

**NEW HANOVER COUNTY  
REQUEST FOR PROPOSALS  
AERIAL PESTICIDE SERVICES**

**RFP # 19-0205**

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**COUNTY COMMISSIONERS**

**WOODY WHITE, CHAIRMAN  
SKIP WATKINS, VICE-CHAIRMAN  
JONATHAN BARFIELD, JR.  
PATRICIA KUSEK  
ROB ZAPPLE**

**CHRIS COUDRIET, COUNTY MANAGER**

**NEW HANOVER COUNTY  
REQUEST FOR PROPOSALS  
AERIAL PESTICIDE SERVICES  
RFP # 19-0205**

Sealed proposal addressed to Lena Butler, Purchasing Supervisor, 230 Government Center Drive, Suite 165, Wilmington, NC 28403 and marked “**RFP # 19-0205 AERIAL PESTICIDE SERVICES**” will be accepted until **9:00 A.M. EST, Thursday, October 11, 2018.**

Instructions for submitting bids and complete requirements and information may be obtained by visiting the County’s website at <https://www.nhcgov.com/business-nhc/bids>.

New Hanover County reserves the right to accept or reject any or all Proposals and to make the Award which will be in the best interest of the County.

Lena L. Butler, Purchasing Supervisor  
New Hanover County  
(910) 798-7190

Released: Wednesday, October 3, 2018

## Section 2 – Instructions and General Conditions

### 2.1 – Schedule

<b>ACTION</b>	<b>DATE</b>
Release of RFP	Wednesday, October 3, 2018
Deadline for Proposals	Thursday, October 11, 2018 at 9:00 AM

### 2.2 – Preparation of Proposal

Proposers are instructed to submit one (1) original and one (1) electronic copy on CD or USB. Please do not submit a protected electronic copy which can't be copied. The electronic copy allows the information to be copied and distributed among the evaluation team.

The proposal shall be submitted by **9:00 AM Thursday, October 11, 2018** to:

Lena L. Butler, Purchasing Supervisor  
New Hanover County  
230 Government Center Drive, Suite 165  
Wilmington, NC 28403

Proposals should be clearly marked **“RFP # 19-0205– Aerial Pesticide Services.”**

All prices and notations shall be written in ink or typed. Changes or corrections made in the proposal must be initialed by the individual signing the proposal. **PROPOSALS NOT SIGNED WILL BE DEEMED NONRESPONSIVE AND REJECTED.**

### 2.3 – Content of Proposals

All Proposals submitted in response to this solicitation must include but are not limited to the following:

- A. List type and number of aircraft and equipment that would be used;
- B. A statement indicating insurance coverage as outlined in section 7 of attached contract agreement (RFP Appendix A);
- C. List number of pilots proposed and flight experience;
- D. Indicate the experience level with pesticide application for each pilot; include any Letters of Recommendation that you have from previous clients.
- E. Loading procedures to be used;
- F. Airport or runway facility to be used;
- G. Application cost per acre for both scenarios presented in Appendix A, Scope of Work, in attached contract agreement (RFP Appendix A);
- H. Guaranteed response time
- I. Firm Identification - Name of firm, address, contact person, phone and fax numbers and email
- J. Signature Page

## 2.4 – Questions

All inquiries relating to the proposal procedure should be directed to Lena Butler, New Hanover County Purchasing Supervisor, (910) 798-7190.

## 2.5 – Communication

Proposers may not have communications, verbal or otherwise, concerning this RFP with any personnel or boards from New Hanover County, other than the person listed in this section. If any vendor attempts any unauthorized communication, the proposal will be rejected.

## 2.6 – Intent to Submit

All proposers who intend to submit a proposal on this project should send an email to [lbutler@nhcgov.com](mailto:lbutler@nhcgov.com) including pertinent contact information. This will ensure that you receive any addenda issued for this RFP; if applicable.

## 2.7 - Cost of Preparation of Response

Costs incurred by prospective Proposers in the preparation of the response to this Request for Proposals are the responsibility of the Proposer and will not be reimbursed by The County.

## 2.8 - Execution of Agreement

The successful Proposer will be required to enter into a formal agreement that is consistent with the proposal requirements outlined within. The successful Proposer to whom the Contract is awarded by the County shall within 15 days after notice of award and receipt of Agreement from the County, sign and deliver to the County all required copies of said Agreement.

## 2.9 - Trade Secret Confidentiality

Upon receipt of your proposal by New Hanover County, your proposal is considered a public record except for material which qualifies as "trade secret" under N.C. General Statute 132-1.2. After opening, your proposal will be provided to County staff and others who participate in the evaluation process, and to members of the general public who submit public records requests.

To properly designate material as trade secret under these circumstances, each Proposer must take the following precautions: (a) any trade secrets submitted by a Proposer must be submitted in a separate, sealed envelope marked "Trade Secret - Confidential and Proprietary Information - Do Not Disclose Except for the Purpose of Evaluating this Bid," and (b) the same trade secret/confidentiality designation must be stamped on each page of the trade secret materials contained in the envelope.

**Do not attempt to designate your entire Proposal as a trade secret, and do not attempt to designate pricing information as a trade secret.** Doing so will result in your Proposal being disqualified.

In submitting a Proposal, each Proposer agrees that the County may reveal any trade secret materials contained in such response to all County staff and County officials involved in the selection process, and to any outside consultant or other third parties who assist the County in the selection process. Furthermore, each Proposer agrees to indemnify and hold harmless the County and each of its officers,

employees, and agents from all costs, damages, and expenses incurred in connection with refusing to disclose any material, which the Proposer has designated as a trade secret.

#### 2.10 - Information Technology Goods and Services

In recognition of the complex and innovative nature of information technology goods and services and of the desirability of a single point of responsibility for contracts that include combinations of purchase of goods, design, installation, training, operation, maintenance, and related services, The County is issuing this RFP as per NCGS 143-128.8.

Contracts for information technology may be entered into under a request for proposals procedure that satisfies the following minimum requirements:

- (1) Notice of the request for proposals shall be given in accordance with G.S. 143-129(b).
- (2) Contracts shall be awarded to the person or entity that submits the best overall proposal as determined by the awarding authority.

Factors to be considered in awarding contracts shall be identified in the request for proposals. The awarding authority may negotiate with any proposer in order to obtain a final product that best meets the needs of the awarding authority. Negotiations allowed under this section shall not alter the contract beyond the scope of the original request for proposals in a manner that: deprives the proposers or potential proposers of a fair opportunity to compete for the contract; and would have resulted in the award of the contract to a different person or entity if the alterations had been included in the request for proposals. Proposals submitted under this section shall not be subject to public inspection until a contract is awarded.

#### 2.11 - Withdrawal of Proposals

Proposers may withdraw or withdraw and resubmit their proposal at any time prior to the closing time for receipt of proposals. NO proposal may be withdrawn after the scheduled closing time for receipt of proposals for a period of ninety (90) days.

#### 2.12 - Equal Opportunity

The non-discrimination clause contained in Section 202 (Federal) Executive Order 11246, as amended by Executive Order 11375, relative to Equal Employment Opportunity for all persons without regard to race, color, religion, sex or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor, are incorporated herein.

The Proposer agrees not to discriminate against any employees or applicant for employment because of physical or mental handicap in regard to any position for which the employees or applicant is qualified. The Proposer agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices.

Pursuant to GS 143-48, New Hanover County encourages small, minority, physically handicapped, and women firms to submit proposals in response to this RFP.

### 2.13 - Indemnity

The successful Proposer shall indemnify and hold the County, its agents and employees, harmless against any and all claims, demands, causes of action, or other liability, including attorney fees, on account of personal injuries or death or on account of property damages arising out of or relating to the work to be performed by the Successful Proposer hereunder, resulting from the negligence of or the willful act or omission of the Proposer, his agents, employees and subcontractors.

### 2.14 – E-Verify

Pursuant to Session Law 2013-418, Contractor shall fully comply with the U.S. Department of Homeland Security employee legal status E-Verify requirements for itself and all its subcontractors. County requires an affidavit attesting to Contractor's compliance. Violation of the provision, unless timely cured, shall constitute a breach of contract.

### 2.15 - Insurance

Before commencing any work, the Proposer shall procure insurance in the Proposer's name and maintain all insurance policies for the duration of the contract of the types and in the amounts listed in this Agreement. The insurance shall provide coverage against claims for injuries to persons or damages to property which may arise from operations or in connection with the performance of the work hereunder by the Proposer, his agents, representatives, employees, or subcontractors, whether such operations are done by himself/herself or anyone directly or indirectly employed by him/her.

Limits of insurance required are detailed in the attached Draft Contract.

### 2.16 - Addendum

The proposal package constitutes the entire set of instructions to the bidder. The County shall not be responsible for any other instructions, verbal or written, made by anyone. Any changes to the specifications will be in the form of an Addendum which will be sent to all known Proposers who are listed with the Finance Office and posted on the County's website.

You may visit our website at <http://www.nhcgov.com/Finance/Pages/CurrentBids.aspx>, call Lena Butler at (910) 798-7190, or email [lbutler@nhcgov.com](mailto:lbutler@nhcgov.com) to check for the issuance of any addenda before submitting your bid proposal.

### 2.17 - Compliance With Proposal Requirements

Failure to comply with these provisions or any other provisions of the General Statutes of North Carolina will result in rejection of bid/proposal.

### 2.18 - Successful Proposer

The Proposer who is not currently set up as a vendor in The County's vendor file will be required to submit a completed Vendor Application, W-9 and EFT form in order to be entered into the County's vendor database.

### 2.19 - Right To Reject Proposals

New Hanover County reserves the right to accept or reject any or all proposals and to make the award which will be most advantageous to the County.

## 2.20 – Federal Uniform Guidance

If the source of funds for this contract is federal funds, the following federal provisions apply pursuant to 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II (as applicable): Equal Employment Opportunity (41 C.F.R. Part 60); Davis-Bacon Act (40 U.S.C. 3141-3148); Copeland “Anti-Kickback” Act (40 U.S.C. 3145); Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708); Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387); Debarment and Suspension (Executive Orders 12549 and 12689); Byrd Anti-Lobbying Amendment (31 U.S.C. 1352); Procurement of Recovered Materials (2 C.F.R. § 200.322); and Record Retention Requirements (2CFR § 200.324).

## Section 3 – Project Scope

### **GENERAL**

- Contractor will provide aerial adulticiding and larviciding services, which includes all labor, equipment, pesticides and other materials needed for each aerial application in New Hanover County.
- Contractor will provide pilot(s) and at least one aircraft either fixed wing or rotary, meeting the criteria detailed below.
- Contractor shall be responsible for loading and unloading the aircraft.
- Maximum acreage to be sprayed not to exceed 105,000 acres per application.
- Two aerial applications may be required. These applications will follow one of the following scenarios, as determined by New Hanover County:
  - Scenario #1 - Aerial adulticiding will be the first application. This may be followed by aerial larviciding within one week of the adulticiding application
  - Scenario #2 – Aerial adulticiding will be the first application. A second aerial adulticiding application may occur within three weeks of the first application.
- The schedule of treatments, sizes, and location of treatment areas will be determined by New Hanover County and defined using GPS coordinates.
- Aerial applications of pesticides shall begin at sunset and shall be completed before dawn.
- Contractor will provide a copy of each aerial spray mission report and map, showing details of the application, within 24 hours after each application.
- Contractor must be prepared to spray with a maximum of 72 hours' notice.
- Contractor must be available for services from October 4, 2018 through November 30, 2018.
- Contractor must have verifiable experience spraying greater than 100,000 acres in one treatment within the last 2 years
- Contractor must have written permission from at least one airport that is to be used as the base of operations for the loading of pesticides into the aircraft.
- All work shall conform with applicable federal, state, territorial, and local laws, ordinances, and regulations concerning mosquito control.

### **PESTICIDES**

- Larvaciding applications will be done with one or more of the following products: Metalarv, Natular G30, and Sustain MBG. Product choice and formulation will be determined by New Hanover County.
- Adulticiding applications will be done with the following product: Dibrom (Naled). This will be applied at the ultra-low volume (ULV) rate of 0.75 oz. per acre.
- Documentation certifying equipment calibration to specified application rates shall be provided to New Hanover County.



- No substitution of chemical is permitted.
- All products must be applied according to label directions and precautions by appropriately trained and certified applicators.
- If, by action or inaction of the Contractor (including employees, agent and subcontractors) or his/her equipment, excessive insecticide is dispensed or is lost through spillage, leaks, etc., the cost of said materials and clean-up will be deducted from payment to Contractor. The Contractor will be responsible for all cost incurred for clean-up of materials.

#### AIRCRAFT REQUIREMENTS

- Certified by FAA and comply with all requirements of FAR part 137, Agricultural Operation
- Have a congested area plan certified by the FAA
- Have ultra-low volume (ULV) adulticide equipment capabilities; rotary atomizer capable and configured to produce less than 50 micron droplets
  - Capable of applying approved larvicides and adulticides within label rates at various operating protocols
- Equipped with GPS navigation system that can target specific areas applying realtime weather data at changing elevations – product release height
- Equipped with night vision capability
- Warranted by contractor to be maintained in an air worthy condition in accordance with maintenance procedures applicable to the type of aircraft
- Fitted with a dry-break coupling device for the loading of pesticides
- Licensed with North Carolina Department of Agriculture pesticide section

#### PILOT REQUIREMENTS

- Must be licensed with the North Carolina Department of Agriculture as commercial pesticide applicator(s) for aerial application with a FAR137 endorsement.
- Have a minimum of:
  - o 1,000 hours as pilot in command of fixed wing aircraft or 500 hours as pilot in command of rotary aircraft
  - o 100 hours mosquito adulticiding, crop spraying, water bombing or similar low level flight experience in the type of aircraft proposed for this agreement.

## Section 4 – Evaluation Criteria & Award

Following the receipt of proposals, the New Hanover County Health Department staff will select the successful contractor based upon consideration of the following criteria:

- A. Availability of personnel and equipment, response time capabilities; 25%
- B. Experience of assigned pilot(s); 20%
- C. Quality of similar work performed for others, successful emergency mosquito applications in the Eastern United States; 10%
- D. Cost per acre of applications; 45%

### Award Procedures

The County reserves the right to make an award without further discussion of the proposals received. Therefore, it is important that the proposal be submitted initially on the most favorable terms from both a technical and cost standpoint. It is understood that any proposal submitted will become part of the public record.

A proposal may be rejected if it is incomplete. New Hanover County may reject any or all proposals and may waive any immaterial deviation in a proposal.

The County may accept the proposal that best serves its needs, as determined by County officials in their sole discretion.

More than one proposal from an individual, firm, partnership, corporation or association under the same name or different names, will not be considered.

## Section 5 – Cost Proposal

Two aerial applications may be required. These applications will follow one of the following scenarios, as determined by New Hanover County:

- Scenario #1 - Aerial adulticiding will be the first application. This may be followed by aerial larviciding within one week of the adulticiding application  
\$\_\_\_\_\_per acre
  
- Scenario #2 – Aerial adulticiding will be the first application. A second aerial adulticiding application may occur within three weeks of the first application  
\$\_\_\_\_\_per acre

Section 6 – Signature Page

<p><b>SIGNATURE FORM (EXECUTION)</b></p> <p><b>AERIAL PESTICIDE SERVICES</b></p> <p><b>RFP # 19-0205</b></p> <p><b>DUE DATE: THURSDAY, OCTOBER 11, 2018 AT 9:00 AM EST</b></p>
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In compliance with this Request for Proposals, and subject to all the conditions herein, the undersigned Vendor offers and agrees to furnish and deliver any or all items upon which prices are bid, at the prices set for each item within the time specified herein. By executing this proposal, the undersigned Vendor certifies that this proposal is submitted competitively and without collusion (N.C.G.S. 143-54), that none of its officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the North Carolina General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (N.C.G.S. 143-59.2), and that it is not an ineligible Vendor as set forth in N.C.G.S. 143-59.1. False certification is a Class I felony. Furthermore, by executing this proposal, the undersigned certifies to the best of Vendor’s knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal or State department or agency. As required by N.C.G.S. §143-48.5, the undersigned Vendor certifies that it, and each of its sub-contractors for any Contract awarded as a result of this RFP, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system.

PROPOSER:		
STREET ADDRESS:	P.O. BOX:	ZIP:
CITY & STATE & ZIP:	TELEPHONE NUMBER:	TOLL FREE TEL. NO:
PRINCIPAL PLACE OF BUSINESS ADDRESS IF DIFFERENT FROM ABOVE		
PRINT NAME & TITLE OF PERSON SIGNING ON BEHALF OF VENDOR:	FAX NUMBER:	
PROPOSER’S AUTHORIZED SIGNATURE:	DATE:	E-MAIL:

NORTH CAROLINA

**AGREEMENT**

NEW HANOVER COUNTY

THIS CONTRACT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2018 by and between **NEW HANOVER COUNTY**, a political subdivision of the State of North Carolina, hereinafter referred to as "County"; and \_\_\_\_\_, a \_\_\_\_\_ hereinafter referred to as "Contractor."

**WITNESSETH:**

That the Contractor, for the consideration hereinafter fully set out, hereby agrees with the County as follows:

1. Scope of Services. Contractor shall provide aerial adulticiding and larviciding services, which includes all labor, equipment, pesticides and other materials needed for each aerial application in New Hanover County, as more fully described on Exhibit A, attached hereto and incorporated herein by reference.

2. Time of Performance. The term of this Agreement shall begin from receipt of Notice to Proceed and all work shall be completed within \_\_\_\_\_ of said Notice.

3. Payment. County hereby agrees to pay for the cost of this Contract not to exceed a sum of \_\_\_\_\_ (\$\_\_\_\_\_) Dollars. Payment is contingent upon a final County inspection and acceptance of work or services.

4. Extra Work. County and Contractor shall negotiate and agree upon the value of any extra work or services prior to the issuance of a County Change Order or Renewal/Amendment (CRA) form covering said extra work or services. Such Change Order or CRA shall set forth the corresponding adjustment, if any, to the Contract Price and Contract Time.

5. Indemnity. Contractor shall indemnify and hold County, its officers, officials, agents, and employees, harmless against any and all claims, demands, causes of action, or other liability, including attorney fees, for any property damages, personal injuries or death arising out of, relating to, or resulting from the negligence, willful act, or omission of Contractor, its agents, employees and subcontractors in the performance of work or services.

Acct# \_\_\_\_\_

Req. \_\_\_\_\_ Flo

6. Insurance. Before commencing any work or services, Contractor shall procure insurance in Contractor's name and maintain all insurance policies for the duration of the Contract of the types and in the amounts listed in this Contract. The insurance shall provide coverage against claims for injuries to persons or damages to property which may arise from operations or in connection with the performance of the work hereunder by Contractor, its agents, representatives, employees, or subcontractors, whether such operations by itself or anyone directly or indirectly employed by it.

7. Minimum Scope and Limits of Insurance

7.1. Commercial General Liability

7.1.1. Contractor shall maintain Commercial General Liability (CGL), including herbicide/pesticide applicator coverage, and if necessary, and if necessary, Commercial Umbrella Liability (CUL) insurance with a total limit of not less than \$2,000,000 for each occurrence for bodily injury and property damage. If such CGL insurance contains a general aggregate limit, it shall apply separately to this work or services, or the general aggregate shall be twice the required limit.

7.1.2. CGL insurance shall be written on Insurance Services Office (ISO) "occurrence" form CG 00 01 covering CGL or its equivalent and shall cover the liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract, including the tort liability of another assumed in a business contract.

7.1.3. County, its officers, officials, agents, and employees are to be covered as additional insureds under the CGL by endorsement CG 20 26 or an endorsement providing equivalent coverage as respects to liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, leased or used by Contractor; and under the CUL, if any. The coverage shall contain no special limitations on the scope of protection afforded to County, its officers, officials, agents, and employees.

7.1.4. Contractor's CGL insurance shall be primary as respects County, its officers, officials, agents, and employees. Any other insurance or

self-insurance maintained by County, its officers, officials, agents, and employees shall be in excess of and shall not contribute to Contractor's insurance.

7.2 Aircraft Liability Insurance. Contractor shall maintain aircraft liability and hull physical damage with respect of all aircraft owned, non-owned, leased and or operated by Contractor for bodily injury, including death, and property damage, including passenger liability, in a combined single limit of not less than \$2,000,000. The policy shall be endorsed as required by this Agreement to include County, and its officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of Contractor.

7.3. Workers' Compensation and Employer's Liability

7.3.1. Contractor shall maintain Workers' Compensation as required by the general statutes of the State of North Carolina and Employer's Liability Insurance.

7.3.2. Employer's Liability, and if necessary, CUL insurance shall not be less than \$1,000,000 for each accident for bodily injury by accident, \$1,000,000 for each employee for bodily injury by disease, and \$1,000,000 policy limit.

7.3.3. The insurer shall agree to waive all rights of subrogation against County, its officers, officials, agents, and employees for losses arising from work or services performed by Contractor for County.

7.4. Business Auto Liability

7.4.1. Contractor shall maintain applicable Business or Personal Auto Liability and, if necessary, CUL insurance with a limit of not less than \$1,000,000 each accident. Personal auto insurance may be accepted in lieu of Business Auto Insurance.

7.4.2. Such insurance shall cover liability arising out of any auto, including owned, hired, and non-owned autos used in the performance of work or services.

7.4.3. Business Auto coverage shall be written on ISO form CA 00 01, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide Contractual liability coverage equivalent to that provided in ISO form CA 00 01.

7.4.4. Contractor's Business Auto Liability insurance shall be primary as respects County, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by County, its officers, officials, agents, and employees shall be in excess of and shall not contribute to Contractor's insurance.

7.5. Deductibles and Self-Insured Retentions

7.5.1. Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects County, its officers, officials, agents, or employees; Contractor shall procure a bond guaranteeing payment of deductibles or self-insured retentions.

7.6.2. Contractor shall be solely responsible for the payment of all deductibles to which all policies are subject, regardless of whether County is an insured under the policy.

7.6. Miscellaneous Insurance Provisions.

7.6.1. Any failure to comply with reporting provisions of the policies listed in this Contract shall not affect coverage provided to County, its officers, officials, agents, and employees.

7.6.2. Each insurance policy required by this Contract shall be endorsed to state that coverage shall not be canceled by either party except after thirty (30) days prior written notice has been given to County, 230 Government Center Drive, Ste. #125, Wilmington, NC 28403.

7.5.3. If Contractor's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

7.7. Acceptability of Insurers. Insurance is to be placed with insurers licensed to do business in the State of North Carolina with an A.M. Best's rating of no less than A VII unless County has granted a specific exemption.

7.8. Evidence of Insurance

7.8.1. Contractor shall furnish County with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements prior to commencing the work or services,



and thereafter upon renewal or replacement of each certified coverage until all operations under this Contract are deemed complete.

7.8.2. Evidence of additional insured status shall be noted on the certificate of insurance as per requirements in this Contract.

7.8.3. With respect to insurance maintained after final payment in compliance with requirements, an additional certificate(s) evidencing such coverage shall be provided to County with final application for payment and thereafter upon renewal or replacement of such insurance until the expiration of the period for which such insurance must be maintained.

7.10. Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein. CGL coverage shall include independent contractors' coverage, and Contractor shall be responsible for assuring that all subcontractors are properly insured.

7.10. Conditions

7.10.1. County may, at its discretion and with approval of Risk Management and the Finance Department, accept letters of credit or custodial accounts in lieu of specific insurance requirements.

7.10.2. Contractor shall warrant that the insurance contributing to the satisfaction of insurance requirements in this Contract and shall not be canceled, terminated, or modified by Contractor without prior written approval of County.

7.10.3. Contractor shall promptly notify the New Hanover County Health Department and New Hanover County Risk Management at (910) 798-7497 of any accidents arising in the course of operations under the Contract causing bodily injury or property damage.

7.10.4. County reserves the right to obtain complete, certified copies of all required insurance policies.

7.10.5. Failure of County to demand a certificate of insurance or other evidence of full compliance with these insurance requirements or failure of County to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

7.10.6. County does not represent that coverage and limits will be adequate to protect Contractor and such coverage and limits shall not be deemed as a limitation of Contractor's liability under the indemnities granted to County in this Contract.

7.10.7. If Contractor fails to maintain the insurance as set forth herein, County shall have the right to purchase said insurance at Contractor's expense. Contractor agrees to reimburse County for all expenses incurred for such purchase.

7.10.8. Contractor or its agent may apply to County for approval of higher deductibles based on financial capacity and quality of the carrier affording coverage.

7.10.9. County shall have the right to prohibit Contractor or any subcontractor from performing work or services and may withhold payment until required certificates has been received and approved by County.

8. Independent Contractor. The parties mutually agree that the Contractor is an independent contractor and not an agent of the County, and as such, the Contractor shall not be entitled to any County employment benefits, such as, but not limited to, vacation, sick leave, insurance, workmen's compensation, or pension and retirement benefits.

9. Default and Termination. If Contractor fails to prosecute the work or services with such diligence as will insure its completion within the Contract time, or if Contractor breaches any of the terms or conditions contained in this Contract and fails to cure said breach within two (2) days of County's mailing of Notice of Default, or otherwise fails to perform the work or services hereunder to the County's reasonable satisfaction, County may terminate this Contract forthwith. Upon termination, County may, without prejudice to an action for damages or any other remedy, take the prosecution of the work or services out of the hands of Contractor. County may enter into another Contract for the completion of the Contract, or use such other methods as may be required for the completion of the Contract. County may deduct all costs of completing the Contract from any monies due or which may become due to Contractor. In the event this Contract is terminated prior to completion of the services by the Contractor, the Contractor shall be paid for work or services performed to the date of termination. In no event will the amount

due Contractor in the event of termination exceed that amount set forth in this Contract. Nothing contained herein shall prevent the County from pursuing any other remedy, which it may have against Contractor, including claims for damages.

10. Termination for Convenience. County may terminate this Contract for convenience at any time and without cause. Upon receipt of notice, Contractor shall immediately discontinue providing the work or service and, if applicable, the placing any orders for any materials, facilities, and supplies in connection with the performance of the work or services of this Contract.

11. Non-appropriation. All funds for payment by County under this Contract are subject to the availability of an annual appropriation of Commissioners for the services provided under the Contract, County will terminate the Contract, without termination charge or liability, on the last day of the then-current fiscal year or when the appropriation made for then-current year for the services/items covered by this Contract is spent, whichever occurs first. If at any time funds are not appropriated for the continuance of this Contract, cancellation shall be accepted by the Contractor on ten (10) business days' prior written notice, but failure to give such notice shall be of no effect and County shall not be obligated under this Contract beyond the date of termination.

12. Non-waiver of Rights. The parties mutually agree that either party's failure to insist upon the strict performance of any provision of this Contract or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this Contract.

13. Conflict of Interest. No paid employee of the County shall have a personal or financial interest, direct or indirect, as a contracting party or otherwise, in the performance of this Contract.

14. Subcontracts. The Contractor shall utilize no subcontractors for performing the work or services to be performed under this Contract without the prior written approval of the County.

15. Entire Contract. This Contract constitutes the entire understanding of the parties.

16. Binding Effect. This Contract shall be binding upon the parties hereto, and their heirs, successors, executors, administrators and assigns.

17. Severability. If any provision of this Contract is held unenforceable, all remaining provisions of this Contract shall remain in full force and effect.

18. Inclusive Terms. Use of the masculine herein shall include the feminine and neuter, and the singular shall include the plural.

19. Governing Law. All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina.

20. E-Verify Compliance. Pursuant to N.C.G.S. 143-133.3, Contractor shall fully comply with the U.S. Department of Homeland Security employee legal status E-Verify requirements for itself and all its subcontractors. Violation of the provision, unless timely cured, shall constitute a breach of Contract.

21. Compliance with Federal Law. If applicable, all federally funded projects, loans, grants, and sub grants whether funded in part or wholly, must be procured in a manner that conforms with all applicable Federal laws, policies, and standards, including those under the Uniform Guidance (2 C.F.R. Part 200).

22. Equal Opportunity.

22.1 During the performance of this contract, Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

22.2 Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

22.3 Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

22.4 Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

22.5 Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

22.6 In the event of Contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

22.7 Contractor will include the provisions of this section in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a

result of such direction, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

23. Contractor shall comply with the following additional federal provisions:

23.1. Davis Bacon Act and Copeland Anti-Kickback Act.

23.1.1 Contractor and its subcontractors agree to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874; 40 U.S.C. § 3145) as supplemented in Department of Labor regulations (29 C.F.R. Part 3). The Copeland Anti-Kickback Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA.

23.1.2 Contractor shall comply with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction)). See 2 C.F.R. Part 200, Appendix II, ¶ D. In accordance with the statute, Contractor must be pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor must be pay wages not less than once a week.

23.1.3 A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

23.2. Contract Work Hours and Safety Standards Act

23.2.1 Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of forty hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of forty hours in the work week.

23.2.2 Overtime: No contractor or subcontractors contracting for any part of the work under this Agreement which may require or involve the

employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such work week.

23.2.3 Violation: liability for unpaid wages; liquidated damages: In the event of any violation of the provisions of this section, Contractor and any subcontractors responsible therefore shall be liable to any affected employee for his unpaid wages. In additions, such Contractor and subcontractors shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of this Agreement in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of his standard work week of forty hours without payment of the overtime wages required by this Agreement.

23.2.4 Withholding for unpaid wages and liquidated damages: County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or its subcontractors under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractors for unpaid wages and liquidated damages as provided in the clause set for in this Agreement.

23.2.5 Subcontracts: Contractor or its subcontractors shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this Agreement.

23.3. Patent Rights: If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement,

and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, County and Contractor agree to take actions necessary to provide immediate notice and a detailed report to FEMA. Unless the Government later makes a contrary determination in writing, irrespective of Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), County and Contractor agree to take the necessary actions to provide, through FEMA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR, Part 401. Contractor agrees to include the above two paragraphs in each third party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FEMA.

23.4. Clean Water Act and Federal Water Pollution Control Act:

23.4.1 Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

23.4.2 Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

23.4.3 Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

23.4.4 Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

23.4.5 Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.



23.4.6 Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. and shall report each violation to County and understands and agrees that County will, in turn, report each violation as required to assure notification to an appropriate Federal Emergency Management Agency, and an appropriate Environmental Protection Agency Regional Office.

23.4.7 Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

23.5. Suspension and Debarment.

23.5.1 This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such Contractor is required to verify that none of Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

23.5.2 Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

23.5.3 This certification is a material representation of fact relied upon by County. If it is later determined that Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

23.5.4 Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

23.6. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used

Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

23.7. Procurement of Recovered Materials.

23.7.1 A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). See 2 C.F.R. Part 200, Appendix II, ¶ J; 2 C.F.R. § 200.322; PDAT Supplement, Chapter V, ¶ 7.

23.7.2 The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

23.7.3 In the performance of this contract, Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

- i. Competitively within a timeframe providing for compliance with the contract performance schedule;
- ii. Meeting contract performance requirements; or
- iii. At a reasonable price.

Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

23.8. Access to Records. The following access to records requirements apply to this contract:

23.8.1 Contractor agrees to provide County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

23.8.2 Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

23.8.3 Contractor agrees to provide the FEMA Administrator or his authorized representative(s) access to construction or other work sites pertaining to the work being completed under this Agreement.

23.9 Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

23.10. Contractor will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

23.11. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

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

24. Notices. All notices required hereunder to be sent to either party shall be sent to the following designated addresses, or to such other address or addresses as may hereafter be designated by either party by mailing of written notice of such change of address, by Certified Mail, Return Receipt Requested:

**To County:**  
New Hanover County Health Department  
Attn: Phillip Tarte, Heath Director  
2029 S 17th Street  
Wilmington, NC 28401

**To Contractor:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

25. Assignability. The parties hereto agree that this Contract is not transferable and shall not be assigned by either party without the written consent of the other party to this Contract.

26. Contract Under Seal. The parties hereto expressly agree to create a Contract under seal.

IN WITNESS WHEREOF, the parties have hereunto affixed their hands and seals, the day and year first above written and by authority duly given.

NEW HANOVER COUNTY

[SEAL]

\_\_\_\_\_  
\_\_\_\_\_ County Manager

ATTEST:

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

CONTRACTOR

[SEAL]

BY: \_\_\_\_\_ (Seal)  
President

ATTEST:

\_\_\_\_\_  
Secretary

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Approved as to form:

\_\_\_\_\_  
County Finance Officer

\_\_\_\_\_  
County Attorney

Acct# \_\_\_\_\_

Req. \_\_\_\_\_ Flo

STATE OF NORTH CAROLINA

NEW HANOVER COUNTY

I, \_\_\_\_\_, a Notary Public of the State and County aforesaid, certify that Kymberleigh G. Crowell acknowledged that she is Clerk to the Board of Commissioners of New Hanover County, and that by authority duly given and as the act of the Board, the foregoing instrument was signed in its name by its \_\_\_\_\_ County Manager, sealed with its corporate seal and attested by herself as its Clerk.

WITNESS my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

STATE OF \_\_\_\_\_

\_\_\_\_\_ COUNTY

I, \_\_\_\_\_, a Notary Public in and for the State and County aforesaid, certify that \_\_\_\_\_, personally came before me this day and acknowledged that (s)he is President of \_\_\_\_\_, a \_\_\_\_\_ and that by authority duly given and as the act of the limited liability corporation, the foregoing instrument was signed in its name by its President.

WITNESS my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**EXHIBIT A**  
**SCOPE OF WORK**

**GENERAL**

- Contractor will provide aerial adulticiding and larviciding services, which includes all labor, equipment, pesticides and other materials needed for each aerial application in New Hanover County.
- Contractor will provide pilot(s) and at least one aircraft either fixed wing or rotary, meeting the criteria detailed below.
- Contractor shall be responsible for loading and unloading the aircraft.
- Maximum acreage to be sprayed not to exceed 105,000 acres per application.
- Two aerial applications may be required. These applications will follow one of the following scenarios, as determined by New Hanover County:
  - Scenario #1 - Aerial adulticiding will be the first application. This may be followed by aerial larviciding within one week of the adulticiding application
  - Scenario #2 – Aerial adulticiding will be the first application. A second aerial adulticiding application may occur within three weeks of the first application.
- The schedule of treatments, sizes, and location of treatment areas will be determined by New Hanover County and defined using GPS coordinates.
- Aerial applications of pesticides shall begin at sunset and shall be completed before dawn.
- Contractor will provide a copy of each aerial spray mission report and map, showing details of the application, within 24 hours after each application.
- Contractor must be prepared to spray with a maximum of 72 hours' notice.
- Contractor must be available for services from October 4, 2018 through November 30, 2018.
- Contractor must have verifiable experience spraying greater than 100,000 acres in one treatment within the last 2 years
- Contractor must have written permission from at least one airport that is to be used as the base of operations for the loading of pesticides into the aircraft.
- All work shall conform with applicable federal, state, territorial, and local laws, ordinances, and regulations concerning mosquito control.

**PESTICIDES**

- Larviciding applications will be done with one or more of the following products: Metalarv, Natular G30, and Sustain MBG. Product choice and formulation will be determined by New Hanover County.
- Adulticiding applications will be done with the following product: Dibrom (Naled). This will be applied at the ultra-low volume (ULV) rate of 0.75 oz. per acre.
- Documentation certifying equipment calibration to specified application rates shall be provided to New Hanover County.
- No substitution of chemical is permitted.
- All products must be applied according to label directions and precautions by appropriately trained and certified applicators.
- If, by action or inaction of the Contractor (including employees, agent and subcontractors) or his/her equipment, excessive insecticide is dispensed or is lost through spillage, leaks, etc., the cost of said materials and clean-up will be deducted from payment to Contractor. The Contractor will be responsible for all cost incurred for clean-up of materials.

**AIRCRAFT REQUIREMENTS**

- Certified by FAA and comply with all requirements of FAR part 137, Agricultural Operation
- Have a congested area plan certified by the FAA
- Have ultra-low volume (ULV) adulticide equipment capabilities; rotary atomizer capable and configured to produce less than 50 micron droplets
- Capable of applying approved larvicides and adulticides within label rates at various operating protocols

- Equipped with GPS navigation system that can target specific areas applying realtime weather data at changing elevations – product release height
- Equipped with night vision capability
- Warranted by contractor to be maintained in an air worthy condition in accordance with maintenance procedures applicable to the type of aircraft
- Fitted with a dry-break coupling device for the loading of pesticides
- Licensed with North Carolina Department of Agriculture pesticide section

PILOT REQUIREMENTS

- Must be licensed with the North Carolina Department of Agriculture as commercial pesticide applicator(s) for aerial application with a FAR137 endorsement.
- Have a minimum of:
  - o 1,000 hours as pilot in command of fixed wing aircraft or 500 hours as pilot in command of rotary aircraft
  - o 100 hours mosquito adulticiding, crop spraying, water bombing or similar low level flight experience in the type of aircraft proposed for this agreement.