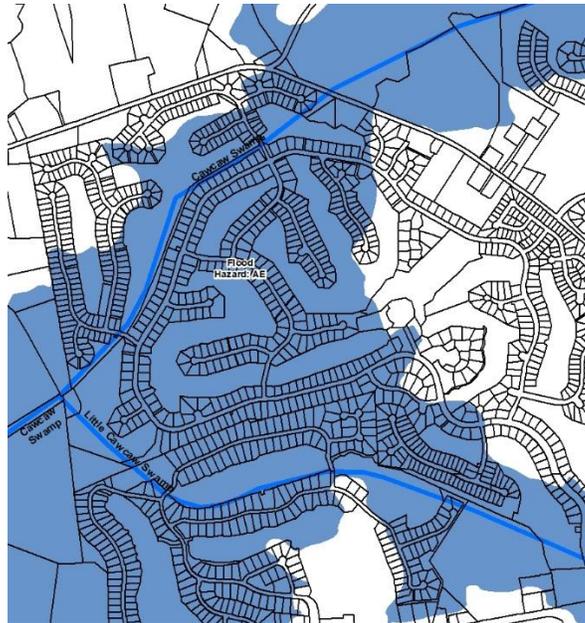


**Brunswick County
Request for Qualifications**

**Cawcaw and Little Cawcaw Swamp Detailed
Floodplain Study**



Qualifications due by April, 9th, 2021

Please submit qualifications to:

**John Shirk, CFM, CZO
Floodplain Administrator
PO Box 249
75 Courthouse Drive, Building I
Bolivia, NC 28422
Office: 910-253-2046**

Email: john.shirk@brunswickcountync.gov

Brunswick County
Request for Qualifications
Cawcaw and Little Cawcaw Swamp
Detailed Floodplain Study

1. **Purpose:** Brunswick County, hereinafter “County,” is requesting Statements of Qualifications from qualified engineering consulting firms, hereinafter a “Respondent,” to provide a Detailed Floodplain Study for the Cawcaw and Little Cawcaw Swamps. The County’s intent is to enter into a professional services agreement with an experienced engineering firm to update the Limited Detail Studies used for development of floodplain maps for the Cawcaw and Little Cawcaw Swamps.
2. **Background:** The current floodplain maps that were made effective on 8/28/2018 used Limited Detailed Flood Hazard Data to determine the Base Flood Elevations for the Cawcaw and Little Cawcaw Swamps and did not determine a Floodway. Development in the area is continuing to increase and having better data to analyze the existing and future conditions of the Watershed will help to ensure all floodplain regulations are met and enforced with the best available information.
3. **Scope of Work:** The County is requesting Statements of Qualifications from qualified engineering consulting firms to provide professional services to complete a detailed study of part of the Cawcaw and Little Cawcaw Swamps. Please see a more detailed map of the Project area attached hereto. The study will need to be more detailed than the Limited Detail Study, using multi-profile and floodway models incorporating field survey channel and hydraulic crossing geometry to establish a regulatory floodway, special flood hazard area boundaries, and base flood elevations. The models and updated maps created will be retained by the County for local regulatory purposes or ultimately submitted to FEMA for a Physical Map Revision (PMR).

A PMR is an action whereby the regulatory flood hazard data, including one or more Flood Insurance Rate Map (FIRM) map panels, associated Flood Insurance Study (FIS), and National Flood Hazard Layer (NFHL) are physically revised and republished. A PMR is used to change flood risk zones, floodplain and/or floodplain delineations, flood elevations, and /or planimetric features. All modeling, mapping, shapefile development, and reporting for this Project will be performed according to applicable FEMA standards in order that the data may be submitted for formal map updates in the future.

Items covered in this scope of work include data collection from the County and other sources, field survey and reconnaissance, hydrologic and hydraulic analysis, mapping, and report development. This analysis will include the following areas:

- Cawcaw Swamp between cross sections 138 and 270
- Little Cawcaw Swamp from Cawcaw Swamp to cross section 110
- Little Cawcaw Swamp 2500 feet past cross section 110

Items that are not covered in this Scope of Work include property owner coordination, environmental and geotechnical investigation or analysis, FEMA coordination, PMR project planning, Study Production, or NFHL processing.

Interested firms should have experience with:

- current FEMA guidelines and specifications for floodplain mapping;
- GIS activities related to base mapping, digital conversion, and floodplain study tasks;
- hydraulic analysis and modeling using computer programs such as HEC-RAS or other FEMA approved methods;
- performing hydrologic analyses;
- field surveys for ground control and field data collection;
- researching available background data;
- topographic mapping; and
- performing floodplain studies.

The County will negotiate and refine a final Scope of Work with the selected firm.

4. **Submittal Instructions:** The submittal instructions are outlined below:

A. **Qualifications Package**

Please include a cover letter that identifies a contact person and all contact information. Each item outlined below must be addressed in the submittal in the order for the qualification package to be valid.

- **Company Information** – Provide your company’s full legal name, primary office location, and years of experience.
- **Project Approach** – Describe your team’s approach to successfully delivering the Project. Provide details on how the study will be completed and include any recommendations for maximizing effectiveness and efficiency.

- Scope of Work – Provide details regarding the specific methodologies, approaches, tasks, and schedule being proposed, and indicate any work or resources that are to be subcontracted or assumed to be provided by local government agencies.
- Contract Man-Hours – Qualification packages must provide estimated man-hours for each task. Calculate the percentage of MBE/DBE’s anticipated participation based on the man-hours.
- Project Team – Provide an organizational chart identifying all staff assigned to the Project, including any subcontractors, defining roles, responsibilities, and task assignments of each member for the duration of the Project.
- Financial Capacity – Provide information to demonstrate your company’s current financial capacity. County reserves the right to request additional financial information for any Respondent in order to support the viability of the Respondent.
- Statement of Qualifications – Qualification packages must indicate general qualifications of the Respondent(s) in disciplines appropriate to the Project, as well as specific prior experience and qualifications applicable to this Project. Qualifications packages should include the following:
 - Qualifications and resumes of key personnel to be assigned to the Project.
 - List of at least three (3) project references with similar projects.
 - Relevant Project Experience and sample of previous work directly related to the technical aspects and processes described in the Scope of Work.

B. Deadline

Qualification Packages must be received by 5:00 pm eastern time on April 9th, 2021. County will not be responsible for the failure of any mail or delivery service to deliver qualifications packages prior to the stated date and time. Regardless of the manner of submission, any package received after the stated date and time will not be considered. Incomplete qualification packages or qualification packages inconsistent with the required format may be disqualified from consideration.

C. Submittal Instructions

Please submit a minimum of five (5) copies and one (1) electronic copy in .pdf format on a USB drive of your submittal to :

John Shirk, CFM, CZO
Floodplain Administrator
PO Box 249
75 Courthouse Drive, Building I
Bolivia, NC 28422
Office: 910-253-2046
Email: john.shirk@brunswickcountync.gov

5. **Evaluation:** There will be a selection review committee for this Project, and it is possible that a presentation may be required as part of the selection process. Brunswick County reserves the right to select the firm that best meets the needs of the County with regards to this Project. County further reserves the right to negotiate a final Scope of Work that reflects the work to be done within the budget constraints.

Statements of Qualifications will be evaluated based on Respondent's ability to meet the requirements of this Request for Qualifications. Evaluation criteria will include, without limitation:

- Respondent's experience in providing similar services for similar projects
- Qualifications and accessibility of key individuals identified in the qualifications statement that will be assigned to the Project
- Capability of Respondent to manage the work
- Ability to meet established schedules
- Ability to deliver within budget
- Statement of Qualifications appearance and presentation

6. **Additional Terms and Conditions:**

All questions or comments shall be submitted in writing to John Shirk at john.shirk@brunswickcountync.gov by April 5th, 2021. A copy of all questions, further clarifications, and answers will be made in the form of an addendum to this Request for Qualifications and will be provided to all known interested Respondents. Any addendum will also be posted to the County website. Respondents should check the County website to ensure they have all addenda.

County will not be responsible for any costs or expenses incurred by a Respondent in submitting a Statement of Qualifications. County reserves the right to cancel the work described herein prior to the issuance and acceptance of any contractual agreement even if the Board of Commissioners has formally accepted the recommendation.

County reserves the right to refuse or reject any or all Statements of Qualifications and to waive any and all formalities, irregularities, or technicalities. All Respondents submitting a Statement of Qualifications will receive notification once the contract has been awarded.

In addition to the terms and conditions contained in this Request for Qualifications, by submitting a Statement of Qualifications, if selected, Respondent agrees to enter into and be bound by the provisions of a Professional Services Agreement in substantially the form attached hereto and incorporated herein by reference. To the extent that any of the terms of this Request for Qualifications and the terms of the Professional Services Agreement conflict, the terms of the Professional Services Agreement shall prevail. No work shall commence until an agreement has been fully executed by the parties.

FORM OF AGREEMENT

NORTH CAROLINA

BRUNSWICK COUNTY

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

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

WITNESSETH:

1. SERVICES; FEES

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

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

2. TERM OF AGREEMENT 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. BRUNSWICK COUNTY GENERAL CONDITIONS OF THE CONTRACT

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

4. NONAPPROPRIATION

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

5. COMPENSATION

The County agrees to pay 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 forty-five (45) days of receipt. Notwithstanding the foregoing, County will not pay late fees on any charges under this Agreement. If County disputes any portion of the charges on any invoice received from Provider, the County shall inform Provider in writing of the disputed charges. Once the dispute has been resolved, Provider shall re-invoice County for the previously disputed charges, and, per any resolution between County and Provider, the County shall pay those charges in full at that time. No advance payment shall be made for the Services to be performed by Provider under this Agreement.

6. INDEPENDENT CONTRACTOR

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

In the event the Internal Revenue Service should determine that Provider is, according to Internal Revenue Service guidelines, an employee subject to withholding and social security

contributions, then Provider hereby acknowledges that all payments hereunder are gross payments, and the Provider is responsible for all income taxes and social security payments thereon.

7. OPINIONS OF COST

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

8. ACCOUNTING RECORDS

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

9. PERMITS AND APPROVALS

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

10. ENVIRONMENTAL CONDITIONS

County shall disclose to Provider the existence of all known and suspected hazardous substances, including, without limitation: asbestos; polychlorinated biphenyls (PCBs); petroleum; hazardous waste; or radioactive material located at or near the site where the Services are to be performed. If Provider discovers any undisclosed hazardous substances, or if investigative or remedial action or other professional services are necessary, Provider may, at its option and without liability for damages, suspend performance of the Services hereunder until County: (1) retains an appropriate specialist consultant or contractor to identify and, as appropriate, abate, remediate or remove the hazardous substances; and (2) warrants that the site where the Services are to be performed are in full compliance with applicable laws and regulations. Notwithstanding the foregoing, if the presence of any hazardous materials adversely affects the performance of Provider's duties under this Agreement, then Provider shall have the option of: (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause upon thirty (30) days' written notice to County.

11. PROVIDER REPRESENTATIONS

- a. Provider is a duly organized entity or corporation qualified to do business and in good standing under the laws of the State of North Carolina;
- b. Provider has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
- c. No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for Provider to enter into and perform its obligations under this Agreement;
- d. In connection with Provider's obligations under this Agreement, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses;
- e. Provider shall not violate any agreement with any third party by entering into or performing the Services under this Agreement;
- f. Provider has not engaged in corrupt, fraudulent or coercive practices in competing for or executing this Agreement;
- g. Provider will perform all Services in conformity with the specifications and requirements of this Agreement;
- h. The Services provided by Provider under this Agreement will not violate, infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party, or any other third-party rights (including, without limitation, non-compete agreements);
- i. Provider shall exercise reasonable care and diligence when performing the Services hereunder and will ensure that it adheres to the highest generally accepted standards in the industry when performing said Services;
- j. Provider shall be responsible for all errors, omissions or deficiencies in technical accuracy in any drawings, specifications or other documents prepared or services rendered by Provider, its subcontractors or consultants and shall correct, at no additional cost to County, any and all errors, omissions, discrepancies, ambiguities, mistakes, deficiencies or conflicts;
- k. Provider acknowledges that if any specific licenses, certifications or related credentials are required in its performance of the Services, it will ensure that such credentials remain current and active and not in a state of suspension or revocation; and
- l. Provider shall ensure that whenever its employees or agents are on County property, they will strictly abide by all instructions and directions issued by the County with respect to rules, regulations, policies and security procedures applicable to work on the County's premises. Such rules, regulations, policies and security procedures shall include, but not

be limited to: (i) not possessing any controlled substances; (ii) smoking only in designated smoking areas, if any; and (iii) not possessing weapons, except for weapons possessed by law enforcement officials.

12. DAMAGE TO EQUIPMENT, FACILITIES, PROPERTY OR DATA

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

13. NON-ENDORSEMENT AND PUBLICITY

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

14. NON-EXCLUSIVITY

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

15. DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL

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

16. DEBARMENT

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

17. INDEMNIFICATION

Provider shall 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 (collectively, "Claims") which may be brought or made against County or which County must pay and incur arising out of this Agreement should fault or negligence on the part of the Provider or its subcontractors or consultants be the proximate cause of such Claims. Provider shall be fully responsible to County for the acts and omissions of its subcontractors or consultants and of persons either directly or indirectly employed by it. This Section shall survive any expiration or termination of this Agreement.

18. INSURANCE

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

19. WORKERS' COMPENSATION

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

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

20. REMEDIES

- a. **RIGHT TO COVER.** If Provider fails to meet any completion date or resolution time set forth, due to no fault of County, the County may take any of the following actions with or without terminating this Agreement, and in addition to, and without limiting, any other remedies it may have:
 - i. Employ such means as it may deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and Provider is again able to resume performance under this Agreement; and
 - ii. Deduct any and all expenses incurred by County in obtaining or performing the Services from any money then due or to become due Provider and, should the County's cost of obtaining or performing the Services exceed the amount due Provider, collect the amount due from Provider.

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

21. TAXES

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

22. HEALTH AND SAFETY

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

23. NON-DISCRIMINATION IN EMPLOYMENT

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

24. COMPLIANCE WITH E-VERIFY PROGRAM

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

25. CONFIDENTIAL INFORMATION

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

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

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

26. OWNERSHIP OF WORK PRODUCT

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

27. NO ASSIGNMENT WITHOUT CONSENT

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

28. GOVERNING LAW AND VENUE

This Agreement shall be governed by applicable federal law and by the laws of the State of North Carolina without regard for its choice of law provisions. All actions relating in any way to this Agreement shall be brought in the General Court of Justice of the State of North Carolina in Brunswick County or in the Federal District Court for the Eastern District of North Carolina, Wilmington division.

29. DISPUTE RESOLUTION

Should a dispute arise as to the terms of this Agreement, both parties agree that neither may initiate binding arbitration. The parties may agree to non-binding mediation of any dispute prior to the bringing of any suit or action.

30. GOVERNMENTAL IMMUNITY

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

31. NON-WAIVER

Failure by County at any time to require the performance by Provider of any of the provisions of this Agreement shall in no way affect County's right hereunder to enforce the same, nor shall any waiver by County of any breach be held to be a waiver of any succeeding breach or a waiver of this Section.

32. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties with respect to the subject matter herein. There are no other representations, understandings or agreements between the parties with respect to such subject matter. This Agreement supersedes all prior agreements, negotiations, representations and proposals, written or oral. Notwithstanding the foregoing, all documents included in the Request for Qualifications and the qualifications statement submitted by Provider, if applicable, including, but not necessarily limited to: General Conditions; Supplementary General Conditions; Scope of Work; Specifications; Addenda; Accepted Proposal; Notice to Proceed; Performance Bond; Payment Bond; MBE forms; Power of Attorney; Insurance Certificates; Approval by County Commissioners; Tax Statement and Certification; Notice of Substantial Completion; Notice of Final Completion and Acceptance; and Drawings are incorporated herein by reference and made an integral part of this Agreement. To the extent the terms of such documents conflict with the terms of this Agreement, the terms of this Agreement shall prevail.

33. HEADINGS

The headings in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

34. SEVERABILITY

The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of this Agreement can be determined and effectuated. If a provision of this Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Agreement

shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

35. AMENDMENTS

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

36. NOTICES

- a. **DELIVERY OF NOTICES.** Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by facsimile to the intended recipient at the address set forth below.
- b. **EFFECTIVE DATE OF NOTICES.** Any notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by facsimile or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier.
- c. **NOTICE ADDRESS.** Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment or waiver of any provision of this Agreement shall be sent to:

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

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

37. SIGNATURES

This Agreement, together with any amendments or modifications, may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be considered one and the same agreement. This Agreement may also be executed electronically. By signing electronically, the parties indicate their intent to comply with the Electronic Commerce in Government Act (N.C.G.S § 66-358.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S § 66-311 et seq.). Delivery of an executed counterpart of this Agreement by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

ATTEST:

BRUNSWICK COUNTY

Clerk to the Board /
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