

**NEW HANOVER COUNTY**  
**HURRICANE FLORENCE FACILITY REPAIRS**  
**REQUEST FOR QUALIFICATIONS**  
**RFQ 19-0265**

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Due date: December 13, 2018  
Time: 5:00 pm  
Receipt Location:  
200 Division Drive  
Wilmington, NC 28401

## General Information

<b>Advertisement</b>	<b>Monday, November 26, 2018</b>
Deadline for Questions	<b>Tuesday, December 4, 2018 by 5:00 PM</b>
Response to questions on or before	<b>Wednesday, December 5, 2018 by 5:00 PM</b>
Deadline for Receipt of Statements of Qualifications	<b>Thursday, December 13, 2018 by 5:00 PM</b> New Hanover County Attn: Kevin Caison 200 Division Drive Wilmington, NC 28401
Date for Award of Contract	TBD

The purpose of this Request for Qualifications is to solicit qualifications from qualified applicants to provide architectural and engineering services needed to develop plans and specifications to be used to solicit bids for the needed repairs at various county owned facilities. Please review the complete project description located within this document.

The scope of services required will include evaluating the storm related damages and determining the scope of work needed at each facility. Complete plans and specifications will be required to the extent needed in order to solicit competitive bids. The scope of work varies from building to building but here is a list of the buildings and a summary of the damages known to date:

1. Historic Courthouse - Roof was torn off, water intrusion occurred. Water damaged insulation, dry wall, paint, plaster work, carpet.
2. Judicial Building - Water flooded basement. Damage to dry wall, paint, carpet, two elevators.
3. Cape Fear Museum - Equipment on roof torn apart, caused tears in roof membrane. Water intrusion occurred caused damage to dry wall, paint, carpet, ceiling tiles.
4. 421 Fire Station - Roof was torn off, water intrusion occurred. Water damaged insulation, dry wall, paint, carpet.
5. Shaw Speaks - Roof damage to gym, water intrusion occurred. Mold growth due to humid environment.
6. EOC/911 - Generator damaged, automatic generator transfer switch damaged. Still assessing to determine extent of damages.
7. Government Center - Roof damage occurred caused minor leaks, water intrusion damaged ceiling tiles, HVAC systems.
8. EM Storage - Portion of roof was removed, water intrusion led to mold growth.

Bidding and contractor selection services will also be required and must follow the “most restrictive rule” procurement requirements under the Federal Uniform Guidance and FEMA Public Assistance Procurement Requirements for North Carolina Local Governments.

## Questions

Please submit questions electronically via email to [kcaison@nhcgov.com](mailto:kcaison@nhcgov.com) and in the subject line note “**RFQ-19-0265 Hurricane Florence Facility Repairs.**” Deadline for questions is by **5:00pm Tuesday December 4, 2018**. Any changes in the qualification’s request will be sent by email and furnished to all proposers. All questions received will be answered and posted as an addendum by **5:00pm Wednesday December 5, 2018**.

Verbal information obtained otherwise will not be considered in the awarding of the proposal.

## Selection Criteria

The architectural firm must demonstrate its competence of each key consultant's qualifications with respect to the published evaluation factors for design and all optional services. Evaluation factors (1) through (3) will be scored for each candidate with maximum values as indicated in each section.

Specific evaluation factors include:

1. Professional qualifications of firm and staff proposed for the design and architectural services for preparation of construction documents including plans, specifications, cost estimates, record drawings, and review of shop drawings in accordance with county standards on similar projects. (35%)

In addition, scheduling professionals and construction contract claim mitigation tasks will be included. Firms will be evaluated in terms of the team’s qualifications:

- active professional registration in North Carolina.
- experience (with present and other firms) and roles of staff members. Each project should clearly indicate the personnel involved and those personnel should be listed by each project.
- Teams consisting of multiple firms are allowed. Demonstrations of past collaborations and team organizational charts are required.

2. Recent experience with local, state, and FEMA procurement regulations. (35%)

Firms will also be evaluated upon:

- specific knowledge of the construction materials and practices of similar projects and design requirements of New Hanover County, the City of Wilmington; and all Federal and State of North Carolina laws, regulations, codes, and permits applicable to projects of this nature.

3. Capacity of the proposed design team to accomplish the following schedules: (30%)
- Develop Scope of work and bidding documents for all buildings in 30 to 45 days.
  - Please list all current and pending projects for the proposed design team members.
  - Clearly show the office location of all team members that will be doing the actual work.

### **Selection Process**

Phase 1: Each firm will be evaluated based upon information provided in the Selection Criteria listed above. From such review, firms receiving the highest ranking will be the firms chosen to participate in Phase 2, the second phase of the selection process. The County reserves the right to reject any and all statements of qualifications and also reserves the right to waive any irregularities in the statements of qualifications.

Phase 2: The firms who are chosen for Phase 2 of the selection process may be required to make a presentation. Firms will be notified if presentations will be required and given the dates and times reserved for the presentations. The County reserves the right to establish additional rules and procedures for the presentations and for the interview process.

Final Selection: The County will negotiate a contract with the top rated firm as selected by the County. If a contract cannot be successfully negotiated with the top rated firm, the County will proceed to the second rated firm. The County reserves the right to reject any and all statements of qualifications.

### **Submittal Requirements**

New Hanover County requests firms experienced in this type of work to submit a Statement of Qualifications (SOQs) by **5pm EST on Thursday, December 13, 2018. Please send SOQs to:**

New Hanover County  
Attn: Kevin Caison  
200 Division Drive  
Wilmington, NC 28401

Firms responding to this Request for Qualifications are requested to submit three (3) copies of the complete statement of qualifications and one (1) electronic copy on CD or USB.

The successful firm must have the capability of receiving and submitting all documents in an electronic format. Also, successful firm must have Internet access for browsing and receipt of electronic documents via Email.

This is not a request for proposal, and there is no solicitation document or package or plans and specifications to be issued as a result of this announcement.

## **Insurance Requirements**

### **A. Commercial General Liability**

1. Vendor shall maintain Commercial General Liability and if necessary, Commercial Umbrella Liability insurance with a total limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location or the general aggregate shall be twice the required limit.
2. CGL insurance shall be written on Insurance Services Office (ISO) "occurrence" form CG 00 01 covering Commercial General Liability 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).
3. New Hanover County, its officers, officials, agents, and employees are to be covered as additional insureds under the CGL by endorsement CG 20 10 & CG 20 37 or an endorsement providing equivalent coverage as respects to liability arising out of activities performed by or on behalf of the vendor and under the commercial umbrella, if any. The coverage shall contain no special limitations on the scope of protection afforded to New Hanover County, its officers, officials, agents, and employees.
4. The vendor's Commercial General Liability insurance shall be primary as New Hanover County, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by the New Hanover County, its officers, officials, and employees shall be excess of and not contribute with the vendor's insurance.

### **B. Workers' Compensation and Employer's Liability**

1. Vendor shall maintain Workers' Compensation as required by the general statutes of the State of North Carolina and Employer's Liability Insurance.
2. The Employer's Liability, and if necessary, Commercial Umbrella Liability insurance shall not be less than \$1,000,000 each accident for bodily injury by accident, \$1,000,000 each employee for bodily injury by disease, and \$1,000,000 policy limit.

3. The insurer shall agree to waive all rights of subrogation against the New Hanover County, its officers, officials, and employees for losses arising from work performed by the contractor for the New Hanover County.

### **C. Business Auto Liability**

1. Vendor shall maintain Business Auto Liability and, if necessary, Commercial Umbrella Liability insurance with a limit of not less than \$1,000,000 each accident.
2. Such insurance shall cover liability arising out of any auto, including owned, hired, and non-owned autos.
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.
4. The vendor's Business Auto Liability insurance shall be primary as respects New Hanover County, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by the New Hanover County, its officers, officials, and employees shall be excess of and not contribute with the vendor's insurance.

### **D. Professional Liability Insurance**

1. Contractor shall maintain in force for the duration of this contract professional liability or errors and omissions liability insurance appropriate to the contractor's profession. Coverage as required in this paragraph shall apply to liability for a professional error, act, or omission arising out of the scope of the contractor's services as defined in this contract. Coverage shall be written subject to limits of not less than \$ 1,000,000 per loss.
2. If coverage required in paragraph 1. above is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the contract is complete.

### **E-Verify**

Contractors and their subcontractors with 25 or more employees as defined in Article 2 of Chapter 64 of the NC General Statutes must comply with E-Verify requirements to contract with governmental units. E-Verify is a Federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or

equivalent program used to verify the work authorization of newly hired employees pursuant to federal law. Please understand that Contractors, as defined above, must use E-Verify. Therefore, all contractors must be in compliance with the E-Verify requirements to enter into contracts with New Hanover County.

### **Iran Divestment Act of 2016 Compliance Pursuant to N.C.G.S. 147-86.55 et. seq.**

The Act requires that the State, a North Carolina local government, or any other political subdivision of the State of North Carolina must not utilize any contractor or subcontractor found on the State Treasurer's Final Divestment List. Contractor certifies that it or its subcontractors are not listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-85.60. The State Treasurer's Final Divestment List can be found on the State Treasurer's website at the address [www.nctreasurer.com/Iran](http://www.nctreasurer.com/Iran) and will be updated every 180 days.

### **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). (See Attachment A for complete details.)

### **Right to Reject**

The County reserves the right to reject any and all submittals received in response to this request.

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1. 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).

2. Equal Opportunity.

2.1 During the performance of this contract, Bidder will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Bidder 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. Bidder 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.

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

2.3 Bidder 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 Bidder's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

2.4 Bidder 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.

2.5 Bidder 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



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of investigation to ascertain compliance with such rules, regulations, and orders.

2.6 In the event of Bidder'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 Bidder 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.

2.7 Bidder 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. Bidder 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 Bidder becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, Bidder may request the United States to enter into such litigation to protect the interests of the United States.

3. Bidder shall comply with the following additional federal provisions:

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

21.1.1 Bidder 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.

3.2 Bidder 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

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Covering Federally Financed and Assisted Construction)). See 2 C.F.R. Part 200, Appendix II, ¶ D. In accordance with the statute, Bidder 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, Bidder must be pay wages not less than once a week.

3.3 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.

4. Contract Work Hours and Safety Standards Act

4.1 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.

4.2 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.

4.3 Violation: liability for unpaid wages; liquidated damages: In the event of any violation of the provisions of this section, Bidder 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.

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4.4 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 Bidder 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 forth in this Agreement.

4.5 Subcontracts: Bidder 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.

5. 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 Bidder 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 Bidder's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), County and Bidder 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. Bidder 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.

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

6.1 Bidder agrees to comply with all applicable standards,

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orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

6.2 Bidder 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.

6.3 Bidder 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.

6.4 Bidder 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.

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

6.6 Bidder 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.

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

7. Suspension and Debarment.

7.1 This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such Bidder 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).

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7.2 Bidder 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.

7.3 This certification is a material representation of fact relied upon by County. If it is later determined that Bidder 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.

7.4 Bidder 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.

8. 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.

9. Procurement of Recovered Materials.

9.1 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.

9.2 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

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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.

9.3 In the performance of this contract, Bidder 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>.

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

10.1 Bidder 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 Bidder which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

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

10.3 Bidder 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.

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

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approval.

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

10.6. 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.

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

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, hereto referred to "County"; and \_\_\_\_\_, hereinafter referred to as "Architect"; for services described below to be rendered for the following Project: County shall hire Architect to provide design and consulting services for the Hurricane Florence Facility Repairs project, herein after referred to as "Project". Architect's duties for the Project are more particularly described in the proposal \_\_\_\_\_, attached hereto as Exhibit A and incorporated herein by reference.

The County and Architect hereby agree as follows:

**ARTICLE I**

**ARCHITECT'S BASIC DUTIES TO COUNTY**

1.1 By executing this Agreement, Architect represents to County that Architect is professionally qualified to act as Architect for this Project. Architect further represents to County that Architect will maintain all necessary licenses, permits or other authorizations necessary to act as Architect for this Project until Architect's duties hereunder have been satisfied. Architect assumes full responsibility to County for the negligent acts and omissions of its consultants or others employed or retained by Architect in connection with this Project.

1.2 Execution of this Agreement by Architect constitutes a representation that Architect has become familiar with the Project and the conditions under which the Project is to be implemented.

**1.3 Schedule (See Exhibit A)**

1.4 **Project Review Meetings.** Architect shall conduct a monthly Project meeting with County. This meeting will provide a comprehensive review of all aspects of the Project's status and provide a time for discussion of major policy, project performance, design, budget, and schedule issues that may arise.

**1.5 Schematic Drawings**

1.5.1 Architect shall review and examine existing information, including any desired schedule, budgetary requirements and preliminary design information furnished by County to understand the requirements of the Project and shall review the understanding of such requirements with County.

1.5.2 Architect shall review and discuss with County any alternative approaches to design and construction of the Project.



1.5.3 Architect shall prepare and submit to County for review, schematic design documents consisting of drawings and other documents illustrating the scale and relationship of proposed Project modifications.

1.5.4 Architect shall furnish County two (2) copies each of drawings, sketches, forms and reports as appropriate and necessary for County's use, review, and approval.

**1.6 Detailed Design**

1.6.1 Based on the schematic design documents and any adjustments authorized by County in its program, desired schedule or project budget, Architect shall prepare and submit to County for review, detailed design documents consisting of drawings and other documents to fix and describe the size and character of the Project as proposed or modified by County.

1.6.2 Architect shall furnish County two (2) copies of each of drawings, sketches, forms and reports as appropriate and necessary for County's use, review and approval, unless County shall request additional copies.

**1.7 Construction Documents**

1.7.1 Upon County's authorization, Architect shall prepare construction documents consisting of drawings and specifications setting forth in detail the requirements for construction of the Project. Such construction documents shall be reasonably accurate, coordinated and adequate for construction and shall be in conformity and comply with applicable law, codes and regulations in force at the time of preparations of the documents. Products specified for use shall be readily available unless written authorization to the contrary is given by County.

1.7.2 Architect shall furnish County with two (2) copies each of all completed drawings, specifications, reports, estimates, and contract documents and a set of reproducible disks.

**1.8 Construction Administration**

1.8.1 Architect shall provide administration of the construction contract as set forth below and shall perform those duties and discharge those responsibilities set forth herein and in the Agreement between County and Architect hereinafter referred to as the "Construction Contract."

1.8.1.1 Architect's responsibility to provide the Contract Administration Services under this Agreement commences with the award of the initial Contract for Construction and terminates at the issuance to County of the final Certificate of Payment. However, Architect shall be entitled to a Change in Services when Contract Administration Services extends sixty (60) days after the original date of Substantial Completion of the work.

1.8.1.2 Architect shall be representative of and shall advise and consult with County during the provision of the Contract Administration Services. Architect shall have authority to act on behalf of County only to the extent provided in this Agreement unless otherwise modified by written amendment.

1.8.2 Upon receipt, Architect shall review and examine the Contractor's Schedule of Values, together with any supporting documentation or data, which County or Architect may require from the Contractor. The purpose of such review and examination will be to advise County of an unbalanced Schedule of Values, which allocates greater value to certain elements of the work than is indicated by such supporting documentation or data or, than is reasonable under the circumstances. If the Schedule of Values is not found to be appropriate, or if the supporting documentation or data is deemed to be inadequate, and unless County directs Architect to the contrary in writing, the Schedule of Values shall be returned to the Contractor for revision or supporting documentation or data. After making such examination, if the Schedule of Values is found to be appropriate as submitted, or if necessary, as revised, Architect shall sign the Schedule of Values thereby indicating its informed belief that the Schedule of Values constitutes a reasonable, balanced basis for payment of the Contract Price to the Contractor. Architect shall not sign such Schedule of Values in the absence of such belief unless directed to do so by County in writing.

1.8.3 Architect shall review the work of the Contractor whenever and wherever appropriate. The purpose of such inspections will be to determine the quality, quantity, and progress of the work in comparison with the requirements of the Construction Contract. In making such inspections, Architect shall exercise care to advise County of defects or deficiencies in the work, from unexcused delays in the schedule and from overpayment to the Contractor.

1.8.3.1 Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences, procedures, or for safety precautions and programs in connection with the work, since these are solely the Contractor's rights and responsibilities under the Contract Documents. Architect will report to Owner any deficiencies in the construction means, methods, techniques, sequences, procedures, or safety observed by Architect or its representative.

1.8.3.2 Architect shall provide written reports of inspections and shall report to County known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, Architect shall not be responsible for the Contractor's failure to perform the work in accordance with the requirements of the Contract Documents. Architect shall be responsible for Architect's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts of omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the work.

1.8.4 Architect shall at all times have access to the work wherever it is located.

1.8.5 Architect shall determine amounts owed to the Contractor based upon observations of the work as required herein, evaluations of the Contractor's rate of progress in light of the remaining Contract Time and upon evaluations of the Contractor's applications for payment, and shall issue certificates for payment to County in such amounts.

1.8.6 The issuance of a certificate for payment shall constitute a representation by Architect to County that Architect has made a review of the work as provided herein and to the best of the knowledge, information and informed belief of Architect, that the work has progressed to the level indicated, that the quality of the work meets or exceeds the requirements of the Construction Contract, and that, the Contractor is entitled to payment of the amount certified. The issuance of a Certificate of Payment shall not be a representation that Architect has reviewed construction means, methods, techniques, sequences or procedures or ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

1.8.7 Architect shall render written or graphic interpretations necessary for the proper execution or progress of the work with reasonable promptness on request of County.

1.8.8 Architect shall, with the permission of County, reject work, which does not conform to the contract documents unless directed by County, in writing, not to do so. Whenever, in Architect's opinion, it is necessary or advisable, Architect shall require special inspection or testing of the work in accordance with the provisions of the Construction Contract whether or not such work is fabricated, installed, or completed. Architect shall review and approve all testing reports pertaining to project construction.

1.8.9 Architect shall review and approve, or take other appropriate action upon, the Contractor's submittal such as Shop Drawings, Product Data and Samples. Approval by Architect of the Contractor's submittal shall constitute Architect's representation to County that such submittal is in conformance with the Construction Contract. Such action shall be taken with reasonable promptness to cause no delay to the Contractor or the Project. Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by Architect, of any construction means, methods, techniques, sequences or procedures. Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

1.8.10 Architect shall review, and advise County concerning, proposals and requests for Change Orders from the Contractor. Architect shall prepare Change Orders for County's approval and execution in accordance with the Construction Contract, and shall have authority to order with the consent of County, by Field Order, minor changes in the work not involving an adjustment in the Contract Price or an extension of the Contract Time.

1.8.11 Architect shall conduct a review to determine the date of Substantial Completion and the date of Final Completion, shall receive and forward to County for County's review written warranties and related documents required by the construction contract and assembled by the Contractor, and shall, when appropriate, issue a final Certificate for Payment.

1.8.12 Architect shall, without additional compensation, promptly correct any errors, omissions, deficiencies or conflicts in Architect's work product.

1.8.13 Architect 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, 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 Architect hereunder, resulting from the negligent act or omission of Architect, its agents, employees and subcontractors.

1.8.14 Architect shall provide a set of reproducible (inks on Mylar) record drawings of projects showing significant changes in the works made during construction based on marked-up prints, drawing and other data furnished by the Contractor to Architect. Architect shall be able to rely on the completeness and accuracy of this information.

**1.9 Additional Services**

Any additional services will be negotiated with Architect to be paid based on the attached Exhibit A, or as otherwise agreed upon through Change Order.

**ARTICLE II**

**COUNTY'S DUTIES TO ARCHITECT**

2.1 Unless otherwise provided under this Agreement, County shall provide full information in a timely manner regarding requirements for and limitations on the Project.

2.2 County's Designated Representative shall be authorized to act on County's behalf with respect to the Project. County or County's Designated Representative shall render decisions in a timely manner pertaining to documents submitted by Architect in order to avoid unreasonable delay in the orderly and sequential progress of Architects services.

2.3 Unless otherwise provided in this Agreement, County shall furnish tests, inspections and reports required by law or the Contract Documents such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

2.4 County shall provide prompt written notice to Architect if County becomes aware of any fault or defect in the Project, including any errors, omissions, or inconsistencies in Architect's documents.

**ARTICLE III**

**COMPENSATION TO ARCHITECT**

**3.1 Architect's Invoices**

3.1.1 On or before the 10th day of each month, unless otherwise agreed in writing by Architect and County, Architect shall submit an invoice to County requesting payment for services properly rendered. Architect's invoice shall describe with reasonable particularity each service rendered, and the date thereof.

3.1.2 If payment is requested for services rendered by Architect, the invoice shall additionally reflect the allocations as provided in Article III and shall state the percentage of completion as to each such allocation. The invoice shall bear the signature of Architect, which signature shall constitute Architect's representation to County that the services indicated in the invoice have progressed to the level indicated, have been properly and timely performed as required herein, that the reimbursable expenses included in the invoice have been reasonably

incurred, that all obligations of Architect covered by prior paid invoices have been paid in full, and that, to the best of Architect's knowledge, information and informed belief, the amount requested is currently due and owing, there being no reason known to Architect that payment of any portion thereof should be withheld. Submission of Architect's invoice for final payment and reimbursement shall further constitute Architect's representation to County that, upon receipt from County of the amount invoiced, all obligations of Architect to others, including its consultants will be paid in full.

3.2 **Time for Payment.** County shall make payment to Architect of all sums properly invoiced as provided in Payments to Architect paragraph, within thirty (30) days of County's receipt thereof.

3.3 **Owner's Right to Withhold Payment.** In the event that County becomes credibly informed that any representations of Architect are wholly or partially inaccurate, County may withhold payment of sums then or in the future otherwise due to Architect until the inaccuracy, and the cause thereof, is corrected to County's reasonable satisfaction. County may also withhold payment in the event that Architect fails to respond in a timely manner to project issues, which arise through the course of the Project, to the County's satisfaction.

3.4 **Reimbursable Expenses**

3.4.1 Reimbursable Expenses shall mean: expenses incurred by Architect and Architect's consultants in the interest of the Project, only to the extent as follows:

3.4.2 Reasonable expenses of: transportation; long distance communications; postage; additional insurance coverage or limits, including professional liability insurance requested by County in excess amounts specified in this agreement; or other similar cost at the actual cost of these expenses to the Architect.

3.4.3 Expenses including reproduction and handling of drawings, specification and other documents; renderings; models; mock-ups requested by the County; expenses for additional services of consultants, services and land surveyors, geotechnical engineers, and other similar expenses shall be reimbursed to the Architect at a multiple of 1.15 times the amount billed to the Architect for such services.

3.5 **Basis of Compensation.** County agrees to pay Architect, for the full and faithful performance of this contract. Architect will bill County monthly and County will process payment upon approval of work completed to date. The total sum of the contract shall not exceed \_\_\_\_\_ (**\$\_\_\_\_\_**) **DOLLARS**, as per the proposal provided by the Contractor in Exhibit A, attached hereto. Time is of the essence and payment is contingent upon completion of Project by required dates and upon acceptance of the work by the County.

**ARTICLE IV**  
**ARCHITECT'S RECORDS**

**4.1 Architect's Records**

4.1.1 Documentation accurately reflecting the time expended by Architect and its personnel, and records of Reimbursable Expenses shall be maintained by Architect and shall be available to County for review and copying upon request.

4.1.2 Architect shall maintain books, records, documents and other evidence directly pertinent to the work under this Contract in accordance with generally accepted accounting principles and practices. County, or any of its duly authorized representatives, shall have access to any books, documents, papers, records and other evidence, which relates directly to the Project for the purpose of examination, audit, excerpts and transcriptions.

4.1.3 Records described above shall be maintained and made available during the performance under this Contract and for a period of three years after County makes final payment and all other pending matters are closed.

**ARTICLE V**  
**TERMINATION**

5.1 **Termination for Cause.** This Agreement may be terminated by either party upon seven (7) days written notice to the other should such other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination.

5.2 **Termination by County Without Cause.** This Agreement may be terminated by County without cause upon seven (7) days written notice to Architect.

**ARTICLE VI**  
**INSURANCE**

**6.1 Minimum Scope and Limits of Insurance**

**6.1.1 Commercial General Liability**

6.1.1.1 Architect shall maintain Commercial General Liability (CGL) and if necessary, Commercial Umbrella Liability (CUL) insurance with a total limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location or the general aggregate shall be twice the required limit.

6.1.1.2 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.

6.1.1.3 County, its officers, officials, agents, and employees are to be covered as additional insureds under the CGL by endorsement CG 20 10 and CG 20 37 or an endorsement providing equivalent coverage as respects to liability arising out of activities performed by or on behalf of Architect; products and completed operations of Architect; premises owned, leased or used by Architect; and under the commercial umbrella, if any. The

coverage shall contain no special limitations on the scope of protection afforded to County, its officers, officials, agents, and employees.

6.1.1.4 Architect'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 Architect's insurance.

**6.1.2 Workers' Compensation and Employer's Liability**

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

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

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

**6.1.3 Business Auto Liability**

6.1.3.1 Architect shall maintain Business or Personal Auto Liability and, if necessary, CUL insurance with a limit of not less than \$1,000,000 each accident.

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

6.1.3.3 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.

6.1.3.4 Architect'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 Architect's insurance.

**6.1.4 Professional Liability Insurance**

6.1.4.1 Architect shall maintain in force for the duration of this Contract professional liability or errors and omissions liability insurance appropriate to Architect's profession. Coverage as required in this paragraph shall apply to liability for professional error, act, negligence, or omission arising out of the scope of Architect's services as defined in this Contract. Coverage shall be written subject to limits of not less than \$1,000,000 per loss.

6.1.4.2 If coverage in this Contract is on a claims-made basis, Architect warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning from the time that work under the Contract are complete.

**6.2 Deductibles and Self-Insured Retentions**

6.2.1 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, and employees; or Architect shall procure a bond guaranteeing payment of deductibles or self-insured retentions.

6.2.2 Architect shall be solely responsible for the payment of all deductibles to which such policies are subject, whether or not County is an insured under the policy.

**6.3 Miscellaneous Insurance Provisions**

6.3.1 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.

6.3.2 Each insurance policy required by this Contract shall be endorsed to state that coverage shall not 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.

6.3.3 If Architect'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.

6.4 **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.

**6.5 Evidence of Insurance**

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

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

6.5.3 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.

6.6 **Subcontractors.** Architect 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 Architect shall be responsible for assuring that all subcontractors are properly insured.



**6.7 Conditions**

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

6.7.2 Architect shall provide that the insurance contributing to the satisfaction of insurance requirements in this Contract shall not be canceled, terminated, or modified by Architect without prior written approval of County.

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

6.7.4 County reserves the right to obtain complete, certified copies of all required insurance policies, at any time.

6.7.5 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 Architect's obligation to maintain such insurance.

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

6.7.7 If Architect fails to maintain the insurance as set forth herein, County shall have the right, but not the obligation, to purchase said insurance at Architect's expense. Architect agrees to reimburse County for all expenses incurred for such purchase.

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

6.7.9 County shall have the right to prohibit Architect or any subcontractor from entering the Project site, performing services, or withholding payment until required certificates are acquired.

**ARTICLE VII**

**MISCELLANEOUS PROVISIONS**

7.1 **Independent Contractor.** Both parties mutually understand and agree that Architect is an independent contractor and not an agent of County, and as such, Architect, its agents and employees shall not be entitled to any County employment benefits, such as, but not limited to, vacation, sick leave, insurance, worker's compensation, or pension or retirement benefits.

7.2 **Non-waiver of Rights.** It is agreed that County's or Architect's failure to insist upon the strict performance of any provision of this Agreement, 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 Agreement. However, specific written waivers signed by the authorized County representative shall be binding upon County.

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

7.4 **Subcontracts.** Architect shall utilize no subcontractors for carrying out the services to be performed under this Agreement without the written approval of County. By the execution of this Agreement, County grants prior approval to the following subcontractors if any (See Exhibit "B" if subcontractors are to be listed):

7.5. **Further Actions.** The parties will make and execute all further instruments and documents required to execute the purposes and intent of this Agreement.

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

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

7.8 **Time.** Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. Architect shall submit for County's approval a schedule for the performance of Architect's service which initially shall be consistent with the periods established and which shall be adjusted, if necessary, as the Project proceeds. This schedule shall include allowances for time required for County's review, for the performance of County's Consultants, and for the approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by County shall not, except for reasonable cause, be exceeded by Architect or County.

7.9 **Use and Ownership of Documents.** The drawings, specifications and other documents or things prepared by Architect for the Project shall become and be the sole property of County upon final completion of the project. Architect shall be permitted to retain copies thereof for its records and for its future professional endeavors. Such drawings, specifications and other documents or things are not intended by Architect for use on other projects by County or others. Any reuse by County or by third parties without the written approval of Architect, shall be at the sole risk of County and County shall indemnify and save harmless Architect from any and all liability, costs, claims, damages, losses and expenses including attorneys' fees arising out of, or resulting from, such reuse; provided however, that this agreement to indemnify and save harmless shall not apply to any reuse of documents retained by, or through, the Architect. Architect shall not be restricted in any way in the use or reuse of any of the designs, drawings, details, specifications, or other work produced by Architect in the normal course of its business. It is understood that Architect is not transferring a copyright to County.

7.10 **Successors and Assigns.** Architect shall not assign its rights hereunder, excepting its right to payment, nor shall it delegate any of its duties hereunder without the written consent of County. Subject to the provisions of the immediately preceding sentence, County and Architect bind themselves, their successors, assigns, and legal representatives to

the other party to this Agreement and to the successors, assigns, and legal representatives of such other party with respect to all covenants of this Agreement.

7.11. **No Third-Party Beneficiaries.** Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

7.12. **Entire Agreement.** This Agreement represents the entire agreement between County and Architect and supersedes all prior communications, negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both County and Architect.

7.13. **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 Registered Mail, Return Receipt Requested:

**To County:**

New Hanover County Property Management  
Attn: Kevin Caison  
200 Division Drive  
Wilmington, NC 28401

**To Architect:**

7.14 **Non-Discrimination.** Architect will take affirmative action not to discriminate against any employee or applicant for employment or otherwise illegally deny any person participation in or the benefits of the program that is the subject of this agreement because of race, creed, color, sex, age, disability, or national origin. To the extent applicable, Architect will comply with all provisions of Executive Order No. 11246, the Civil Rights Acts of 1964 (P.L. 88-352) and 1968 (P.L. 90-284), and all applicable Federal, State and local laws, ordinances, rules, regulations, including all Federal and State Occupational Safety and Health Act (OSHA) requirements, orders, instructions, designations and other directives promulgated to prohibit discrimination. Violation of this provision, after notice, shall be a material breach of this agreement and may result, at County's option, in a termination or suspension of this Agreement in whole or in part.

7.15 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when Architect's services are substantially completed.

7.16 To the extent damages are covered by property insurance during construction, County and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in this Agreement. County or Architect shall require of the contractors, consultants, agents, and employees of any of them similar waivers in favor of the other parties enumerated herein.

7.17 In the event of a breach of this Agreement by either party, the other party shall be entitled to recover its actual compensatory damages only. Such damaged party shall not be entitled to any consequential damages. Actual compensatory damages for any tort claim shall include, but are not limited to, County facility operational costs and other accommodations.

7.18. Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of a third party against either County or Architect.

7.19. County and Architect shall cooperate with one another to fulfill their respective obligations under this Agreement. Both parties shall endeavor to maintain good working relationships among all members of the Project team.

7.20 **Contract Under Seal.** The parties hereto expressly agree to create a contract under seal.

7.21 **E-Verify Compliance.** Pursuant to N.C.G.S. 143-133.3, Architect 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

7.22 **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).

7.23. **Equal Opportunity.**

7.23.1 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.

7.23.2 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.

7.23.3 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.

7.23.4 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.

7.23.5 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.

7.23.6 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.

7.24.7 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.

**7.24. Contractor shall comply with the following additional federal provisions:**

**7.24.1. Davis Bacon Act and Copeland Anti-Kickback Act.**

7.24.1.1 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.

7.24.1.2 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.

7.24.1.3 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.

**7.24.2. Contract Work Hours and Safety Standards Act**

7.24.2.1 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.

7.24.2.2 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.

7.24.2.3 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.

7.24.2.4 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.

7.24.2.5 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.

7.24.3. **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.

**7.24.4. Clean Water Act and Federal Water Pollution Control Act:**

7.24.4.1 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.

7.24.4.2 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.

7.24.4.3 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.

7.24.4.4 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.

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

7.24.4.6 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.



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

7.24.5. **Suspension and Debarment.**

7.24.5.1 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).

7.24.5.2 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.

7.24.5.3 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.

7.24.5.4 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.

7.24.6. **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.

**7.24.7. Procurement of Recovered Materials.**

7.24.7.1 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.

7.24.7.2 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.

7.24.7.3 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>.

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

7.24.8.1 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.

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

7.24.8.3 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.

7.24.9 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.

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

7.24.11. 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.

7.24.12. 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.

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

[SEAL]

NEW HANOVER COUNTY

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

ATTEST:

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

ARCHITECT

\_\_\_\_\_(SEAL)

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 Director

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

STATE OF NORTH CAROLINA

NEW HANOVER COUNTY

I, \_\_\_\_\_, a Notary Public of the State and County aforesaid, certify that Kymberleigh G. Crowell personally came before me this day and acknowledged that she is Clerk to the Board of County 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 \_\_\_\_\_ County Manager, sealed with its official 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 OF \_\_\_\_\_

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

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

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

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

**CERTIFICATION REGARDING LOBBYING**

**(To be submitted with all bids or offers exceeding \$100,000; must be executed prior to Award)**

The undersigned \_\_\_\_\_ certifies, to the best of his or her knowledge and belief, that:  
(Contractor)

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding to any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.  
This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 for each such expenditure or failure.]

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Section A 3801 *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractors Authorized Official

Subscribed and sworn to before me this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, in the State of \_\_\_\_\_;  
and the County of \_\_\_\_\_.

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

My Appointment Expires \_\_\_\_\_

CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
INELIGIBILITY and VOLUNTARY EXCLUSION  
LOWER TIER COVERED TRANSACTION

- (1) The prospective lower tier participant (Bidder/Contractor) certifies, by submission of this bid or proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) The prospective Bidder/Contractor also certifies by submission of this bid or proposal that all subcontractors and suppliers (this requirement flows down to all subcontracts at all levels) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (3) Where the prospective lower tier participant (Bidder/Contractor) is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this bid or proposal.

The lower tier participant (Bidder/Contractor), \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of this statement of its certification and disclosure, if any.

SIGNATURE \_\_\_\_\_

TITLE \_\_\_\_\_

COMPANY \_\_\_\_\_

DATE \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_ day of \_\_\_\_\_, 20\_\_

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

My Appointment Expires \_\_\_\_\_