

REQUEST FOR PROPOSALS

**Diesel Fuel Tank Cleaning and Fuel Recovery Services  
RFP #20S1001**

NOTICE IS HEREBY GIVEN that the Cape Fear Public Utility Authority (hereinafter referred to as "CFPUA" or "the Authority") is requesting quotes for the inspection, and cleaning of back-up generator diesel fuel and fuel tanks.

CFPUA will receive such proposals in the office of and addressed to:

Cape Fear Public Utility Authority  
Finance Department  
ATTENTION: Teresa Horsboll, Assistant Procurement Manager

UP TO THE HOUR OF 2:00 PM., Wednesday, May 20, 2020

Firms shall submit their bids, before the date and time of the deadline for receipt of proposals, in pdf format to [bids@cfpu.org](mailto:bids@cfpu.org). A reply will be sent to the email address submitting the bid to confirm receipt. It is the submitting firms' responsibility to confirm that CFPUA has received the bid forms via email. If an email reply is not received from [bids@cfpu.org](mailto:bids@cfpu.org), please call 910-332-6401 or 910-332-6589 before the deadline for submission.

**All proposals forms must be properly executed and submitted as part of the bid.  
The CFPUA reserves the right to reject any or all bids.**

Teresa Horsboll  
Assistant Procurement Manager

**Diesel Fuel Tank Cleaning and Fuel Recovery Services**  
**RFP #20S1001**  
**Instructions for Bidders**

**Deadlines Schedule:**

<i>Request for quotes</i>	<b>April 29, 2020</b>
<i>Deadline for Questions (questions <u>must</u> be emailed)</i>	<b>May 13, 2020 by 2:00 PM</b>
<i>Deadline for Receipt of proposals</i>	<b>May 20, 2020 by 2:00 PM</b>
<i>Proposed date of Award</i>	<b>May 27, 2020</b>

Proposals will be received by Cape Fear Public Utility Authority, to provide inspection, and cleaning of back-up generator fuel and fuel tanks services, no later than the date and time specified above at Cape Fear Public Utility Authority. It is the bidder's responsibility to ensure bid is submitted correctly and on time. Late bids will not be accepted. CFPUA reserves the right to reject any and/or all proposals in connection to this project and to waive formalities in the bid. This is NOT a public bid opening.

To register to bid so you receive any updates or changes, and for any questions regarding this bid, email [bids@cfpua.org](mailto:bids@cfpua.org) . Questions regarding the bid will be received up to the date and time stated above.

Site Visits: Any site visits, prior to the proposal deadline, are by appointment only. Contact Teresa Horsboll, via email [bids@cfpua.org](mailto:bids@cfpua.org) to set up appointments.

Proposals must be submitted showing prices as requested on the Bid Proposal Form. All proposals must be completed and signed.

All bids shall be valid for a period of 60 days pending approval and award of contract.

Quoted price should not include any sales or use tax.

Cape Fear Public Utility Authority reserves the right to reject any and/or all bids received, or to select the proposal which, in our opinion, is in the best overall interest of CFPUA.

Proposals will be evaluated by determining the lowest responsible, responsive bidder considering:

- Accuracy of bid submission.
- Bidder's ability and capacity to provide scoped services requested
- References or past performance

Bidder must meet all the above requirements for proposal to be considered.

**Local Preference Policy**

The Cape Fear Public Utility Authority has adopted a Local Preference Policy. Please refer to our website for details. Visit [www.cfpua.org](http://www.cfpua.org), click on the My Business tab, then on Purchasing.

**NCGS 143-131 specifies that informal bids are not subject to public inspection until the contract is awarded.**

**Request for Proposal**  
**Diesel Fuel Tank Cleaning and Fuel Recovery Services**  
**RFP #20S1001**  
**Scope of Work**

1. Bidder is to provide a quote for services associated with the inspection, sampling/testing and cleaning of back-up generator diesel fuel. Also, includes fuel tank inspections and possible cleaning of these fuel tanks for CFPUA facilities.
2. Contractor shall filter contaminants that could potentially damage or cause failure to the generator systems. The fuel cleanup process should filter out any contaminants in the tank. Treatment of fuel and fuel tanks should include biocides and stabilizers, if contaminants are found.
3. We would like the following contaminants tested for: water, micro-organisms, and sediments.
4. All tanks have at least two access points.
5. Access for parking is within 75' of the tanks. Some of the engine day tanks are inside buildings / shelters. Main tanks are outside.
6. All tanks are diesel fuel.
7. All tanks are horizontal, above ground.
8. Testing should be scheduled in advance with the CFPUA authorized Supervisor(s).
9. Effort between the Contractor and CFPUA will be made to coordinate sampling and cleanings to occur in a scheduled grouping.
10. Bidder must be able to provide emergency services
11. Bidder shall be EPA Certified to haul waste. If a subcontractor is used for this service, documentation must be submitted with the bid to include to the subcontractor's credentials.
12. Contractor's service personnel must provide a copy of the service report upon completion of the task. An emailed fuel report or portal access is required to the authorized Supervisor.
13. Contractor shall itemize repair invoices, detailing taxable materials from labor costs.
14. Bidder to submit an example of an inspection report. This is required to be submitted with the bid.
15. Bidder shall provide an overview of their company's capabilities, processes, certifications and equipment.

16. Bid prices are to be per unit costs as indicated on the proposal sheet.
17. Mobilization Fees and Response Times will be taken into consideration.
18. Contract to go into effect July 1, 2020.
19. There is no guarantee of using the full value of the contract in a 12 month term.  
Determination is made by the supervisory staff as to the frequency of the servicing.

Please record your price proposals on the attached Bid Proposal Forms.

Please provide any other options and services you offer, as well as certification levels of your mechanics and specialty diagnostic equipment, on a separate sheet if necessary.

All Proposals are subject to renewal each year, upon mutual agreement. Initial term of agreement will be twelve (12) months, with the option to renew after annual review, for up to three (3) additional twelve (12) month terms. See section 14 "Terms and Renewal" in the draft service agreement document for more information.

Submitted proposals must be received in the office of the CFPUA, Assistant Procurement Manager via email: [bids@cfpua.org](mailto:bids@cfpua.org) , attention Teresa Horsboll, located at 235 Government Center Drive Wilmington, NC 28403 no later than the date and time specified above. It is the bidder's responsibility to ensure their bid is submitted correctly and on time. Late bids will not be accepted. CFPUA reserves the right to reject any and/or all proposals in connection to this project and to waive formalities in the bid. This is NOT a public bid opening.

**This Request for Quotes and all Bidder responses are considered public information, except for trade secrets specifically identified in writing by the Bidder, which will be handled according to State Statute or other laws. Any section of the Bidder's response package that is deemed to be a trade secret by the Bidder shall be submitted in a separate envelope clearly marked "TRADE SECRET INFORMATION- DO NOT DISCLOSE."**

**NCGS 143-131 specifies that informal bids are not subject to public inspection until the contract is awarded.**

**Bid Proposal Form**  
**Diesel Fuel Tank Cleaning and Fuel Recovery Services**  
**RFP #20S1001**

**Bid Item 1. Tank and Fuel Cleaning**

Below is a listing of the Equipment that is currently in CFPUA's inventory. This list will expand and contract as tanks are added or taken out of service.

Annual Inspections costs are a per-unit cost including all labor, materials, tools, safety equipment, rental equipment, and freight. Do not include travel costs; this is addressed in Bid Item 2

Cape Fear Public Utility Authority Fuel Tanks Annual Inspections  
**Record prices as per tank cost.**

Liftstations

Site ID	Capacity in Gallons	Sample	Clean Fuel & Tank	Treat Fuel
42	1,000	\$	\$	\$
12	1,000	\$	\$	\$
36	1,000	\$	\$	\$
44	1,000	\$	\$	\$
14	2,000	\$	\$	\$
39	500	\$	\$	\$
34-1	2,000	\$	\$	\$
34-2	3,000	\$	\$	\$
10	2,000	\$	\$	\$
89 Smith Creek	3,100	\$	\$	\$
25-A	1,500	\$	\$	\$
155	1,500	\$	\$	\$
35	3,000	\$	\$	\$
157	1025	\$	\$	\$
Portable	150	\$	\$	\$
76	1575	\$	\$	\$
69	1200	\$	\$	\$
71	850	\$	\$	\$
95	1600	\$	\$	\$
<b>TOTALS</b>		\$	\$	\$

Water Treatment

Site ID	Capacity in Gallons	Sample	Clean Fuel & Tank	Treat Fuel
Main (Supply Gen 1&2)	12,000	\$	\$	\$
DT1	200	\$	\$	\$
DT2	200	\$	\$	\$
DT3	200	\$	\$	\$
Gen 3	8,000	\$	\$	\$
Kings Bluff Main	4,000	\$	\$	\$
DT Pump	25	\$	\$	\$
DT Gen	25	\$	\$	\$
Nano -EDG	10,600	\$	\$	\$
TOTALS		\$	\$	\$

Waste Water Treatment

Site ID	Capacity in Gallons	Sample	Clean Fuel & Tank	Treat Fuel
NS 1	10,000	\$	\$	\$
NS 2	6,000	\$	\$	\$
SS 1	1,000	\$	\$	\$
SS 2	150	\$	\$	\$
TOTALS		\$	\$	\$

Wells

Site ID	Capacity in Gallons	Sample	Clean Fuel and Tank	Treat Fuel
Well 4 Flemington	276	\$	\$	\$
A	250	\$	\$	\$
K	440	\$	\$	\$
L	440	\$	\$	\$
C	440	\$	\$	\$
G	440	\$	\$	\$
H	440	\$	\$	\$
F	440	\$	\$	\$
I	440	\$	\$	\$
PN Booster	200	\$	\$	\$
4	400	\$	\$	\$
J	440	\$	\$	\$
N	360	\$	\$	\$

Site ID	Capacity in Gallons	Sample	Clean Fuel and Tank	Treat Fuel
M	360	\$	\$	\$
O	360	\$	\$	\$
P	200	\$	\$	\$
Q	200	\$	\$	\$
<b>TOTALS</b>		\$	\$	\$

**Bid Item 2. Travel**

Daily Travel Costs is to include all costs related to travel and per-diem as ONE daily rate.

Daily Travel Costs: \$ \_\_\_\_\_ / day charge

**Bid Item 3. Fuel Disposal**

Possible fuel disposal costs

Fuel Disposal Cost: \$ \_\_\_\_\_ / gallon

**Attachments to submit with Bid:**

1. Example Invoice and report

**Addendum:**

Receipt of the following Addendum is acknowledged:

Addendum No. \_\_\_\_\_ Date \_\_\_\_\_, 2020

Addendum No. \_\_\_\_\_ Date \_\_\_\_\_, 2020

**Questionnaire for  
Diesel Fuel Tank Cleaning and Fuel Recovery Services  
RFP #20S1001**

**This information will be used in the proposal evaluation process.**

1. Number of Years Company has been in business? \_\_\_\_\_
2. Please attach a copy of your business license or NC Secretary of State id number.
3. Professional associations and memberships and/or other community involvement  
\_\_\_\_\_
4. Number of people employed \_\_\_\_\_
5. Total number of certified technicians \_\_\_\_\_
6. List any additional services that your company can provide outside of Inspections and Treatment.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
7. List any service that you would have to "Sublet". List the companies you normally outsource this work to and the percent over your cost that you will charge CFPUA for sublet services. Note: Awarded Contractor will not be reimbursed for outsourced services that they can perform in-house. All sublet items must be listed below. (Attach separate sheet if needed.)

Type of Service	Company(ies) may sublet to	% over your cost
_____	_____	_____
_____	_____	_____
8. As an authorized service provider, you will be asked to certify that you believe the services performed are the minimum necessary to make the fuel and tanks operationally worthy and safe. Is this something your business would be willing to attest to? Yes\_\_\_\_\_ No\_\_\_\_\_
9. If awarded the contract, can you provide a certificate of liability insurance covering the limits of insurance described in Terms and Conditions of the Draft Service Agreement? Yes\_\_\_\_ No\_\_\_\_\_
10. The awarded contractor will be required to enter into a Contract for Services with the CFPUA. A sample of the Contract is attached for review. Will you be able to comply with the terms and conditions of the Contract and sign such Contract? Yes\_\_\_\_\_ No\_\_\_\_\_
11. Providers will be required to submit itemized invoices detailing the unit location, cost per part, the number of labor hours and hourly rates per service, as well as sales tax on parts. Will you be able to provide itemized invoices for reimbursement? Yes\_\_\_\_\_ No\_\_\_\_\_



12. Please attach a standard example of inspection report. This is required to be submitted with the bid.

13. What are your regular days and hours of operation? \_\_\_\_\_

14. Is your business an authorized sales or service center for a particular brand of equipment? Yes\_\_\_\_\_ No\_\_\_\_\_. If so, what brand(s)\_\_\_\_\_

15. References: Provide at least three (3) current inspection customers and their contact information, to include Company name, contact name, phone number and/or email address.

Company Name	Contact Name	Phone	Email

*By signing this Bid Proposal Sheet the Company, if selected, agrees to perform the services listed in the preceding pages and bill for services using the rates quoted on this "Bid Proposal Sheet". Company representative, hereby acknowledges that he has read, understands and agrees to the "Standard Terms and Conditions" in the draft service agreement.*

**Please provide the following information on your company:**

<b>Company Legal Name:</b>	
<b>Mailing Address:</b>	
<b>City, State, Zip:</b>	
<b>Phone:</b>	<b>Email:</b>
<b>Printed Name:</b>	<b>Title:</b>
<b>Signature:</b>	<b>Business License:</b>

**Type of Company:**     *check one*

**Sole Proprietor**

**Partnership**

**Corporation**

**State of incorporation:** \_\_\_\_\_

**LLC**

**State of incorporation:** \_\_\_\_\_

Is your company a minority owned company? \_\_\_\_\_ Yes \_\_\_\_\_ No

AGREEMENT BETWEEN  
THE CAPE FEAR PUBLIC UTILITY AUTHORITY  
AND

THIS CONTRACT made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_,  
by and between **CAPE FEAR PUBLIC UTILITY AUTHORITY**, hereinafter referred to as  
“AUTHORITY”, located in New Hanover County, North Carolina and; \_\_\_\_\_, a corporation  
organized under the laws of the State of North Carolina and hereinafter referred to as  
“CONTRACTOR”.

**WITNESSETH:**

1. **Scope of Services:** Routine and Unscheduled

Services associated with the inspection, and cleaning of back-up generator diesel fuel  
and fuel tanks for CFPUA facilities as outlined in the Cape Fear Public Utility Authority  
Request for Proposal

2. **Contractor Duties**

The Contractor shall supply all materials, equipment, labor, and other items needed to perform  
and execute the work (hereinafter referred to as the Work) described in the Proposal. The Work  
will be performed on the equipment at the CFPUA location where equipment is located. The  
Authority will provide Contractor with such permissions as required for access to the sites. The  
Work shall be performed in accordance with generally accepted industry standards, practices,  
and principles applicable to the work, and the Work sites maintained reasonably free of trash  
and waste materials. The Contractor shall supervise and direct the Work and shall be solely  
responsible for and in control of the means, methods, procedures, techniques and sequences of  
doing the Work. Except as otherwise provided in the Scope of Work, the Contractor shall pay for  
all labor, equipment, tools, safety equipment, rental equipment, transportation, subcontractors  
fees, and other items needed to perform and execute the Work. CFPUA does not loan tools or  
safety equipment.

Contractor will be responsible for obtaining a signature (both written and printed) on the service  
paperwork, showing receipt of the stated work. Contractor will provide detailed inspection  
reports of equipment by equipment asset number or s/n, and department. At the end of the

calendar year a summary report for each piece of equipment from that year shall be submitted to authority to include all maintenance charges and dates of inspection.

### **3. Schedule**

Contractor will be required to co-ordinate with Authority's Representative to schedule routine or extended maintenance, repairs, and inspections. Contractor will obtain permission prior to beginning any work beyond the work considered as routine maintenance such as extended service work or repairs to Equipment which are recommended due to problems found during the inspection or routine maintenance process.

### **4. Delivery of Materials**

Contractor is responsible for all off loading of materials and furnishing tools and equipment necessary to complete repairs, maintenance.

### **5. Additional Work**

Any repairs identified during the performance of routine maintenance shall be described and submitted in writing along with an estimated cost of repair. The Authority must approve the repair prior to such repair being undertaken.

### **6. Custody and Care of Property**

Contractor agrees that he/she shall be responsible for the proper custody and care of any Equipment or property furnished for use in connection with the performance of this contract or purchased by it for this contract (i.e. repair manuals) and will reimburse Authority for loss of damage of such property. Authority's Equipment and trailers should be stored in a secure location if it is necessary for them to remain in the contractor's custody over night.

### **7. Supervision and Superintendence**

Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Authority's requirements. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of the work.

Contractor shall provide competent, suitably qualified personnel to complete the Work as required by these documents. Contractor shall at all times maintain good discipline and order at the Site.

Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work outside of regular working hours without Authority's written consent (which will not be unreasonably withheld) given after prior written notice to Authority. After hour emergency service work is excluded.

Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs,

losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work.

## **8. Safety and Protection**

Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to (1) all persons on the Site or who may be affected by the Work and (2) all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site.

Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. All damage, injury, or loss to any property referred to in this Safety and Protection section caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the acts or omissions of Authority or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Authority has accepted the work. CFPUA is committed to providing safe conditions for employees, contractors, vendors, and visitors while occupying CFPUA facilities. Strict adherence to State and Federal OSHA and EPA Regulations will be required.

Hazard Communication Programs: Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employees at the Site in accordance with Laws or Regulations.

Contractor shall not be responsible for any unforeseen hazardous environmental condition uncovered or revealed at the site, however, Contractor shall be responsible for a hazardous environmental condition created with any materials brought to the site by the contractor, subcontractor, supplier, or anyone else for whom Contractor is responsible. If contractor encounters or creates a hazardous environmental condition, Contractor shall deal with the condition in accordance with applicable Federal and State regulations.

## **9. Tests and Inspections**

Contractor shall give Authority timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests. Contractor shall provide Authority with results of all testing.

## **10. Warranties**

Contractor shall warranty their repairs for no less than (90) days for workmanship, and for the full manufacturer warranty period on materials.

#### **11. Invoicing**

Contractor shall bill Authority on an as completed basis for any pre-approved repair work and scheduled maintenance work. Invoices shall include all sales taxes paid relative to the Work, Purchase Order number, description of item(s), quantities, unit price, extended price, freight, state and local taxes, date of delivery and equipment number. Receipted freight bills shall support invoices for prepaid transportation charges.

The Authority is not exempt from North Carolina State and local tax. North Carolina and local sales tax shall be shown as a separate item on the invoice.

The Cape Fear Public Utility Authority is exempt from and will not pay *federal* taxes. An exemption certificate will be furnished upon request.

All invoices are to be mailed to the Finance Department to the remittance address listed on the Purchase Order or emailed to [ap@cfpua.org](mailto:ap@cfpua.org). Each purchase order must be invoiced separately. Invoices for partial shipments will be accepted and final invoices should indicate completion of order. Reference the purchase order number on all invoices. The Authority will not be responsible for any goods/services delivered without a purchase order. Terms are **Net 30**.

#### **12. Contract Price**

The Authority hereby agrees to pay to the Contractor in lawful money of the United States for the faithful performance of this agreement in accordance with quoted prices as set forth in the Cost Proposal sheet, subject to allowable additions and deductions through amendments, a total not to exceed amount of \$ [REDACTED] per 12 month contract term. There is no guarantee of using the full value of the contract in a 12 month term.

#### **13. Payment of Contract Price**

Payment will be made by the Authority in full for all delivered services and products as soon after complete delivery and receipt of a correct invoice can be processed in accordance with these specifications. Terms are **Net 30**.

The Authority may withhold payments if the Authority has received claims of lien by subcontractors for unpaid labor or materials, if the work of the Contractor is defective, if the Contractor fails to diligently pursue the work with reasonable dispatch, or if the amount requested is not consistent with the level of Work actually performed.

#### **14. Terms and Renewal**

Contract will be effective July 1, 2020 and will be for an initial term of twelve (12) months. Contractor is bound to the quoted prices for the full twelve (12) month term.

Upon each anniversary date of any resulting agreement, Authority and Contractor, upon mutual agreement, shall have the option to renew this contract for one twelve (12) month term. This contract may be renewed up to three (3) times at the same prices, terms and conditions as stated in the original contract.

**15. Authority's Representative**

Authority designates the following as its representative, who shall have authority to transmit instructions, receive notices and information, and enunciate the Authority's policies and decisions in regards to the Work in their respective areas:

Teresa Horsboll	Contract/Bid - Primary
Kevin Boyett	Service - Primary

A contact from each division may be assigned upon award of contract.

**16. Records**

Contractor shall maintain all records, documents, notes, and financial information related to performance of the Work in accordance with generally accepted accounting principles and practices and shall provide the Authority access to such information if requested. Any information, data, instruments, documents, studies or reports given to or prepared or assembled by Contractor under this agreement shall be kept as confidential and not divulged or made available to any individual or organization without the prior written approval of Authority.

**17. Errors/Deficiencies**

Contractor shall, without additional compensation, make any corrections to inferior or incomplete work done under this agreement if it is determined that Contractor is responsible for any errors or deficiencies.

**18. Notices**

All notices required under this agreement shall be in writing and mailed first class by US Mail, postage prepaid, to the address for each party set forth above.

**19. Limitations on Authority's Responsibilities**

The Authority shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Authority will not be responsible for Contractor's failure to perform the Work in accordance with this agreement.

**20. Release and Indemnity**

To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify, hold harmless, and defend the officers, directors, members, partners, employees, agents, contractors and other Contractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising directly or indirectly out of the obligations herein undertaken or resulting from the operations conducted, to the extent caused by any negligent act or omission of

CONTRACTOR, any sub-Contractor of CONTRACTOR, or any individual or entity directly or indirectly employed by any of them to perform any of the Services or anyone for whose acts any of them may be liable.

## **21. Personnel**

It is mutually agreed that CONTRACTOR is an independent contractor and not an agent or employee of the AUTHORITY, and as such the CONTRACTOR, or any employees thereof, or sub-contractors, or any employees thereof, shall not be entitled to any Authority employment benefits, such as, but not limited to, wages or salary, vacation, sick leave, insurance, workers' compensation, or pension and retirement benefits.

### **21.1 E-Verify**

CONTRACTOR shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Further, if CONTRACTOR utilizes a subcontractor, CONTRACTOR shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes.

## **22. Conflict of Interest**

No paid employee of the AUTHORITY shall have a personal or financial interest, direct or indirect, as a contracting party or otherwise, in the performance of this agreement.

## **23. Non-Waiver of Rights**

It is agreed that the AUTHORITY'S failure to insist upon the strict performance of any provision of this agreement, or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this agreement.

## **24. Suspension or Termination of Agreement**

1. In the event that review of the CONTRACTOR'S performance shows non-conformance to the work required by this contract, the Scope of Services or other terms or conditions contained herein as a result of the CONTRACTOR'S negligent errors, omissions or acts, the CONTRACTOR shall be in breach of this agreement and the AUTHORITY may take corrective action as it deems necessary including, but not limited to, termination, withholding or reduction of payment.

2. The AUTHORITY shall also have the right to suspend this agreement upon written notice to the CONTRACTOR. Such written notice shall state the reasons for suspension and allow for a review period of ten (10) days during which the CONTRACTOR shall be provided with an opportunity to respond with an explanation or justification, and/or shall undertake any reasonable remedial action required by the AUTHORITY. If, in the opinion of the AUTHORITY the CONTRACTOR remains in violation of this agreement at the completion of the ten (10) day suspension period, the AUTHORITY shall have the right to terminate this agreement whereupon all obligations of the AUTHORITY to the CONTRACTOR shall cease.

3. In the event this project is terminated prior to completion of the services by the CONTRACTOR, the CONTRACTOR shall be paid for 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 paragraph IV of this agreement. CONTRACTOR shall be paid for all reimbursable, as defined herein, which are due him.)

4. This agreement may be terminated without cause by the AUTHORITY with thirty (30) days written notice to CONTRACTOR.

5. Nothing contained herein shall prevent the AUTHORITY from pursuing any other remedy which it may have against CONTRACTOR including claims for damages.

### **25. Assignment of Agreement**

It is mutually agreed by the parties hereto that this agreement is not transferable by CONTRACTOR without the written consent of the other party to this agreement.

### **26. Insurance Requirements**

CONTRACTOR shall maintain insurance from companies licensed to write business in North Carolina, with an A.M. Best rating of "A" or higher, and acceptable to the AUTHORITY, of the kinds and minimum amounts specified below.

Certificates and Notice of Cancellation. Before commencing work under this contract, CONTRACTOR shall furnish AUTHORITY with certificates of all insurance required below. Certificates shall indicate the type, amount, class of operations covered, effective date and expiration date of all policies.

Each insurance policy required by this contract shall be endorsed to state that coverage shall not canceled by either party except after 30 days prior written notice has been given to Cape Fear Public Utility Authority, 235 Government Center Drive, Wilmington, NC 28403.

The Certificate of Insurance, naming the AUTHORITY as an additional insured where specified, shall be further evidenced by an actual endorsement furnished to the AUTHORITY from the insurer within thirty (30) days of the signing of the contract between the CONTRACTOR and the AUTHORITY, and is included as Attachment D of this AGREEMENT.

The amount of insurance to be provided for all coverages listed under this section shall be not less than \$1,000,000.00, unless otherwise specified, per occurrence for claims arising from bodily injury and/or property damage, including accidental death which may arise directly or indirectly from CONTRACTOR'S performance of professional services under this contract. The CONTRACTOR shall be responsible for any liability directly or indirectly arising out of professional services performed under this contract by a subcontractor which liability is not covered by the subcontractor's insurance.

#### **a) Commercial General Liability**

The CONTRACTOR shall take out and maintain during the life of this contract COMMERCIAL GENERAL LIABILITY INSURANCE, coverage. The AUTHORITY shall be named as an additional insured under this policy. Unless otherwise specified, this coverage shall be written providing liability limits at least in the amount of \$1,000,000 per occurrence/\$3,000,000



aggregate, Combined Single Limits, applicable to claims due to bodily injury and/or property damage arising from an occurrence. Exclusions applicable to explosion, collapse and underground hazards are to be deleted when the work involves these exposures. The AUTHORITY shall be named an additional insured on this policy.

**b) Workers' Compensation and Employer's Liability**

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

The Employer's Liability, and if necessary, Commercial Umbrella Liability insurance shall not be less than \$500,000 each accident for bodily injury by accident, \$500,000 each employee for bodily injury by disease, and \$500,000 policy limit.

The insurer shall agree to waive all rights of subrogation against the Cape Fear Public Utility Authority, its officers, officials, and employees for losses arising from work performed by the contractor for Cape Fear Public Utility Authority.

**c) Business Auto Liability**

The CONTRACTOR shall take out and maintain during the life of this agreement AUTOMOBILE LIABILITY INSURANCE. Such coverage shall be written on a comprehensive form covering owned, non-owned, hired and leased Equipment, providing liability limits at least in the amount of \$1,000,000 per occurrence combined single limits applicable to claims due to bodily injury and/or property damage.

The CONTRACTOR shall furnish the schedule of insurance carried under this contract in the form of a Certificate of Insurance attested by the insurance carrier or appointed agent, indicating the type, amount, class of operations covered, effective date and expiration date of all policies. This Certificate shall be in three (3) counterparts and when the contract is signed by the CONTRACTOR, a copy thereof shall be inserted in each copy of the contract documents and upon insertion shall become a part of such documents.

**d) Pollution Liability**

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

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 \$2,000,000.

Contractors Pollution Liability shall include as an additional insured Cape Fear Public Utility Authority, its officers, officials, agents, and employees.

If Contractors Pollution Liability is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years, beginning from the time that work under the contract is complete. If the scope of services as defined in this contract includes the disposal of any hazardous or nonhazardous materials from the job site, the Contractor must furnish to Cape Fear Public Utility Authority evidence of pollution liability insurance maintained by the disposal site operator for

losses arising from the insured facility accepting waste under this contract. Coverage certified to the Cape Fear Public Utility Authority under this paragraph must be maintained in minimum amounts of \$1,000,000 per loss, with an annual aggregate of at least \$ 2,000,000.

### **27. Findings Confidential**

All of the information, reports, cost estimates, plans, specifications and documents prepared or assembled by the CONTRACTOR under this agreement are confidential. The CONTRACTOR agrees that any such documents shall not be made available to any individual or organization other than appropriate AUTHORITY officials without prior written approval of the AUTHORITY. Nothing contained in this paragraph shall be construed to prevent the CONTRACTOR from making information, reports and documents available to those individuals or firms directly concerned with the project involved with prior written agreement of the AUTHORITY.

### **28. Subcontracts**

The CONTRACTOR shall utilize no subcontracts for carrying out the services to be performed under this agreement without the written approval of the AUTHORITY.

### **29. Entire Agreement**

This agreement constitutes the entire understanding of the parties.

### **30. Binding Effect**

This agreement shall be binding upon the heirs, successors, assigns, agents, officials, employees, independent contractors, and subcontractors of the parties.

### **31. Continuing Obligation**

The parties will make and execute all further instruments and documents required to carry out the purposes and intent of the agreement.

### **32. Reference**

Use of the masculine includes feminine and neuter, singular includes plural; and captions and headings are inserted for convenience of reference and do not define, describe, extend or limit the scope of intent of the agreement.

### **33. Interpretation**

All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina. In the event of a conflict between the various terms and conditions contained herein or between these terms and other applicable provisions, then the more particular shall prevail over the general and the more stringent or higher standard shall prevail over the less stringent or lower standard.

### **34. Immunity Not Waived**

This agreement is governmental in nature for the benefit of the public and is not intended to be for private profit or gain. Any fees charged hereunder are intended to reflect as closely as possible the AUTHORITY'S actual cost and neither party intends to waive its sovereign immunity by reason of this agreement.

### **35. Saving Clause**

If any section, subsection, paragraph, sentence, clause, phrase or portion of this agreement is for any reason held invalid, unlawful, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

### **36. Other Laws and Regulations**

CONTRACTOR will comply with any and all applicable federal, state and local standards, regulations, laws, statutes and ordinances regarding toxic, hazardous and solid wastes and any other pollutants; public and private nuisances; health or safety; and zoning, subdivision or other land use controls. CONTRACTOR will take all reasonably necessary, proper or required safety, preventative and remedial measures in accordance with any and all relations and directives from the North Carolina Department of Human Resources, the United States Environmental Protection Agency, the North Carolina Department of Environmental Management, Health Departments, and any other federal, state or local agency having jurisdiction, to insure the prompt prevention or cessation (now or in the future) of violations of either the applicable provisions of such standards, regulations, laws, statutes, and ordinances or any permits or conditions issued thereunder.

### **37. Amendments**

This agreement shall not be modified or otherwise amended except in writing signed by the parties.

### **38. Non-Discrimination**

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

### **39. Dispute Resolution**

In the event of any dispute between the parties arising out of or in connection with the Agreement or the services or work contemplated herein; the parties agree to first make a good faith effort to resolve the dispute informally. Negotiations shall take place between the designated principals of each party. If the parties are unable to resolve the dispute through

negotiation within forty-five (45) days, then either party may give written notice within ten (10) days thereafter that it elects to proceed with mediations pursuant to the commercial mediation rules of the American Arbitration Association. In the event that mediation is not invoked by the parties or that mediation is unsuccessful in resolving the dispute, then either party may submit the controversy to a court of competent jurisdiction located in New Hanover County, North Carolina which shall be the sole forum for any litigation with respect to this Agreement or the subject matter thereof. The foregoing is a condition precedent to the filing of any action other than an action for injunctive relief or if an applicable statute of limitations may expire.

Each party shall be responsible for its own costs and expenses including attorneys' fees and court costs incurred in the course of any dispute, mediation or legal proceeding. Provided, however, that the fees of the mediator and any filing fees shall be shared equally by the parties.

#### **40. Environmental Policy:**

The Authority has developed and implemented an ISO 14001 Environmental Management System (EMS), and is third party certified. Per the certification the Authority must ensure all persons doing work on their behalf is made aware of our Environmental Policy. Visit [www.cfpua.org](http://www.cfpua.org), click on How Do I...?, Learn About, and then choose Environmental Protection. Contractor/Vendor certifies by signing this agreement that they have reviewed the Environmental Policy and understand their work contributes to the effectiveness of the EMS and may have a positive or negative impact on the Environment.

#### **41. Advertising:**

No advertising, sales promotion, other materials or presentations of the Contractor will identify or reference this contract, or the Cape Fear Public Utility Authority's name without the written consent of the Authority. This includes professional conferences, meetings and other events where the Contractor may be discussing or referencing either verbally or in writing Cape Fear Public Utility Authority and/or the services or products covered under this contract. Exception may be taken to the above with regard to listing the Authority as a job history reference in responses to requests for proposals.

#### **41. Iran Divestment Act Certification:**

The Contractor named in this agreement is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. Article 6E, §147. Contractor shall not utilize any subcontractor found on the State Treasurer's Final Divestment List located on the State Treasurer's website at the address [www.nctreasurer.com/iran](http://www.nctreasurer.com/iran)

**SIGNATURES**

**IN WITNESS WHEREOF**, the OWNER has caused this Agreement to be duly executed in its name and behalf and the CONTRACTOR has cause this Agreement to be duly executed in its name and behalf and its corporate seal to be hereunto affixed, and attested to.

**CONTRACTOR**

**CORPORATE SEAL:**

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

SIGNED BY: \_\_\_\_\_

*[President, Vice Pres, Assistant Vice Pres]*

ATTESTED BY: \_\_\_\_\_

*[Secretary, Officer]*

PRINT NAME: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public, certify that the corporation's Secretary,  
*[Notary (Print)]*  
Assistant Secretary, or Trust Officer, \_\_\_\_\_ personally

*[Secretary, Officer]*

came before me this day and acknowledged that s/he is the Secretary or Trust Officer of \_\_\_\_\_, a Corporation, and that by authority duly given and

as act of the corporation, the foregoing instrument was signed in its name by its

President, Vice President, or Assistant Vice President, \_\_\_\_\_, sealed with

*[President, VP, AVP]*

its Corporate Seal, and attested by him/herself as its Secretary, Assistant Secretary, or Trust Officer.

**WITNESS** my hand and official seal this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

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

**OWNER**

CAPE FEAR PUBLIC UTILITY AUTHORITY    SEAL:

235 Government Center Drive  
Wilmington, North Carolina 28403

BY: \_\_\_\_\_  
          Jim Flechtner  
          Executive Director

ATTEST: \_\_\_\_\_  
          Donna S. Pope  
          Clerk to the Board

NORTH CAROLINA  
\_\_\_\_\_ COUNTY

I, \_\_\_\_\_ the undersigned Notary Public do hereby certify that Donna S. Pope personally came before me this date and acknowledged that she is the Clerk to the Board of Cape Fear Public Utility Authority, Wilmington, North Carolina, and that, by authority duly given and the act of the Board, the foregoing document was signed in its name by its Executive Director, sealed with its corporate seal, and attested by herself as its Clerk.

WITNESS my hand and official seal this the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

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

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

**AUTHORITY ATTORNEY'S CERTIFICATION**

This instrument has been reviewed and is approved as to form this the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Linda Miles  
Consulting Attorney to the Board

**AUTHORITY ACCOUNTANT'S CERTIFICATION**

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act this the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
John McLean  
Chief Financial Officer