REQUEST FOR BIDS

FOR

Smith Creek Watershed Recovery

RFB # 20-0356

COUNTY COMMISSIONERS

JULIA OLSON-BOSEMAN, CHAIR
PATRICIA KUSEK, VICE-CHAIR
JONATHAN BARFIELD, JR.
WOODY WHITE
ROB ZAPPLE

CHRIS COUDRIET, COUNTY MANAGER
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**Attachments:**

A. EWP-Assurances-Construction Programs  
B. MWBE Program Requirements  
C. Certification Regarding Lobbying  
D. Certification Regarding Debarment  
E. Bid Bond  
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G. Payment Bond  
H. Draft Contract  
I. Drawing
Section 1 – Advertisement

New Hanover County
Request for Bids
Smith Creek Watershed Recovery
RFB# 20-0356

Sealed bids addressed to Lena Butler, Purchasing Supervisor, 230 Government Center Drive, Suite 165, Wilmington, NC 28403 and marked “RFB # 20-0356- Smith Creek Watershed Recovery” will be received at 11:00 A. M. EST, May 15, 2020. This bid is for the removal of debris and sediment in Smith Creek Watershed in New Hanover County.

Due to COVID-19, New Hanover County has implemented county-wide restrictions that supplement the Governor’s state-wide Stay at Home Order.

New Hanover County Government buildings will be open to the public for limited walk-in hours: Monday-Friday from 10 a.m. to 2 p.m.

Bidders are instructed to mail their bid to the Finance Office located at 230 Government Center Drive, Suite 165, Wilmington, NC prior to the 11:00 AM deadline May 15, 2020. If you will be dropping off your bid, please ensure that you take note of the limited walk-in hours which are Monday-Friday from 10 a.m. to 2 p.m.

NOTE: The bid opening at 11:00 A. M. EST, May 15, 2020 will be accessible via Microsoft WebEx only.
Bidders may Join the WebEx by Phone:
Dial: 1-415-655-0003
Access Code: 286 818 257

If you would like to join the meeting live with video and audio capabilities, please send an email to Lena Butler, Purchasing Supervisor lbutler@nhcgov.com.

Bids will be received for a Single Prime Contract. Bidders must be properly licensed under Chapter 87 of the North Carolina General Statues.

All prime bidders on this project must be pre-qualified in accordance with New Hanover County’s Pre-qualification Ordinance in order to bid. Bids will not be accepted unless the bidder is pre-qualified. Pre-qualification applications may be obtained at the County Legal Department, 230 Government Center Drive, Suite 155, Wilmington, NC 28403 or by visiting the County’s website at http://legalinsurance.nhcgov.com/contractors-approved-for-bidding/.
Bidding Documents may be accessed on the County’s website at https://finance.nhcgov.com/purchasing-solicitation/open-and-closed-bids/.

A Bid Bond Equal to 5% of the bid price is required by all bidders. The successful bidder will be required to provide Performance and Payment bonds equal to one hundred percent (100%) of the contract price.

No Bid may be withdrawn ninety (90) days after bid opening date.

The bidder shall make good faith efforts, as defined in the bid specifications, to subcontract 10% of the dollar value of the single prime contract to businesses owned and controlled by minorities.

The County reserves the right to waive any informalities, to reject any or all bids, and to accept that Bid or Bids which is in the best interest of the County.

**Posted:** Monday, April, 20, 2020
Section 2 – Instructions and General Conditions

2.1 – Schedule

<table>
<thead>
<tr>
<th>Date</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 20, 2020</td>
<td>RFB Issued</td>
</tr>
<tr>
<td>Any time prior to the deadline for receipt of bids May 15, 2020 at 11:00 am</td>
<td>Self-guided site visits as allowed by law.</td>
</tr>
<tr>
<td>May 1, 2020 by 5:00 PM</td>
<td>Deadline for questions. All questions must be submitted in writing to Lena Butler at <a href="mailto:lbutler@nhcgov.com">lbutler@nhcgov.com</a>.</td>
</tr>
<tr>
<td>May 6, 2020</td>
<td>Questions will be answered via written addendum</td>
</tr>
<tr>
<td>May 15, 2020 at 11:00 AM</td>
<td>Deadline for receipt of SEALED bids</td>
</tr>
</tbody>
</table>

2.2 – Preparation of Bid

2.2.1 Bidders are instructed to submit their bid using the bid form provided. in a sealed envelope. Discrepancies between words and numerals will be resolved in favor of words. Discrepancies between the multiplication of units of work and unit prices will be resolved in favor of the unit prices. Changes or corrections made in the bid must be initialed by the individual signing the proposal. **BIDS NOT SIGNED WILL BE DEEMED NONRESPONSIVE AND REJECTED.**

No telephone, electronic or facsimile proposals will be considered. **Bids received after the time and date for closing will be rejected.**

2.2.2 **Deviations:** New Hanover County reserves the right to allow or disallow minor deviations or technicalities should the County deem it to be in the best interest of the County. New Hanover County shall be the sole judge of what is to be considered a minor deviation or technicality.

2.3 Submission of Bid

Submit bid with attachments in a sealed envelope properly marked “**RFB # 20-0356 Smith Creek Watershed Recovery**” and addressed to:

New Hanover County Finance Office  
Attn: Lena Butler, Purchasing Supervisor  
230 Government Center Drive, Suite 165  
Wilmington, NC  28403
2.4 – Site Visits
Due to COVID-19, New Hanover County has implemented county-wide restrictions that supplement the Governor’s state-wide Stay at Home Order. Bidders may conduct a self-guided site visit while the bidding period is still open as allowed by law. Site visits are not mandatory but highly recommended. Please use extreme caution and be respectful of the adjacent property owners.

2.5 – Questions
Questions concerning the specifications in this Request for Bids (RFB) should be directed to Lena Butler, Purchasing Supervisor by emailing lbutler@nhcgov.com. Questions will be received until May 1, 2020 at 5:00 pm. An addendum summarizing all questions and answers will be posted to the County’s website and Bidders who have notified the County of their intent to submit a bid along with the email address will be sent the addendum upon posting no later than May 6, 2020.

2.6 – Communication
Bidders may not have communications, verbal or otherwise, concerning this RFB with any personnel or boards from New Hanover County, other than the person listed in this section which is Lena Butler, Purchasing Supervisor at email lbutler@nhcgov.com. If any bidder attempts any unauthorized communication, the bid may be rejected.

2.7 – Intent to Submit
All Bidders who intend to submit a bid on this project should send an email to lbutler@nhcgov.com including pertinent contact information. This will ensure that you receive any addenda issued for this RFB; if applicable. This will also ensure that you are invited to the Bid Opening which will be held via WebEx.

2.8 - Cost of Preparation of Response
Costs incurred by prospective Bidders in the preparation of the response to this Request for Bids are the responsibility of the Bidder and will not be reimbursed by The County.

2.9 – Bid Opening
The bids will be opened to the public using Microsoft WebEx May 15, 2020 at 11:00 a.m. EST. Bids received after this time will not be accepted.

2.10 – Award
Award “shall be made to the lowest responsive responsible bidder taking into consideration quality, performance, and the time specified in the bid for the performance of the contract.” The County may also consider other factors such as past performance, financial stability, and availability of equipment in the consideration of award.

2.11 - Execution of Agreement
The successful Bidder will be required to enter into a formal agreement that is consistent with the bid requirements outlined within. The successful Bidder to whom the Contract is awarded by the County shall within seven (7) days after notice of award and receipt of Agreement from the County, sign and deliver to the County all required copies of said Agreement.

2.12 – Ownership of Documents
All bids and accompanying documentation will become the property of New Hanover County at the time the bids are opened and as such will not be returned to the bidder.

2.13 - Trade Secret Confidentiality
All bid proposals received are considered public record and available for public inspection after award of contract and/or purchase order. According to General Statutes 132 - 1.2, trade secrets contained in a bid may be kept confidential if the bidder, at the time the bid is submitted, designates the secret and requests that it be kept confidential. This right of privacy will be construed as narrowly as possible to protect the interests of the BIDDER while attempting to maximize the availability of information to the public.

2.14 - Withdrawal of Bids
A bidder submitting a bid for construction or repair work or for the purchase of apparatus, supplies, materials, or equipment may withdraw the bid from consideration after the bid opening without forfeiture of his bid security if the price bid was based upon a mistake, which constituted a substantial error, provided the bid was submitted in good faith, and the bidder submits credible evidence that the mistake was clerical in nature as opposed to a judgment error, and was actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, apparatus, supplies, materials, equipment, or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work papers, documents or materials used in the preparation of the bid sought to be withdrawn.

A request to withdraw a bid must be made in writing to the County prior to the award of the contract, but not later than 72 hours after the opening of bids. If the work or purchase is rebid, under no circumstances may the bidder who has filed a request to withdraw be permitted to rebid the work or purchase.

2.15 – Authorized Signature
Please be advised that the person signing the bid must be authorized by your organization to contractually bind your firm with regard to prices and related contractual obligations for the delivery and installation period requested. **BIDS NOT SIGNED WILL BE REJECTED.**
2.16 – Bid Bond
A deposit equal to not less than five percent (5%) of the bid amount must accompany the bid. The bid deposit may be in any of the following forms:
   a. Cash
   b. Cashier’s check
   c. Certified check
   d. Bid bond executed by a surety licensed in North Carolina

The bid deposit shall be retained if the successful bidder fails to execute the contract within 10 days after the award or fails to give satisfactory surety as required.

2.17 – Surety Bonds

A performance bond in the amount of one hundred percent (100%) of the construction contract amount, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. Such bond shall be solely for the protection of the contracting body that is constructing the project.

A payment bond in the amount of one hundred percent (100%) of the construction contract amount, conditioned upon the prompt payment for all labor or materials for which a contractor or subcontractor is liable. The payment bond shall be solely for the protection of the persons furnishing materials or performing labor for which a contractor, subcontractor, or construction manager at risk is liable.

The performance bond and the payment bond shall be executed by one or more surety companies legally authorized to do business in the State of North Carolina and shall become effective upon the awarding of the construction contract.

2.18 – E-Verify

Pursuant to N.C.G.S 147-33.95(g), New Hanover County shall not enter into a contract unless the Bidder and each of its sub-contractors comply with the E-Verify requirements of N.C.G. S. Chapter 64, Article 2. Bidders are directed to review the foregoing laws. The successful Bidder must submit a certification of compliance with E-Verify to the County, and on a periodic basis thereafter as may be required by the County.

2.19 - 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 Bidder 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
Bidder 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 bids in response to this RFB.

2.20- Minority Participation
The bidder will make good faith efforts to subcontract with individuals who are minorities to include women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and Asian-Indian Americans. Bidders should submit along with the bid information concerning minority business enterprises that they have contacted and those which will participate in the contract.

2.21- Indemnity
The successful Bidder 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 Bidder hereunder, resulting from the negligence of or the willful act or omission of the Bidder, his agents, employees and subcontractors.

2.22 - Insurance
Before commencing any work, the Bidder shall procure insurance in the Bidder’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 Bidder, his agents, representatives, employees, or subcontractors, whether such operations are done by himself/herself or anyone directly or indirectly employed by him/her. See required limits in the Draft Contract.

2.23 - Addendum
The bid 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 Bidders 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, or email lbutler@nhcgov.com to check for the issuance of any addenda before submitting your bid.

2.24- Compliance with Bid Requirements
Failure to comply with these provisions or any other provisions of the General Statutes of North Carolina will result in rejection of bid.
2.25 - Successful Bidder
The Bidder 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.

2.26 - Right to Reject Bids
The County reserves the right to waive any informalities, to reject any or all bids, and to accept that Bid or Bids which is in the best interest of the County.

2.27 – Bid Protest Procedures

As a custodian of public funds, the County must adhere to applicable bidding practices established by State law, County policy, and good administrative practice. Bids may be protested for any bid solicited. All protests must be in the writing and must be delivered to the Finance Director prior to award by the Board of Commissioners or issuance of purchase order.

The protester (bidder) shall adhere to the following procedures:

1. The protester (bidder) who protests a bid will deliver a written statement to the Finance Director detailing the reason for the protest within five (5) business days or prior to award and/or issuance of a purchase order whichever is later.

2. The Finance Director will review the data submitted and provide a formal response to the protester (bidder) within five (5) business days after receipt of the written protest.

3. A protester (bidder) not satisfied with that response may appeal the decision to the County Manager, provided such appeal is received within five (5) business days after the response from the Finance Director. If an appeal is not filed within the specified period, no other County redress is available.

4. No further appeal is available as of right; provided, however, the dis-satisfied protester (bidder) may request that the Board of Commissioners elect to hear an appeal from the decision of the County Manager. The decision rendered by the Board of Commissioners is final.

5. Any and all cost incurred by a protesting party in connection with a protest shall be the sole responsibility of the protesting party.

2.28 – Draft Contract
A draft contract is attached for review by the Bidder.
2.29 – Contract Contingent on Funding

Award of this project is contingent on execution of the contract between New Hanover County and the Natural Resources Conservation Service which will provide funding for the work.
Section 3 – Specifications for Smith Creek Watershed Recovery

SPECIFICATIONS
SMITH CREEK WATERSHED RECOVERY
NEW HANOVER COUNTY, NC

PART 1 – GENERAL..................................................................................................................1

PART 2 – DEBRIS REMOVAL.................................................................................................3

PART 3 - SEDIMENT REMOVAL............................................................................................4

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PART 1 GENERAL

1.1 Description. This project provides for the removal of debris and sediment from streams and open drainage channels in Smith Creek watershed in New Hanover County. This is the first of ten similar projects to clear drainage conveyances in the county.

1.2 Mobilization. This item includes all preparatory work and operations for the project, including but not limited to:

A. Movement of personnel, equipment, supplies, and incidentals to and from the project site.

B. Establishment of temporary fencing, staging areas, temporary access and haul routes and other facilities as necessary to complete the work.

C. Maintenance of vehicle and construction traffic including portable and stationary construction signs, barricades, drums, cones and other traffic control devices.

D. Performance bond, labor and materials bond and insurance.

E. Any work outside the limits of construction to restore areas disturbed by the Contractor to their original condition including pavement rehabilitation, grading, seeding, mulching, cleaning, and disposal.

F. Any temporary flow diversion or dewatering required to perform the work. Adequate drainage flow through all channels must be maintained at all times during the work.

1.2.1 Measurement and Payment. Mobilization will be paid at the lump sum price provided in the contract. The mobilization bid amount shall be paid equally in the first two (2) monthly partial pay estimates up to 5% of the total bid amount. Any mobilization amount exceeding 5% of the total bid amount will be paid on the final payment.

1.3 Site Access and Notification. Access to the project sites is to be through existing easements and rights-of-way. Permission to access any other areas is the responsibility of the contractor to obtain, if necessary. A minimum of 24 hrs. notice is to be provided to property owners prior to work on their property.
1.4 Protection of Existing Vegetation. Existing vegetation is to be protected to the maximum extent practical. Any trees required to be removed for access are to be flagged and approved by the Engineer prior to removal. Damages for any unauthorized tree removal will be assessed per the New Hanover County tree protection ordinance.

1.5 Protection of Existing Utilities. Locate, identify, and protect from damage any existing utilities in the work area. Any damage to existing utilities is the responsibility of the Contractor to repair.

1.6 Protection of Existing Infrastructure or Property. Any damage to existing infrastructure or property caused by the Contractor that occurs during the course of the work is the responsibility of the Contractor to repair. Any existing damage in or near the work area should be documented and brought to the attention of the Engineer prior to beginning work.

1.7 Progress Payments. The Contractor shall provide monthly payment estimates for work performed during the period and verify quantities with the Engineer prior to submission of invoices to the County.

1.8 Project Timeframe. All work included in this contract is to be complete within 90 days from the notice to proceed. Extensions may be granted for reasons such as change in scope or inclement weather. Requests for extensions are to be made in writing to the Engineer within 21 days from the day of occurrence of the event causing the delay.

1.9 Liquidated Damages. Failure to complete the work within the contract time will result in assessment of liquidated damages of $250/day.

1.10 Work Hours. Standard work hours shall be between 7 am and 6 pm on weekdays excluding County holidays. Requests for work outside of standard hours may be made in writing to the Engineer.

1.11 Noise Control. The contractor shall prevent excessive noise levels during the project per the County Noise Ordinance. The Contractor shall provide baffles and/or enclosures on any equipment that must be operated outside of standard work hours.

END OF PART 1
PART 2 DEBRIS REMOVAL

2.1 Description. The work covered by this section consists of hand-clearing of debris from streams and ditches in the areas indicated on the project location map. Hand tools such as shears pruning saws, hatchets, axes, hooks or chain saws may be used to perform the work as described below:

A. Vegetative Debris. Remove fallen logs and branches from the channel and side slopes. Remove and dispose of the debris at the New Hanover County landfill or other approved facility.

B. Embedded Logs. Fully embedded logs parallel to the channel should not be removed. Partially embedded logs with the potential to trap debris should be cut near the ground and removed as vegetative debris.

C. Uprooted Trees. Uprooted trees in or over the channel and side slopes are to be cut within two (2) ft of the roots and the root ball replaced in the original location. The cut portion shall be removed as vegetative debris.

D. Leaning Trees. Trees leaning over the channel at an angle greater than 30 deg from vertical shall be removed. The tree shall be cut within two (2) ft of the roots and the root ball replaced in the original location. The cut portion shall be removed as vegetative debris.

E. Vegetative Debris On-site Disposal. In cases where there is insufficient access to remove vegetative debris, the Engineer may specify on-site disposal. Debris will be oriented parallel to the channel a minimum of 5’ from the top of bank.

F. Non-vegetative debris. Remove any non-vegetative debris from the channel, side slopes and drainage easement and provide for disposal at the New Hanover County landfill or other approved facility.

2.1.1 Measurement and Payment.

A. Vegetative debris, log and tree removal will be paid per lf of drainage way cleared.

B. Vegetative debris disposal will be paid per ton disposed as shown on landfill tickets.

C. Payment for non-vegetative debris disposal will be paid per ton disposed as shown on landfill tickets.

END OF PART 2
PART 3 SEDIMENT REMOVAL

3.1 Description. The work covered by this section consists of removal of sediment from streams and ditches in the areas indicated on the project location map and as defined below:

A. **Work Limits.** Sediment removal is limited to 200’ from both the upstream and downstream ends of culverts.

B. **Permit.** In jurisdictional streams, sediment removal is permitted by Army Corps of Engineers (ACE) Nationwide Permit 3. The Contractor is to adhere to conditions of this permit and provide pre-construction notification to the Wilmington division of the US Army Corps of Engineers prior to sediment removal. Permit notification is considered incidental to sediment removal.

C. **Removal Depth.** Remove sediment from the channel to provide positive drainage from points 200’ upstream and downstream of culverts. Provide center line construction staking at 25’ maximum intervals to establish cut depths. The Engineer is to approve staking prior to sediment removal.

D. **Sediment Disposal.** Removed sediment is to be disposed of at the New Hanover County landfill or other approved facility.

E. **Measurement and Payment.** Payment for sediment removal and disposal is per linear foot of sediment removed.

END OF PART 3
NEW HANOVER COUNTY
Smith Creek Watershed Recovery
Bid Form
RFB # 20-0356

Deadline for Receipt of Bids: MAY 15, 2020 AT 11:00 AM EST.

I certify that this bid is made without prior understanding, agreement or connection with any corporation firm, or person submitting a bid for the same services and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards. I agree to abide by all conditions of this bid and certify that I am authorized to sign this bid for the bidder.

CONTRACTOR’S NAME: _____________________
OFFICE PHONE: ___________________ CELL PHONE: _____________________
ADDRESS: _______________________________
EMAIL ADDRESS: _______________________________

Acknowledgment of Addendum:
Addendum #_____ Dated: ________________
Addendum #_____ Dated: ________________

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</table>

Total

________________________________________________________
Signature                                              Printed Name

________________________________________________________
Date

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RFB 20-0356
SMITH CREEK WATERSHED RECOVERY
Section 5 – Federal Uniform Guidance Provisions

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 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.

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 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.

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 for 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, 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).

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.


9. **Procurement of Recovered Materials.**


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 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-approval.
10.5. Bidder will comply with 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.
NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain Federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the project.

4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.

5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.

6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

10. Will comply with all Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681, 1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) underwhich application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.


14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).


18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-1 33, "Audits of States, Local Governments, and Non-Profit Organizations."

19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

*SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL*  
*APPLICANT ORGANIZATION*  
*DATE SUBMITTED*  
*TITLE*  

Completed on submission to Grants.gov

SF-424D (Rev. 7-97) Back
New Hanover County
 Minority and/or Women Business Enterprise
  (M/WBE) Program

Construction Guidelines and Affidavits

These instructions shall be included with each bid solicitation.
New Hanover County
Minority and/or Women Business Enterprise Program

Construction Guidelines for M/WBE Participants

Policy Statement
It is the policy of New Hanover County that minority businesses, as defined by North Carolina General Statute 143-128 have maximum opportunity to participate in the performance of contracts and subcontracts funded in whole or in part with public funds. This includes all aspects of the County’s contracting and procurement programs, including but not limited to construction projects, supplies and materials, as well as professional and personal service contracts.

Goals and Good Faith Efforts
Bidders responding to this solicitation shall comply with the M/WBE program by making Good Faith Efforts to achieve the following aspiration goals for participation.

| M/WBE | 10% |

Bidders shall submit M/WBE information with their bids on the forms provided. This information will be subject to verification by the County prior to contract award. Firms qualifying as “M/WBE” for the County’s goals must be certified by the NC Department of Historically Underutilized Businesses (NCHUB) or by the NC Department of Transportation (NCDOT). Firms qualifying as “WBE” must be designated as “women-owned business and firms qualifying as “MBE” must be certified in one of the other categories (i.e.: Black, Hispanic, Asian American, American Indian, Disabled, or Socially and Economically Disadvantaged). Those firms who are certified as both a “WBE” and “MBE” may only satisfy the “MBE” requirement. A complete database of NC HUB certified firms may be found at http://www.doa.nc.gov/hub/default.aspx and NCDOT firms may be found at https://partner.ncdot.gov/VendorDirectory/default.html.

Please note: A contractor may utilize any firm desired; however, in order for the County to count the participation towards the goal, all M/WBE vendors who wish to do business as a minority or female must be certified by NC HUB or NCDOT.

The Bidder shall make good faith efforts to encourage participation of M/WBEs prior to submission of bids in order to be considered as a responsive bidder. Bidders are cautioned that even though their submittal indicates they will meet the M/WBE goal, they should document their good faith efforts and be prepared to submit this information, if requested.

The M/WBE’s listed by the Contractor on the Identification of Minority/Women Business Participation which are determined by the County to be certified shall perform the work and supply the materials for which they are listed unless the Contractors receive prior authorization from the County to perform the work with other forces or to obtain materials from other sources. If a contractor is proposing to perform all elements of the work with his own forces, he must be prepared to document evidence satisfactory to the owner of similar government contracts where he has self-performed.
ATTACHMENT B

The Contractor shall enter into and supply copies of fully executed subcontracts with each M/WBE or supply signed Letter(s) of Intent to the Project Manager after award of contract and prior to Notice to Proceed. Any amendments to subcontracts shall be submitted to the Project Manager prior to execution.
Instructions

The Bidder shall provide with the bid the following documentation:

- Identification of Minority/Women Business Participation
  (if participation is zero, please mark zero—Blank forms will be considered nonresponsive)

- Affidavit A (if subcontracting)

OR

- Identification of Minority/Women Business Participation
  (if participation is zero, please mark zero—Blank forms will be considered nonresponsive)

- Affidavit B (if self-performing; must attest that bidder does not customarily subcontract work on this type of project—includes supplies and materials)

Within 72 hours or 3 business days after notification of being the apparent low bidder who is subcontracting anything must provide the following information:

- Affidavit C (if aspirational goals are met or are exceeded)

OR

- Affidavit D (if aspirational goals are not met)

After award of contract and prior to issuance of notice to proceed:

- Letter(s) of Intent or Executed Contracts

**With each pay request, the prime contractors will submit the Proof of Payment Certification, listing payments made to M/WBE subcontractors.

***If a change is needed in M/WBE Participation, submit a Request to Change M/WBE Participation Form. Good Faith Efforts to substitute with another M/WBE contractor must be demonstrated.

Minimum Compliance Requirements:

All written statements, affidavits, or intentions made by the Bidder shall become a part of the agreement between the Contractor and the County for performance of contracts. Failure to comply with any of these statements, affidavits or intentions or with the minority business guidelines shall constitute a breach of the contract. A finding by the County that any information submitted (either prior to award of the contract or during the performance of the contract) is inaccurate, false, or incomplete, shall also constitute a breach of the contract. Any such breach may result in termination of the contract in accordance with the termination provisions contained in the contract. It shall be solely at the option of the County whether to terminate the contract for breach or not. In determining whether a contractor has made Good Faith Efforts, the COUNTY will evaluate all efforts made by the Contractor and will determine compliance in regard to quantity, intensity, and results of these efforts.
NEW HANOVER COUNTY
Identification of Minority/Women Business Participation

I, ________________________ (Name of Bidder)
do hereby certify that on this project, we will use the following minority/women business enterprises as
construction subcontractors, vendors, suppliers or providers of professional services.

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<th>Firm Name, Address and Phone #</th>
<th>Work type</th>
<th>*M/WBE Category</th>
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*M/WBE categories: Black, African American (B), Hispanic (H), Asian American (A) American Indian (I),
Female (F) Socially and Economically Disadvantaged (S) Disabled (D)

If you will not be utilizing M/WBE contractors, please certify by entering zero “0”

The total value of MBE business contracting will be ($)__________________.
The total value of WBE business contracting will be ($)__________________.
NEW HANOVER COUNTY AFFIDAVIT A – Listing of Good Faith Efforts

County of ____________________________  (Name of Bidder)

Affidavit of_____________________________________________________

I have made a good faith effort to comply under the following areas checked:

Bidders must earn at least 50 points from the good faith efforts listed for their bid to be considered responsive.  (1 NC Administrative Code 30 I.0101)

☒ 1 – (10 pts) Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor, or available on State or local government maintained lists, at least 10 days before the bid date and notified them of the nature and scope of the work to be performed.

☒ 2 – (10 pts) Made the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bids are due.

☒ 3 – (15 pts) Broken down or combined elements of work into economically feasible units to facilitate minority participation.

☒ 4 – (10 pts) Worked with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.

☒ 5 – (10 pts) Attended prebid meetings scheduled by the public owner.

☒ 6 – (20 pts) Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.

☒ 7 – (15 pts) Negotiated in good faith with interested minority businesses and did not reject them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.

☒ 8 – (25 pts) Provided assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.

☒ 9 – (20 pts) Negotiated joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.

☒ 10 - (20 pts) Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Minority/Women Business Participation schedule conditional upon scope of contract to be executed with the Owner. Substitution of contractors must be in accordance with GS143-128.2(d) Failure to abide by this statutory provision will constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of the minority/women business commitment and is authorized to bind the bidder to the commitment herein set forth.

Date:____________  Name of Authorized Officer:________________________

Signature:__________________________________________________________

Title:_____________________________________________________________

State of____________________, County of_______________________________

Subscribed and sworn to before me this _____ day of _____________ 20____

Notary Public_____________________________________________________

My commission expires___________________________________________

Page 6
NEW HANOVER COUNTY --AFFIDAVIT B-- Intent to Perform Contract with Own Workforce.

County of ______________________

Affidavit of ______________________ (Name of Bidder)

I hereby certify that it is our intent to perform 100% of the work required for the ______________________ contract.

(Name of Project)

In making this certification, the Bidder states that the Bidder does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform all elements of the work on this project with his/her own current work forces; and

The Bidder agrees to provide any additional information or documentation requested by the owner in support of the above statement.

The undersigned hereby certifies that he or she has read this certification and is authorized to bind the Bidder to the commitments herein contained.

Date: __________ Name of Authorized Officer: __________________________________________

Signature: __________________________________________

Title: __________________________________________

State of ______________________, County of ______________________

Subscribed and sworn to before me this ___________ day of ______ 20___

Notary Public ______________________

My commission expires____________________
NEW HANOVER COUNTY - AFFIDAVIT C -  Portion of the Work to be Performed by M/WBE Firms

County of ____________________________
(Note this form is to be submitted only by the apparent lowest responsible, responsive bidder.)

If the portion of the work to be executed by M/WBE businesses as defined in GS143-128.2(g) and 128.4(a),(b),(c) is equal to or greater than 10% of the bidders total contract price, then the bidder must complete this affidavit. This affidavit shall be provided by the apparent lowest responsible, responsive bidder within 72 hours after notification of being low bidder.

Affidavit of __________________________________________ I do hereby certify that on the ____________________________

(Name of Bidder) (Project Name)

Project ID# ____________________________ Amount of Bid: $ ____________________________

I will expend a minimum of ________% of the total dollar amount of the contract with M/WBE firms. Minority/women businesses will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below.

Attach additional sheets, if needed

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<tr>
<th>Name and Phone Number</th>
<th>*M/WBE Category</th>
<th>Work description</th>
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*Minority categories: Black, African American (B), Hispanic (H), Asian American (A) American Indian (I), Female (F) Socially and Economically Disadvantaged (S) Disabled (D)

Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with M/WBE Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of this commitment and is authorized to bind the bidder to the commitment herein set forth.

Date:___________  Name of Authorized Officer: ____________________________

Signature: ____________________________

Title: ____________________________

State of _____________, County of _____________

Subscribed and sworn to before me this __________ day of __________ 20____

Notary Public ____________________________
My commission expires ____________________________
NEW HANOVER COUNTY AFFIDAVIT D – Good Faith Efforts

County of ____________________________
(Note this form is to be submitted only by the apparent lowest responsible, responsive bidder.)

If the goal of 10% participation by minority/women business is not achieved, the Bidder shall provide the following documentation to the Owner of his good faith efforts:

Affidavit of ________________________________ I do hereby certify
that on the ________________________________
(Name of Bidder)

________________________________________
(Project Name)

Project ID# ______________________________ Amount of Bid $ __________________

I will expend a minimum of ______% of the total dollar amount of the contract with M/WBE firms. Minority/women businesses will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below.

(Attach additional sheets if needed)

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*Minority categories: Black, African American (B), Hispanic (H), Asian American (A) American Indian (I), Female (F) Socially and Economically Disadvantaged (S) Disabled (D)

Examples of documentation required to demonstrate the Bidder's good faith efforts to meet the goals set forth in these provisions include, but are not necessarily limited to, the following:

A. Copies of solicitations for quotes to at least three (3) minority business firms from the source list provided by the State for each subcontract to be let under this contract (if 3 or more firms are shown on the source list). Each solicitation shall contain a specific description of the work to be subcontracted, location where bid documents can be reviewed, representative of the Prime Bidder to contact, and location, date and time when quotes must be received.

B. Copies of quotes or responses received from each firm responding to the solicitation.

C. A telephone log of follow-up calls to each firm sent a solicitation.

D. For subcontracts where a minority business firm is not considered the lowest responsible sub-bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.

E. Documentation of any contacts or correspondence to minority business, community, or contractor organizations in an attempt to meet the goal.

F. Copy of pre-bid roster.
G. Letter documenting efforts to provide assistance in obtaining required bonding or insurance for minority business.

H. Letter detailing reasons for rejection of minority business due to lack of qualification.

I. Letter documenting proposed assistance offered to minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letter of credit, including waiving credit that is ordinarily required.

Failure to provide the documentation as listed in these provisions may result in rejection of the bid and award to the next lowest responsible and responsive bidder.

Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with M/WBE Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of this commitment and is authorized to bind the bidder to the commitment herein set forth.

Date:_________________ Name of Authorized Officer: ________________________________

Signature:__________________

Title: ________________________________

State of ____________________, County of ____________________

Subscribed and sworn to before me this _______ day of ______ 20____

Notary Public ____________________

My commission expires ____________
LETTER OF INTENT  
M/WBE Subcontractor Performance

Please submit this form or executed subcontracts with M/WBE firms after award of contract and prior to issuance of notice to proceed.

PROJECT: ________________________________________________________________  
             (Project Name)

TO:   ________________________________________________________________  
         (Name of Prime Bidder/Architect)

The undersigned intends to perform work in connection with the above project as a:

____ Minority Business Enterprise       ____ Women Business Enterprise

The M/WBE status of the undersigned is certified the NC Office of Historically Underutilized Businesses (required). ___ Yes   ___ No

The undersigned is prepared to perform the following described work or provide materials or services in connection with the above project at the following dollar amount:

<table>
<thead>
<tr>
<th>Work/Materials/Service Provided</th>
<th>Dollar Amount of Contract</th>
<th>Projected Start Date</th>
<th>Projected End Date</th>
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__________________________________________  
        (Date)

__________________________________________  
        (Address)                                    (Name & Phone No. of M/WBE Firm)

__________________________________________  
        (Name & Title of Authorized Representative of M/WBE)  (Signature of Authorized Representative of M/WBE)

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REQUEST TO CHANGE M/WBE PARTICIPATION

(Submit changes only if notified as apparent lowest bidder, continuing through project completion)

Project: ___________________________________________________________

Bidder or Prime Contractor: __________________________________________

Name & Title of Authorized Representative: _____________________________

Address: ___________________________ Phone #: _________________________

________________________________________ Email Address: __________________

Total Contract Amount (including approved change orders or amendments): $_______

Name of subcontractor: _______________________________________________

Goods or services provided: ___________________________________________

Proposed Action:

___ Replace subcontractor
___ Perform work with own forces

For the above actions, you must provide one of the following reasons (Please check applicable reason):

___ The listed MBE/WBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract.

___ The listed MBE/WBE is bankrupt or insolvent.

___ The listed MBE/WBE fails or refuses to perform his/her subcontract or furnish the listed materials.

___ The work performed by the listed subcontractor is unsatisfactory according to industry standards and is not in accordance with the plans and specifications; or the subcontractor is substantially delaying or disrupting the progress of the work.

If replacing subcontractor:
Name of replacement subcontractor: ________________________________
The M/WBE status of the contractor is certified by the NC Office of Historically Underutilized Businesses (required).  ___Yes  ___No

Dollar amount of original contract $________________

Dollar amount of amended contract $________________

Other Proposed Action:

___Increase total dollar amount of work  ___Add additional subcontractor

___Decrease total dollar amount of work  ___Other

Please describe reason for requested action:  _________________________________________

_________________________________________________________________

If adding* additional subcontractor:

The M/WBE status of the contractor is certified by the NC Office of Historically Underutilized Businesses (required). ___Yes  ___No

*Please attach Letter of Intent or executed contract document

Dollar amount of original contract $________________

Dollar amount of amended contract $________________

Interoffice Use Only:

Approval __Y __N

Date______________________

Signature__________________
Proof of Payment Certification  
M/WBE Contractors, Suppliers, Service Providers

Project Name: ________________________________________________

Prime Contractor:  _____________________________________________

Current Contract Amount (including change orders): $_______________

Requested Payment Amount for this Period:  $____________________

Is this the final payment? ___Yes   ___No

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<tr>
<th>Firm Name</th>
<th>M/WBE Category*</th>
<th>Total Amount Paid from this Pay Request</th>
<th>Total Contract Amount (including changes)</th>
<th>Total Amount Remaining</th>
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*Minority categories: Black, African American (B), Hispanic (H), Asian American (A), American Indian (I), Female (F), Socially and Economically Disadvantaged (S), Disabled (D)

Date: ______________________  Certified By: ____________________

Name

Title

Signature
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:

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 ______________________
FORM OF BID BOND

KNOW ALL MEN BY THESE PRESENTS THAT ________________
__________________________________________________________ as
principal, and _______________________________________________, as surety, who
is duly licensed to act as surety in North Carolina, are held and firmly bound unto New
Hanover County through _______________________________________________ as
obligee, in the penal sum of _______________________________ DOLLARS, lawful money of
the United States of America, for the payment of which, well and truly to be made, we bind
ourselves, our heirs, executors, administrators, successors and assigns, jointly and
severally, firmly by these presents.

Signed, sealed and dated this ____ day of ____ 20__

WHEREAS, the said principal is herewith submitting proposal for
and the principal desires to file this bid bond in lieu of making
the cash deposit as required by G.S. 143-129.

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION is such, that
if the principal shall be awarded the contract for which the bid is submitted and shall
execute the contract and give bond for the faithful performance thereof within ten days
after the award of same to the principal, then this obligation shall be null and void; but if the
principal fails to so execute such contract and give performance bond as required by G.S.
143-129, the surety shall, upon demand, forthwith pay to the obligee the amount set forth
in the first paragraph hereof. Provided further, that the bid may be withdrawn as provided
by G.S. 143-129.1

____________________(SEAL)

____________________(SEAL)

____________________(SEAL)

____________________(SEAL)

____________________(SEAL)
FORM OF PERFORMANCE BOND

Date of Contract: 

Date of Execution: 

Name of Principal: 

(Contractor)

Name of Surety: 

Name of Contracting Body: NEW HANOVER COUNTY

Amount of Bond: 

Project: 

KNOW ALL MEN BY THESE PRESENTS, that we, the principal and surety above named, are held and firmly bound unto the above named contracting body, hereinafter called the contracting body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind, ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the contracting body, identified as shown above and hereto attached:

NOW, THEREFORE, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the contracting body, with or without notice to the surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then, this obligation to be void; otherwise to remain in full force and virtue.
IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Executed in _________________ counterparts.

Witness:

______________________________
(Proprietorship or Partnership)

Attest: (Corporation)

By: ________________________________
Title: ________________________________
(Corp. Sec. or Asst. Sec. only)

(Corporate Seal)

______________________________ (Surety Company)

By: ________________________________
Title: ________________________________
(Attorney in Fact)

(Surety Corporate Seal)

______________________________ (N.C. Licensed Resident Agent)

______________________________
Name and Address-Surety Agency

______________________________
Surety Company Name and N.C. Regional or Branch Office Address
FORM OF PAYMENT BOND

Date of Contract: ________________________________

Date of Execution: ________________________________

Name of Principal: ________________________________
(Contractor)

Name of Surety: ________________________________

Name of Contracting Body: NEW HANOVER COUNTY

Amount of Bond: ________________________________

Project: ________________________________

KNOW ALL MEN BY THESE PRESENTS, that we, the principal and surety above named, are held and firmly bound unto the above named contracting body, hereinafter called the contracting body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the contracting body identified as shown above and hereto attached:

NOW, THEREFORE, if the principal shall promptly make payment to all persons supplying labor/material in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Executed in ________________ counterparts.
Witness: ________________________________

(Proprietorship or Partnership)

Attest: (Corporation)

By: ________________________________

Title: ________________________________

(Corp. Sec. or Asst. Sec., only)

(Corporate Seal)

Contractor: (Trade or Corporate Name)

By: ________________________________

Title: ________________________________

(Owner, Partner, or Corp. Pres. or Vice Pres. only)

Surety Company: ________________________________

By: ________________________________

Title: ________________________________

(Attorney in Fact)

(Surety Corporate Seal)

Witness: ________________________________

Countersigned: ________________________________

(N.C. Licensed Resident Agent)

Name and Address-Surety Agency

Surety Company Name and N.C. Regional or Branch Office Address
NORTH CAROLINA
NEW HANOVER COUNTY

AGREEMENT

THIS CONTRACT made and entered into this _____ day of ________________ 2020 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 for the removal of debris and sediment from streams and open drainage channels in Smith Creek watershed in New Hanover County as more fully described in 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 ninety (90) days 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.
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) and if necessary, Commercial Umbrella Liability (CUL) insurance with a total limit of not less than $1,000,000 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. **Workers' Compensation and Employer's Liability.**

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

7.2.2. 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.

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

7.3. **Business Auto Liability.**

7.3.1. 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.

7.3.2. 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.

7.3.3. 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.

7.3.4. 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.

7.4. **Surety Bond - Performance & Payment Bonds.** Contractor shall furnish and deliver to County a Payment Bond and a Performance Bond covering the faithful performance and completion of work included in this Contract and payment for all materials and labor furnished or supplied in connection with work included in this Contract. All bonds shall be issued and furnished to County prior to, and as a condition
precedent to, commencement of the Work of this Contract. The Payment Bond and Performance Bond shall be furnished on behalf of Contractor, shall name County obligee, and shall be one hundred percent (100%) of the amount of the guaranteed repair and maintenance costs. Such bond(s) shall be solely for the protection of County. The Payment Bond and the Performance Bond shall be issued by a surety of financial standing having a rating from A.M. Best Company equal to or better than A and must be included on the approved list of sureties issued by the United States Department of Treasury. The bond shall remain in effect at least one (1) year after the date when final payment is made. The surety bond must be in the form set forth in N.C.G.S. 44A-33, without any variations therefrom. Contractor shall provide surety bond wherein Surety waives notice of all modifications, omissions, additions, changes and advance payments or deferred payments in or about the Contract, and agrees that the obligations undertaken by the Bond shall not be impaired in any manner due to any modifications, omissions, additions, changes, and advance payments or deferred payments. The surety bond must set forth no requirement that suit be initiated prior to the time stipulated in applicable North Carolina Statutes of Limitation.

7.5  **Contractor’s Pollution Liability.**

7.5.1. Contractor shall maintain Contractors Pollution Liability covering losses caused by pollution incidents that arise from the operations of Contractor described under the scope of services of this contract.

7.5.2. Contractor’s Pollution Liability shall apply to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured, cleanup costs and defense, including costs and expenses incurred in the investigation defense, or settlement of claims. The policy of insurance affording these required coverages shall be written in an amount of at least $1,000,000 per claim, with an annual aggregate of at least $1,000,000.

7.5.3. Contractor’s Pollution Liability shall include as an additional insured County, its officers, officials, agents, and employees.

7.5.4. If Contractor’s Pollution Liability is written on a claims-made basis, 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 two (2) years, beginning from the time that work under the contract is complete.

7.6. **Deductibles and Self-Insured Retentions.**

7.6.1. 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.

7.7. **Miscellaneous Insurance Provisions.**

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

7.7.2. 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.

7.7.3. 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.

7.8. **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.

7.9. **Evidence of Insurance.**

7.9.1. 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.
7.9.2. Evidence of additional insured status shall be noted on the certificate of insurance as per requirements in this Contract.

7.9.3. 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.

7.11. **Conditions**

7.11.1. 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.

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

7.11.3. Contractor shall promptly notify New Hanover County Engineering 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.

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

7.11.5. 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.

7.11.6. County does not represent that coverage and limits will be adequate to protect Contractor and such coverage and limits shall not be deemed

Acct# TBD

req. TBD dnm

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as a limitation of Contractor's liability under the indemnities granted to County in this Contract.

7.11.7. 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.

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

7.11.9. 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 the New Hanover County Board 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), FEMA Compliance Addendum and Certifications, and Construction Program Assurances incorporated herein by reference.

22. **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 Engineering Department
Attn: Jim Iannucci
230 Government Center Drive Suite 160
Wilmington NC 28403

**To Contractor:**

___________________________
___________________________
___________________________
23. **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.

24. **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.

CONTRACTOR

________________________________ (Seal)
President

ATTEST:

____________________________
Secretary

STATE OF _____________
______________ COUNTY

I, ____________________________, a Notary Public of the State and County aforesaid, certify that __________________ came before me this day and acknowledged that (s)he is President of __________________________ a _______ corporation, and that by County duly given and as the act of the corporation, the foregoing instrument was signed and sealed in its name by its President.

WITNESS my hand and official seal, this ____ day of __________________, 2020.

________________________________
Notary Public

____________________________
My Commission Expires

[SEAL]

[ REST OF PAGE INTENTIONALLY BLANK.
NEW HANOVER COUNTY DIGITAL SIGNATURE PAGE FOLLOWS EXHIBIT A, FEMA Compliance Addendum and Compliance Certifications, and Construction Program Assurances]
Smith Creek
Emergency Watershed Protection

- 70,833 LF Debris Removal
- 23,588 LF Silt Removal

Scale: 1" = 1,550'