

# **BRUNSWICK COUNTY** **REQUEST FOR** **PROPOSALS**

## **VoIP Phone System Replacement**

ISSUE DATE: **March 20, 2025**

DUE DATE: **April 25, 2025**



**[BRUNSWICKCOUNTYNC.GOV/BID](https://BRUNSWICKCOUNTYNC.GOV/BID)**

## 1. PROJECT OVERVIEW

Brunswick County (“County”) is soliciting sealed proposals for a VoIP Phone System to replace the existing end-of-life, end-of-support VoIP system. A majority of the phones reside at the County Complex in Bolivia, NC. The remaining phones are physically located at approximately forty (40) offsite locations within the County. The County also has a need to provide VoIP to remote and mobile workers.

## 2. SCOPE OF WORK

Brunswick County has established the following objectives for this project. Any changes to the specifications or Scope of Work will be made in the form of an Addendum to this Request for Proposals that will be supplied to all known prospective vendors and posted on the Brunswick County website. Notwithstanding the foregoing, vendors will be responsible for ensuring that they have all addenda. Brunswick County may negotiate and refine the final Scope of Work with the selected vendor. Brunswick County reserves the right to negotiate additional services with the selected vendor at any time after the initial contract award.

Brunswick County seeks an experienced firm to provide a **turnkey** solution for a VoIP system to replace all existing Mitel equipment.

The primary goals of replacing the current telephone system are:

- Providing users with integrated, uniform functionality for all telephone stations across the County.
- Improving work efficiency by offering unified communications to end-users.
- Investing in a communications system that is scalable to grow with the County.

The new turnkey system shall include Unified Communications and integrate with the County’s Microsoft 365, Teams, Exchange, and Active Directory systems. All existing telephones should be replaced with equivalent IP physical or soft phone. The County intends to replace a portion of the physical phone inventory with softphones. The proposal should include pricing to reflect this option on a per unit basis. Details regarding the current system are provided below and should be used for bidding purposes.

The County requires that any system has the capability to service remote locations and mobile users with the same features and functionality as the main office.

Proposals should include training specifically for system administrators and end users of all phone types and features. Training should be provided over the course of the project and include times with in-person (minimum of 15 in-person sessions) and remote options. Training courses are to be recorded and delivered for future use.

Existing phones numbers must be retained. The proposed system should integrate with the existing telco provider. Existing numbers will not be ported.

Proposals shall include pricing and options for a five- (5) year warranty with and without phone coverage.

### **Proposal Contents**

A complete list of all equipment proposed must be provided, specifying manufacturer and individual model numbers. All equipment and component parts furnished shall be new, meet the requirements stated herein, and be in operable condition at the time of delivery. The vendor must also provide a complete list of personnel and subcontractors involved with the proposed solution and include associated cost broken down by position, number of hours, and hourly rate for said work of each position. Hourly rates may be decreased through negotiation in any contract entered as a result of this RFP, including the original contract and renewals, but cannot be increased.

### **Current Voice Communications**

Brunswick County currently runs a Mitel MiVoice Connect VoIP system. The County utilizes analog and VoIP devices. The local carrier, FOCUS, provides the DID numbers, SIP trunks, and one PRI for faxing. The quantities below are based on the County's current system to aid interested vendors in preparing a proposal. Notwithstanding the foregoing, the County does not guarantee any minimum or maximum amount of equipment to be purchased under the awarded contract.

The current Mitel system is comprised of and serves:

- Various remote locations connected via site-to-site VPN and metro ethernet
- 1,500 DIDs
- 1,200 Phone system accounts
- 975 physical desk phones with programmable buttons
- 16 Conference phones
- Softphone/Mobile App
- Phone VPN capability
- 210 Auto-attendants
- 130 Fax numbers
- 900 Voicemail boxes with unified messaging
- 200 Hunt and Workgroups
- Custom scheduling
- 911 Kari/Ray Baum Compliance
- Pickup groups
- Number forwarding
- Contact Center with 330 named agents/100 concurrent and 30 groups
- Detailed call reporting with live dashboards
- System virtualized using VMWare
- Classes of Restriction
- Find Me-Follow Me
- Active Directory Compatibility
- Music on hold
- Office 365 Integration

- Call Recording
- Bridge Conferencing Ports

Brunswick County would “*highly prefer*” the new system to include these additional features:

- Microsoft Teams integration
- Robust mobile and PC client
- Brightmetrics replacement. Brightmetrics is a third-party phone reporting and dashboarding product. It provides live and historical dashboards with client control. It also provides detailed and easily customizable reports.
- Phones with Bluetooth are available for pairing with accessories such as hearing aids and headsets.
- Fax server for faxing via software (one time purchase, not billed by fax volume), single line and multiline ATA devices.
- Support various network connectivity scenarios (i.e. Metro Ethernet connected sites, site-to-site VPN connected locations, wi-fi enabled phones, VPN connected desk phones, microwave connected locations).
- Streamlined voicemail management with simple administrative voicemail deletion or reset from a management console and deletion of voicemail from system when message delivered via email attachment is deleted from email.
- Live connection of calls between differing client types. For example, if a call is received on a mobile device, it can easily and without interruption, be transitioned to a desk phone or PC application.

Other “*areas of interest*”:

- AI integration – Interactive Voice Response (“IVR”) that understands natural language for easy menu navigation, detect mood of caller for prioritization, call transcription and key points sent via email, call quality analysis, call resolution analysis for quality and performance monitoring, can improve security capabilities.
- Data dipping/Database (DB) Access – The County does not have a central Customer Relationship Management (CRM) solution but departments may be able to take advantage of this feature to link callers to pertinent data within the system and present that data to staff for better customer service.
- Nuisance caller blocking – at the system administrator / IT level
- Managed service option Vendor supplied support for system programming and updates. This includes the daily end user account maintenance.

### 3. PROPOSAL DEADLINE AND SUBMISSION REQUIREMENTS

3.1 All sealed proposals must be received by Brunswick County no later than **April 25, 2025, by 5:00 PM ET.**

3.2 All proposals must include the following:

- The proposal title and due date and time.
- A cover letter/letter of intent on vendor's letterhead, signed by an authorized representative of vendor, expressly agreeing to Brunswick County's terms and conditions contained in this Request for Proposals and its attachments.
- The vendor's name or company name, address and telephone number.
- The name, address and telephone number of company representatives with the authority to answer questions or provide clarification regarding the proposal's contents.
- A list of key personnel to be assigned to perform the services and each person's qualifications. Personnel should possess relevant and diverse knowledge and expertise in their respective fields.
- The names of any and all subcontractors expected to perform services in connection with the project and their qualifications. Include the estimated percentage of work that each subcontractor is expected to perform. **Brunswick County reserves the right to accept or reject any proposed subcontractor.**
- A full description of the services and processes that will be implemented and ongoing to complete the project in the most efficient, timely and comprehensive manner. The description should include a detailed implementation plan and project schedule outlining the primary tasks, estimated hours, responsibility, major deliverables and timing, including an estimated start date. Additional project deliverables are set forth below.
- Any assistance requirements from Brunswick County.
- A detailed company description and history, including the areas of expertise related to the project.
- A reference list of at least three (3) current projects or projects completed within the past twenty-four (24) months for projects of similar size and scope, including the name and telephone number of a contact person for each reference listed.
- Certificate of Insurance as evidence that vendor meets the County's Minimum Insurance Requirements attached hereto.

Vendors shall provide documentation sufficient to clearly demonstrate that their firm meets or exceeds the requirements set forth in this Request for Proposals. Failure to provide such documentation may result in the proposal being deemed non-responsive.

In addition to the foregoing, Brunswick County reserves the right to request financial information for any vendor, to support the viability of the vendor.

### 3.3 County Proprietary Information

To receive certain confidential information specifically related to this project, vendors will be required to complete and sign a separate Confidentiality Agreement in the form attached hereto. The vendor's completed and signed Confidentiality Agreement must be returned via email to [voip.rfp@brunswickcountync.gov](mailto:voip.rfp@brunswickcountync.gov) **no later than March 27, 2025, at 5:00 PM ET. No late submissions will be accepted.**

Once the Confidentiality Agreement is countersigned by Brunswick County, County staff will provide the relevant information via a secure file transfer (SFT) or such other encrypted means as the County deems appropriate. The email with the completed and signed Confidentiality Agreement must include the full name, title, and email address of the proposed SFT account holder, the full company name, address, and state of incorporation or organization, and the authorized officer or representative of the company who signed the Confidentiality Agreement.

### 3.4 Submittals

Those interested should submit **one (1) sealed hard copy** of the proposal. The vendor should also include in the sealed proposal a USB drive that contains an identical, searchable copy of the submitted proposal. Sealed proposals may only be mailed or hand delivered to the following:

Cindy Hewett  
Brunswick County Information Technology Director  
P.O. Box 249 (mail)  
45 Courthouse Drive, NE, Building E (hand delivery)  
Bolivia, NC 28422

**Sealed proposals must be received no later than April 25, 2025, by 5:00 PM T. Sealed proposals shall be labeled with the name of the Request for Proposals and marked "SEALED PROPOSAL, DO NOT OPEN." Brunswick County will not be responsible for the failure of any mail or delivery service to deliver a proposal prior to the stated date and time. Regardless of the manner of submission, any proposal received after the stated date and time will not be considered. Incomplete proposals or proposals inconsistent with the required format may be disqualified from consideration.**

## 4. **EXPENSES**

Brunswick County will not be responsible for any costs or expenses incurred by the vendor in submitting a proposal or for any other activities associated with this procurement. Further, Brunswick County reserves the right to cancel the work described herein prior to issuance and acceptance of any contractual agreement even if the Board of Commissioners has formally accepted the recommendation.

## **5. RIGHT TO SUBMITTED PROPOSALS AND SUPPORTING DOCUMENTS**

All written correspondence, proposals and supporting documents received by Brunswick County in connection with this Request for Proposals will become the property of Brunswick County. Brunswick County reserves the right to use any ideas in a proposal or supporting documents regardless of whether the proposal is selected.

## **6. QUESTIONS/ADDENDA**

Questions or requests for further information regarding this Request for Proposals shall be submitted in writing via email to [voip.rfp@brunswickcountync.gov](mailto:voip.rfp@brunswickcountync.gov) to the attention of **Cindy Hewett, IT Director, no later than April 4, 2025 by 5:00 PM ET**. A copy of all questions, further clarifications and answers will be made in the form of an Addendum to this Request for Proposals and will be provided to all known vendors and posted on the County's website. Notwithstanding the foregoing, vendors will be responsible for ensuring that they have all addenda.

**Vendors are expressly prohibited from contacting any Brunswick County official or employee regarding this Request for Proposals, except in the manner noted in this section. A violation of this provision is grounds for the immediate disqualification of the vendor.**

## **7. FORM OF AGREEMENT**

In addition to the terms and conditions contained in this Request for Proposals, by submitting a proposal, the vendor, if selected, agrees to enter into and be bound by the provisions of a Goods and Services Agreement in substantially the form attached hereto and incorporated herein by reference. To the extent that any of the terms of this Request for Proposals and the terms of the Goods and Services Agreement conflict, the terms of the Goods and Services Agreement shall prevail. No work shall commence until an agreement has been fully executed by the parties. Unless otherwise approved by Brunswick County, the vendor must begin performing services within thirty (30) days after an agreement is signed.

## **8. INSURANCE**

Vendor, and any of its approved subcontractors, must procure and maintain in full force and effect during the term of any agreement with Brunswick County, or the renewal of any agreement with Brunswick County, the insurance coverage set forth in the Minimum Insurance Requirements attached hereto and incorporated herein by reference. In the event vendor, or any of its approved subcontractors, fails to maintain insurance as outlined herein, Brunswick County may, at its option, obtain the required insurance at the expense of the vendor.

## **9. PROPOSAL CONDITIONS**

9.1 Submission of a proposal indicates explicit acceptance by the vendor of the terms and conditions contained in this Request for Proposals and any attachments hereto. Brunswick County reserves the right to reject, without prejudice or explanation, any or all proposals. Brunswick County reserves the right to waive informalities or to amend the specifications of this Request for Proposals and request new proposals at any time prior to the award of a contract. All decisions of Brunswick County shall be final and binding.

9.2 The vendor shall supply the following:

- A single point of contact through proposal acceptance. Brunswick County will communicate solely through this contact regarding all issues relating to the proposal through acceptance.
- A single Project Manager, after acceptance, dedicated and available for the entire duration of the project. The Project Manager may only be replaced upon approval by, or at the request of Brunswick County. At a minimum, the vendor's Project Manager shall be responsible for oversight and management of the Scope of Work as outlined above.

## **10. CONSIDERATION OF WITHDRAWAL AND/OR REJECTION OF PROPOSAL**

### **10.1 Withdrawal**

After submission, no proposal may be withdrawn by the vendor for a period of ninety (90) days following the opening date. Until that time, the proposal will remain firm and irrevocable, and any required bond will be forfeited.

### **10.2 Rejection**

A proposal may be rejected if the vendor fails to:

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

### **10.3 No Acceptance**

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



#### 10.4 Competency of Vendor

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

### **11. AWARD**

Brunswick County reserves the right to award a contract, based on initial proposals received from vendors, without discussion and without conducting further negotiations. Brunswick County may also, in its sole discretion, initiate further discussions with vendors that it deems to fall within a competitive range. Pursuant to North Carolina General Statutes §§ 143-129.8 and 143-135.9, Brunswick County will award the contract to the vendor who it deems submits the best overall proposal, utilizing the evaluation criteria set forth below.

It is the intent of Brunswick County that the awarded contract will have an initial term of one (1) year with four (4) subsequent options to renew for one (1) year each for the continued provision of support, maintenance, and warranty for a total of five (5) years. The term of the awarded contract is subject to approval by the Board of Commissioners, in its sole and absolute discretion. If approved, each subsequent option to renew will be exercised automatically contingent upon the County paying any annual support, maintenance, and remote monitoring fees. Recurring fees must be included with the submitted proposal.

Brunswick County shall not be deemed to have finally selected a vendor until a contract has been successfully negotiated and signed by both parties.

When evaluating proposals, Brunswick County will form an evaluation committee to consider a variety of factors. Table 11.1 below represents the criteria which will be considered during the evaluation process.

### 11.1 Proposal Evaluation Criteria

<b>CRITERIA</b>	<b>POSSIBLE POINTS</b>
The qualifications of the vendor to provide and install VoIP Phone System	<b>25</b>
The proposal by the vendor to provide an IP faxing solution	<b>10</b>
The proposal by the vendor to provide a Contact Center Solution	<b>15</b>
The proposal by the firm to provide quality reporting with dashboards	<b>10</b>
The proposal by the firm to provide mobile and softphone clients	<b>15</b>
The proposal by the firm to provide items listed as <i>"highly preferred"</i>	<b>10</b>
The proposal by the firm to provide items listed in <i>"areas of interest"</i>	<b>5</b>
Cost	<b>10</b>
<b>GRAND TOTAL</b>	<b>100</b>

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

Vendor and its agents shall treat all data and information associated with this Request for Proposals, including, without limitation, the Request for Proposals, all reports, recommendations, specifications and other data as confidential. Vendor and its agents shall not disclose or communicate any information to a third party or use such information in advertising, propaganda and/or in another job or jobs, unless prior written consent is obtained from Brunswick County.

## 13. **NORTH CAROLINA PUBLIC RECORDS**

All proposals received by Brunswick County shall be considered public information subject to lawful disclosure under North Carolina Public Records Law. Any proposal material deemed by the vendor to constitute either proprietary or trade secret material shall be designated as such, and each page or section of a page containing such material shall be so marked by the vendor. In addition, it shall be the sole responsibility of the vendor to demonstrate to a court of competent jurisdiction that their designation is proper. Brunswick County shall not make public any material determined by a court of competent jurisdiction to be proprietary or trade secret. Vendor hereby agrees to indemnify and hold Brunswick County harmless from any and all claims, suits, damages, penalties or expenses arising out of vendor's proprietary or trade secret designation.

#### **14. AMENDMENTS/CHANGE ORDERS**

After a project is awarded to a vendor and the parties enter into a formal agreement, a written amendment or change order will be required for any changes to the scope of the project.

#### **15. PROJECT DELIVERABLES**

The vendor shall complete the following:

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

#### **16. ADDITIONAL SERVICES**

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

#### **17. CERTIFICATION**

Vendor hereby certifies that it has carefully examined this Request for Proposals and all attachments hereto, that it understands and accepts all terms and conditions and the scope of work, and that it has knowledge and expertise to complete the project. By submitting a proposal, the vendor certifies that its proposal is in all respects fair and without collusion or fraud.

STATE OF NORTH CAROLINA

CONFIDENTIALITY AGREEMENT

BRUNSWICK COUNTY

**THIS CONFIDENTIALITY AGREEMENT** (hereinafter referred to as the "Agreement") is made and entered into as of the last date a party signs below by and between Brunswick County, a body politic and corporate of the State of North Carolina (hereinafter referred to as "County"), and \_\_\_\_\_ (hereinafter referred to as "Recipient").

**WITNESSETH:**

1. **Confidentiality.** The parties understand that certain confidential information, as defined herein, may be provided by County to Recipient in the course of the parties' business relationship. Recipient hereby agrees to comply with the terms and conditions contained herein as well as any applicable local, state or federal law, rule or regulation governing the use and disclosure of confidential information.

"Confidential Information" shall mean any non-public information concerning the County or its operations including, but not limited to, all tangible, intangible, visual, electronic, present or future technical or business information such as: (a) methods, processes, formulae, compositions, systems, techniques, and computer programs which may include, without limitation, specifications, designs, plans, process flows, diagrams, functional descriptions of security systems, security drawings, security infrastructure, and security software; (b) other software products, software source code, or any related codes in all formats; (c) other hardware and/or software systems and configurations; (d) information technology policies and procedures, including, without limitation, those related to the protection of data; (e) County network data, including security settings; (f) personal data, data protection, marketing data, customer lists, or vendor lists; and (g) other technical information, including, without limitation, research, development, procedures, algorithms, data, designs and know-how.

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

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

Recipient shall not use or disclose any Confidential Information to any person who has not signed a confidentiality agreement in a form approved by County with terms at least as restrictive as those contained herein. Recipient may disclose Confidential Information only to its officers, employees, agents, representatives and subcontractors who have a need to know and will disclose only the portion of the Confidential Information that such individual needs to know. This Section shall survive any termination of the relationship between the parties.

2. **Data Protection.** Recipient shall establish appropriate safeguards to protect the Confidential Information, including, without limitation: (a) implementing and maintaining an information security management policy acceptable to County with standards that are no less rigorous than accepted industry practices; (b) complying with all applicable laws to protect the Confidential Information from unauthorized access; (c) implementing and maintaining physical, technical and administrative information safeguards that provide for network, application (including databases), and platform security; (d) implementing and maintaining business systems designed to optimize security; and (e) ensuring secure, encrypted transmission and storage of the Confidential Information. In the event Recipient becomes aware of an actual or alleged security breach, it shall notify County in writing immediately and in no event more than twenty-four (24) hours after it becomes aware of the actual or alleged security breach.

3. **Ownership.** All Confidential Information provided to Recipient hereunder shall remain the sole and exclusive property of County.

4. **Termination of Relationship.** Upon termination of the relationship between the parties, Recipient will immediately return to County all Confidential Information, as may exist in any form of media, and all information and other materials provided by County or developed by the parties with regard to the parties' business relationship hereunder.

5. **Survival of Obligations and Benefit of Agreement.** Termination for any reason shall not relieve Recipient of any of its obligations under this Agreement. This Agreement shall inure to the benefit of County, its affiliates, successors, assigns and designees, and shall be binding upon Recipient and its successors and assigns.

6. **Remedies.** Recipient acknowledges that any breach of this Agreement will cause County irreparable harm and that monetary damages alone are not an adequate remedy for an actual or threatened breach of this Agreement. In the event of an actual or threatened breach, County shall be entitled to injunctive or other equitable relief, including specific performance, even without proof of actual damages. Such remedies shall not be deemed to be the exclusive remedies for any such breach but shall be in addition to all other remedies available at law or in equity.

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

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

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

10. **Signatures.** This Agreement, together with any amendments or modifications, may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be considered one and the same agreement. This Agreement may also be executed electronically. By signing electronically, the parties indicate their intent to comply with the Electronic Commerce in Government Act (N.C.G.S § 66-58.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S § 66-311 et seq.). Delivery of an executed counterpart of this Agreement by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

BRUNSWICK COUNTY

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

Printed Name: Steven T. Stone

Title: County Manager

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

RECIPIENT

\_\_\_\_\_

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

APPROVED AS TO FORM

\_\_\_\_\_  
Bryan W. Batton, County Attorney /  
Ryan S. King, Assistant County Attorney

## FORM OF AGREEMENT

NORTH CAROLINA

GOODS AND SERVICES AGREEMENT

BRUNSWICK COUNTY

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

### WITNESSETH:

#### 1. GOODS AND SERVICES; FEES

The goods to be purchased and the services to be performed under this Agreement (hereinafter referred to collectively as the “Project”) and the agreed upon fees for the Project are set forth on Exhibit “A” attached hereto.

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

#### 2. TERM OF AGREEMENT; TERMINATION

- (1) *Term.* The term of this Agreement begins on {Effective Date} (the “Effective Date”) and continues in effect until {Expiration Date}, unless sooner terminated as provided herein. **No work may commence under this Agreement until the Agreement has been fully executed by both parties.**
- (2) *Termination.* County may terminate this Agreement at any time without cause by giving sixty (60) days’ written notice to Provider. As soon as practicable after receipt of a written notice of termination without cause, Provider shall submit a statement to County showing in detail the work performed under this Agreement through the effective date of termination. County may terminate this Agreement for cause by giving written notice of a breach of the Agreement. Provider shall have fifteen (15) days to cure the breach following receipt of the notification. Failure to cure the breach within the fifteen (15) days shall result in the immediate termination of the Agreement. Notwithstanding the foregoing, County may terminate this Agreement immediately and without notice to Provider if Provider becomes insolvent, makes or has made an assignment for the benefit of creditors, is the subject of proceedings in voluntary or involuntary bankruptcy instituted on behalf of or against Provider, or has a receiver or trustee appointed for substantially all of its property, or if Provider allows any final judgment to stand against it unsatisfied for a period of forty-eight (48) hours.

### **3. NONAPPROPRIATION**

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

### **4. COMPENSATION**

County agrees to pay costs as specified in Exhibit "A" or as set out above for the satisfactory completion of the Project. Unless otherwise specified, Provider shall submit monthly invoices to County and include detail of all products delivered or work performed under the terms of this Agreement. County shall pay all undisputed and properly completed invoices within thirty (30) days of receipt. Notwithstanding the foregoing, County will not pay late fees on any charges under this Agreement. If County disputes any portion of the charges on any invoice received from Provider, County shall inform Provider in writing of the disputed charges. Once the dispute has been resolved, Provider shall re-invoice County for the previously disputed charges, and, per any resolution between County and Provider, County shall pay those charges in full at that time. No advance payment shall be made for the work to be performed by Provider under this Agreement.

### **5. INDEPENDENT CONTRACTOR**

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

In the event the Internal Revenue Service should determine that Provider is, according to Internal Revenue Service guidelines, an employee subject to withholding and social security contributions, then Provider hereby acknowledges that all payments hereunder are gross payments, and Provider is responsible for all income taxes and social security payments thereon.

### **6. PROVIDER REPRESENTATIONS**

- (1) Provider is a duly organized entity or corporation qualified to do business and in good standing under the laws of the State of North Carolina;



- (2) Provider has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
- (3) No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for Provider to enter into and perform its obligations under this Agreement;
- (4) In connection with Provider's obligations under this Agreement, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses;
- (5) Provider shall not violate any agreement with any third party by entering into or performing the work under this Agreement;
- (6) Provider will provide all goods and perform all work in conformity with the specifications and requirements of this Agreement;
- (7) The goods and services provided by Provider under this Agreement will not violate, infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party, or any other third-party rights (including, without limitation, non-compete agreements);
- (8) Provider shall exercise reasonable care and diligence when performing the work hereunder and will ensure that it adheres to the highest generally accepted standards in the industry when performing said work;
- (9) Provider acknowledges that if any specific licenses, certifications or related credentials are required in its performance of the work, it will ensure that such credentials remain current and active and not in a state of suspension or revocation; and
- (10) Provider shall ensure that whenever its employees or agents are on County property, they will strictly abide by all instructions and directions issued by County with respect to rules, regulations, policies and security procedures applicable to work on County's premises. Such rules, regulations, policies and security procedures shall include, but not be limited to: (i) not possessing any controlled substances; (ii) smoking only in designated smoking areas, if any; and (iii) not possessing weapons, except for weapons possessed by law enforcement officials.

## **7. WARRANTIES**

Without limiting Provider's obligation to provide warranty or maintenance services, and in addition to any other warranties available, Provider hereby assigns to County all of Provider's warranties covering any third-party goods purchased under this Agreement. Provider will provide copies of all said warranties to County upon delivery of the goods.

## **8. DAMAGE TO EQUIPMENT, FACILITIES, PROPERTY OR DATA**

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

## **9. NON-ENDORSEMENT AND PUBLICITY**

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

## **10. NON-EXCLUSIVITY**

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

## **11. DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL**

Provider hereby certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. § 147-86.80 *et seq.*

## **12. DEBARMENT**

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

## **13. INDEMNIFICATION**

Provider shall defend, indemnify and hold harmless County, its officers, officials, agents and employees from and against all actions, liability, claims, suits, damages, costs or expenses of any kind which may be brought or made against County or which County must pay and incur arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind in connection with or arising out of this Agreement and/or the performance hereof that are due in part or in the entirety of Provider, its employees or agents. Provider further agrees to investigate, handle, respond to, defend and dispose of same at its sole cost and expense. Provider shall be fully responsible to County for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by it. This Section shall survive any expiration or termination of this Agreement.

## **14. INSURANCE**

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

## **15. WORKERS' COMPENSATION**

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

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

## **16. REMEDIES**

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

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

## **17. TAXES**

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

## **18. HEALTH AND SAFETY**

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

## **19. COMPLIANCE WITH E-VERIFY PROGRAM**

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

## **20. CONFIDENTIAL INFORMATION**

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

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

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

## **21. OWNERSHIP OF WORK PRODUCT**

Should Provider’s performance under this Agreement generate documents or other work product that are specific to the Project hereunder, such documents or work product shall become the property of County and may be used by County on other projects without additional compensation to Provider.

## **22. NO ASSIGNMENT WITHOUT CONSENT**

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

## **23. GOVERNING LAW AND VENUE**

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

## **24. DISPUTE RESOLUTION**

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

## **25. GOVERNMENTAL IMMUNITY**

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

## **26. NON-WAIVER**

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

## **27. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties with respect to the subject matter herein. There are no other representations, understandings or agreements between the parties with respect to such subject matter. This Agreement supersedes all prior agreements, negotiations, representations and proposals, written or oral.

## **28. HEADINGS**

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

## 29. SEVERABILITY

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

## 30. AMENDMENTS

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

## 31. NOTICES

- (1) *Delivery of Notices.* Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by facsimile to the intended recipient at the address set forth below.
- (2) *Effective Date of Notices.* Any notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by facsimile or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier.
- (3) *Notice Address.* Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment or waiver of any provision of this Agreement shall be sent to:
  - i. For the County: Brunswick County Manager  
P.O. Box 249  
Bolivia, NC 28422  
Fax: 910-253-2022
  - ii. For the Provider: { Vendor Name }  
{ Vendor Address }  
{ Vendor City }, { Vendor State or Territory } { Vendor Zip }

## 32. SIGNATURES

This Agreement, together with any amendments or modifications, may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be considered one and the same agreement. This Agreement may also be executed electronically. By

signing electronically, the parties indicate their intent to comply with the Electronic Commerce in Government Act (N.C.G.S. § 66-58.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S. § 66-311 et seq.). Delivery of an executed counterpart of this Agreement by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

ATTEST:

**BRUNSWICK COUNTY**

\_\_\_\_\_  
Clerk to the Board /  
Deputy Clerk to the Board

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

[SEAL]

**{VENDOR NAME}**

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

Printed Name: { Vendor Signatory Name }

Title: { Vendor Signatory Title }

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

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

\_\_\_\_\_  
Aaron C. Smith, Finance Director  
Brunswick County, North Carolina

APPROVED AS TO FORM

\_\_\_\_\_  
Bryan W. Batton, County Attorney /  
Ryan S. King, Assistant County Attorney



**EXHIBIT “A”**  
**GOODS AND SERVICES/FEES AND COSTS**



## **BRUNSWICK COUNTY MINIMUM INSURANCE COVERAGE REQUIREMENTS**

At contractor's expense, contractor shall procure and maintain the following recommended lines of insurance according to the scope of work. The County may choose to elect higher or lower coverages according to the work performed. Contractors must be insured by a licensed agent in North Carolina and rated A-VII or better by A.M. Best.

### **A. COMMERCIAL GENERAL LIABILITY**

Covering all operations involved in this Agreement.

\$2,000,000 General Aggregate  
\$2,000,000 Products/Completed Operations Aggregate  
\$1,000,000 Each Occurrence  
\$1,000,000 Personal and Advertising Injury Limit  
\$ 5,000 Medical Expense Limit

### **B. WORKERS' COMPENSATION**

Statutory limits covering all employees, including Employer's Liability with limits of:

\$500,000 Each Accident  
\$500,000 Disease - Each Employee  
\$500,000 Disease - Policy Limit

### **C. COMMERCIAL AUTOMOBILE LIABILITY**

\$1,000,000 Combined Single Limit – Any Auto

### **D. PROFESSIONAL LIABILITY**

\$1,000,000 Per Occurrence

### **E. POLLUTION LIABILITY INSURANCE**

\$1,000,000 Per Occurrence

When a contractor is required to bind pollution/environmental coverage, the contractor must provide evidence of continuation or renewal of liability insurance for a period of three (3) years following termination of the agreement.

## **ADDITIONAL INSURANCE AND INDEMNIFICATION REQUIREMENTS**

- A. Contractor agrees to defend, indemnify, and hold harmless Brunswick County, its officers, employees, and agents from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees, or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind in connection with or arising out of this Agreement and/or the performance hereof that are due in part or in the entirety of Contractor, its employees or agents. Contractor further agrees to investigate, handle, respond to, defend and dispose of same at its sole expense and agrees to bear all other costs and expenses related thereto.

The Contractor's General Liability policy shall be endorsed, specifically or generally, to include the following as Additional Insured:

BRUNSWICK COUNTY, ITS OFFICERS, AGENTS AND EMPLOYEES ARE INCLUDED AS  
ADDITIONAL INSURED UNDER CONTRACTOR'S GENERAL LIABILITY INSURANCE.

- A. Before commencement of any work or event, Contractor shall provide a Certificate of Insurance in satisfactory form as evidence of the insurances required above.
- B. Contractor shall have no right of recovery or subrogation against Brunswick County (including its officers, agents and employees), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.
- C. Brunswick County shall have no liability with respect to Contractor's personal property whether insured or not insured. Any deductible or self-insured retention is the sole responsibility of Contractor.
- D. All certificates of insurance must provide that the policy or policies shall not be changed or cancelled without at least thirty (30) days prior written notice.
- E. The Certificate of Insurance should note in the Description of Operations the following:  
Department: \_\_\_\_\_  
Contract #: \_\_\_\_\_
- F. Insurance procured by Contractor shall not reduce nor limit Contractor's contractual obligation to indemnify, hold harmless and defend Brunswick County for claims made or suits brought which result from or are in connection with the performance of this Agreement.
- G. In the event Contractor receives Notice of Cancellation of Insurance required pursuant to this Agreement, Contractor shall immediately cease performance of all services and shall provide Notice to Brunswick County's Legal/Risk Management personnel within twenty-four (24) hours.
- H. Certificate Holder shall be listed as follows;  
ATTENTION: Brunswick County Risk Manager  
30 Government Center Dr. NE  
P.O. Box 249  
Bolivia, NC 28422
- I. If Contractor is authorized to assign or subcontract any of its rights or duties hereunder and in fact does so, Contractor shall ensure that the assignee or subcontractor satisfies all requirements of this Agreement, including, but not limited to, maintenance of the required insurances coverage and provision of certificate(s) of insurance and additional insured endorsement(s), in proper form prior to commencement of services.

Revised 01/2015

## VENDOR INFORMATION

Name of Company \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Phone No. \_\_\_\_\_ Fax No. \_\_\_\_\_

E-Mail Address \_\_\_\_\_

Federal I.D. No. \_\_\_\_\_

SDBE, Minority or Woman Owned Business Enterprise \_\_\_\_\_Yes \_\_\_\_\_No

Proposal Submitted By: \_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Signature)

Title: \_\_\_\_\_

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