NON-EXCLUSIVITY**

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

## **10. 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.

## **11. DEBARMENT**

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

## **12. 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.

## **13. 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.

#### **14. 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.

#### **15. REMEDIES**

- a. **RIGHT TO COVER.** If Provider fails to meet any completion date or resolution time set forth, due to no fault of County, the County may take any of the following actions with or without terminating this Agreement, and in addition to, and without limiting, any other remedies it may have:
  - i. Employ such means as it may deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and Provider is again able to resume performance under this Agreement; and
  - ii. Deduct any and all expenses incurred by County in obtaining or performing the Services from any money then due or to become due Provider and, should the County's cost of obtaining or performing the Services exceed the amount due Provider, collect the amount due from Provider.
- b. **RIGHT TO WITHHOLD PAYMENT.** County reserves the right to withhold any portion, or all, of a scheduled payment if Provider fails to perform under this Agreement until such breach has been fully cured.
- c. **SETOFF.** Each party shall be entitled to set off and deduct from any amounts owed to the other party pursuant to this Agreement all damages and expenses incurred or reasonably anticipated as a result of the other party's breach of this Agreement.

- d. **OTHER REMEDIES.** Upon breach of this Agreement, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently in addition to any other available remedy.
- e. **NO SUSPENSION.** In the event that County disputes in good faith an allegation of breach by Provider, notwithstanding anything to the contrary in this Agreement, Provider agrees that it will not terminate this Agreement or suspend or limit any Services or warranties, unless: (i) the parties agree in writing; or (ii) an order of a court of competent jurisdiction determines otherwise; provided, however, this dispute period shall be limited to ninety (90) days.

## **16. 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.

## **17. 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.

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

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

## **19. 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.

## **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 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.

## **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 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.

## **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 Provider 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 Provider: {Vendor Name}  
{Vendor Address}  
{Vendor City}, {Vendor State or Territory} {Vendor Zip}



**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 § 66-58.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S § 66-311 et seq.). Delivery of an executed counterpart of this Agreement by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

ATTEST:

**BRUNSWICK COUNTY**

\_\_\_\_\_  
Clerk to the Board

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

[SEAL]

{VENDOR NAME}

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

Printed Name: {Vendor Signatory Name}

Title: {Vendor Signatory Title}

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

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

\_\_\_\_\_  
Aaron C. Smith, Director of Fiscal Operations  
Brunswick County, North Carolina

APPROVED AS TO FORM

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

**EXHIBIT "A"**  
**GOODS AND SERVICES/FEES AND COSTS**

[TBD]



## 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

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