

**REQUEST FOR QUALIFICATIONS  
MASTER AGREEMENT FOR ON-CALL  
ENGINEERING / PLANNING SERVICES  
RFQ NO. 20-1001**



**catawba county**  
MAKING. LIVING. BETTER.

**Date of Issue: October 18, 2019**

**Qualifications Statement Due Date: November 15, 2019**

**Time: 5:00 PM ET**

**Issued for:**

**Catawba County Solid Waste Division  
4017 Rocky Ford Road  
Newton, North Carolina 28658  
(704) 462-1348**

**Issued by:**

**Catawba County Purchasing Manager  
25 Government Drive  
Newton, North Carolina 28658  
(828) 465-8224**

## **INTRODUCTION**

Catawba County (hereinafter “County”) is soliciting the submittal of qualification statements from experienced Engineering Firms (hereinafter “Firm”) interested in providing on-call professional engineering and planning services for the County’s Solid Waste Management Facilities related to various solid waste projects over the next five (5) years. A **Master Agreement for On-Call Engineering Services** shall be utilized for the requested services and it is attached hereto as Attachment B. Eligible firms must have demonstrated experience in engineering and planning services for solid waste management facilities as described in the Scope of Work.

Catawba County reserves the right to reject any and all submittals. This submittal request is neither a contractual offer nor a commitment to purchase services. The County assumes no contractual obligation as a result of the issuance of this request, the preparation or submission of a qualifications statement by a Firm, the evaluation of statements or final selection.

## **PURPOSE**

This Request for Qualifications (RFQ) is being issued by County for the purpose of soliciting Statements of Qualifications from firms for providing on-call engineering and planning services for the County’s existing solid waste facilities and for siting, design, and construction of future facilities.

One or more qualified firms will be selected to provide services that include, but are not limited to, the preparation and submittal of all documentation in order to provide strategic and tactical expertise for planning, regulatory compliance, engineering design, construction administration and management of the County’s Solid Waste facilities and programs for an approximate five (5) year period anticipated to be December 17, 2019 – December 16, 2024. Qualified Firm(s) shall provide Project Management Services such that it meets all requirements and conforms to the North Carolina Solid Waste Management Rules and other applicable Federal, State, and Local Rules and Regulations.

## **RFQ SCHEDULE**

The table below shows the *intended* schedule for this RFQ. Catawba County will make every effort to adhere to this schedule.

<b>Event</b>	<b>Responsibility</b>	<b>Date and Time</b>
Issue RFQ	County	October 18, 2019
Submitted Written Questions	Firms	October 30, 2019 at 5:00 PM
Provide Responses to Questions	County	November 1, 2019 at 5:00 PM
Submit Proposals	Firms	November 15, 2019 at 5:00 PM
Contract Award	County	TBA
Anticipated Contract Effective Date	County	December 17, 2019

**The qualifications statement shall be submitted no later than 5:00 p.m. November 15, 2019. No submittals will be accepted after the deadline.**

Once the submittals have been reviewed, the County reserves the right to shortlist Firm(s) and request that the Firm(s) conduct a presentation and be interviewed by the selection committee.

## **RFQ QUESTIONS**

Written questions shall be emailed to [tinawright@catawbacountync.gov](mailto:tinawright@catawbacountync.gov) by the date and time specified above. Firms should enter “RFQ # 20-1001 – Questions” as the subject for the email. Questions received prior to the submission deadline date, the County’s response, and any additional terms deemed necessary by the County will be posted in the form of an addendum to the Catawba County website, <https://www.catawbacountync.gov/county-services/purchasing/bid-notice/> and shall become an Addendum to this RFQ. No information, instruction or advice provided orally or informally by any County personnel, whether made in response to a question or otherwise in connection with this RFQ, shall be considered authoritative or binding. Firms shall rely *only* on written material contained in an Addendum to this RFQ.

## **SUBMISSION OF QUALIFICATIONS**

Respondents may submit qualifications for any one, or all the various tasks listed in the Scope of Services. Respondents are required to clearly identify in their responses which tasks within the Scope of Services they are submitting qualifications for.

The qualifications statement must be submitted with one (1) original, one (1) copy and one (1) electronic copy on flash drive. When responding to this RFQ, please follow all instructions carefully. Please submit proposal contents according to the outline specified. Failure to follow these instructions may be considered a non-responsive submission and may result in immediate elimination from further consideration. The qualifications statement should be sent to the address indicated in the table below.

<b>Mailing address for delivery of proposal via US Postal Service</b>	<b>Office Address of delivery by any other method (hand delivery, overnight, or any other carrier)</b>
RFQ Number: RFP 20-1001 Catawba County Government Center Attn: Purchasing Department Post Office Box 389 Newton, North Carolina 28658	RFQ Number: RFP 20-1001 Catawba County Government Center Attn: Purchasing Department 25 Government Drive Newton, North Carolina 28658

**IMPORTANT NOTE:** All qualifications shall be physically delivered to the office address listed above on or before the submission deadline in order to be considered timely, regardless of the method of delivery. **This is an absolute requirement.** All risk of late arrival due to unanticipated delay—whether delivered by hand, U.S. Postal Service, courier or other delivery service is entirely on the Firm(s). It is the sole responsibility of the Firm to have the qualifications physically in this Office by the specified time and date of opening.

## **EXISTING SOLID WASTE FACILITY DESCRIPTION**

The list of facilities below are the primary operating locations of Catawba County Solid Waste, however, there are other sites that the County used from time to time that are not listed here, but may be part of future work.

### **Blackburn Resource and Recovery Facility**

The Facility site is 567.95 acres and is located approximately 6 miles south of Hickory, along Rocky Ford Road. The Facility has an approved Permit 1803-MSLF-1997, from the North Carolina Department of Environmental Quality, Division of Solid Waste Management. The Facility is owned and operated by Catawba County, North Carolina and consists of four landfill areas, including a closed, unlined landfill that predated Subtitle D regulations, designated as Unit 1; the Subtitle D Municipal Solid Waste (MSW) Landfills, designated as MSW Unit 2 and MSW Unit 3; a closed Construction and Demolition (C&D) Landfill, designated C&D Unit 1; and an active C&D Unit 2. In addition, the County operates a Treatment and Processing Area onsite that grinds green and dry wood, leaves and grass, and manages tires and white goods. Both pre and post Subtitle D MSW Landfill Units 1, 2, and 3 have an active Landfill Gas (LFG) collection and conditioning system that currently provides LFG to three (3) Jenbacher-J320 engine-generator sets.

### **Bethany Church Road Landfill (Closed)**

The Facility is approximately 270 acres and is located at 3245 Bethany Church Road, Newton N.C. 28658. This Facility has an approved Permit 1801-MSWLF-1973, from the North Carolina Department of Environmental Quality, Division of Solid Waste Management. This Facility is currently in Post Closure Care, has a small Air Quality Permit, and has a LFG gas collection system.

## **SCOPE OF SERVICES**

The Firm shall provide professional engineering services to meet (1) all requirements of the North Carolina Solid Waste Management Rules; (2) any building code or building permit requirements; and (3) any other requirements imposed by law or ordinance. The amount of services or scope of work for each project will be determined by Catawba County. The firm selected will not be guaranteed any quantity of hours, fees or projects during the term of the contract.

The projects and services proposed for Catawba County's Solid Waste Management Facilities include, but are not limited to the following:

1. The preparation of detailed drawings, specifications, and contract documents necessary for bidding and construction of various solid waste projects, such as landfill phases, partial caps and closures.
2. Preparation of required Solid Waste reports.
3. Responses to NCDEQ correspondence.
4. Geo-Technical Services for the assessment of soil availability and suitability for use in liner and cover systems.
5. Provide QA/QC and CQA services for all relevant projects.
6. Perform Annual surveying of airspace usage for MSW and C&D landfills.

7. Prepare annual Capacity Analysis report for State.
8. Assistance with regulatory requirements and pre-regulatory landfill issues.
9. Development of the annual Financial Assurance report for Closure and Post/Closure funds.
10. Develop and prepare annual fill sequence phases in AUTO-CAD to be used in County's Equipment GPS system.
11. Landfill gas system evaluation, design, and implementation.
12. Develop and maintain master plans for landfill phases, closure phases, and borrow areas.
13. Provide engineering field inspection services to maintain State Permit requirements.
14. Perform sampling, monitoring, permitting, and reporting services for the Title V Air Permit to include monthly/semi-annual/annual reporting to the State.
15. Landfill gas reporting associated with the New Source Performance Standards.
16. Development and/or implementation of Corrective Action Plans for Groundwater and Landfill Gas necessary to meet State Regulations.
17. Updating Ground Water Monitoring, and gas detection site Plans.
18. Presentations to County Commissioners or various Citizen Boards.
19. Assist the County with new regulations or requests from Federal, State, or Local Regulators that impact operations or monitoring.
20. Other services as required.

## **CONTENTS OF QUALIFICATIONS STATEMENT**

Qualifications shall be submitted on 8-1/2 x 11 paper, side bound with Table of Contents and reference tabs for key sections.

The qualification statement must be submitted with one (1) original, one (1) copy and one (1) electronic copy on CD, DVD or flash drive.

Qualification Statement shall include the following information:

### **1. Introduction – Letter of Transmittal**

- Summarize in a brief and concise manner the Firm's understanding of the scope of work and make a positive commitment to perform the work in a professional and timely manner.

### **2. Qualifications of Firm**

Please provide:

- Company's history and experience in solid waste management and design.
- Overall qualifications of projects managers and key personnel.
- Overall experience with:

- Solid Waste management regulations
- Municipal solid waste landfill design, Construction and Demolition Landfill design and operations, closure and operations.
- Title V Air permitting, monitoring, and reporting
- Landfill gas systems design and operation
- Storm water management systems design and operation
- Customer convenience site design and operation
- Leachate management system design and operation
- Environmental assessment and permitting
- Company's expertise and experience with community relations
- Provide a summary of any litigation, claim(s), or contract dispute(s) filed by or against the Firm in the past five (5) years that are related to the services that the Firm provides in the regular course of business. The summary shall state the nature of the litigation, claim, or contract dispute; a brief description of the case; the outcome or projected outcome; and the monetary amount involved. If no litigation claim(s) or contract dispute(s) have been filed by or against the Firm in the past five (5) years, please state that.
- List any regulatory or license agency sanctions. If no license sanctions against the Firm, please state that.

### **3. Project Management**

Please provide:

- Firm staff resumes that show experience in North Carolina.
- State of qualifications of the firm and its key personnel who will be assigned to work with the County on various projects.
- List any professional training and experience, especially in relation to the type and magnitude of work required for this particular scope of services.
- List any licenses or certifications related to the scope of work described in this Request for Qualifications.
- Describe the Firm's approach to and/or method of cost control and project scheduling.
- Current work load and percentage of availability.
- Hourly billing rates charged by your Firm for each position type.

### **4. References – Past Performance and Existing Contracts**

Please provide:

- List of previous and current clients for work similar to this scope of work within the past five (5) years. Include names and location of project, brief description and firm's key personnel's involvement, name of project manager and telephone number, date and value of project. In addition, please complete Attachment A: Reference Disclosure Form and submit with qualifications.

### **5. Master Service Agreement**

The awarded Firm will be required to enter into a Master Service Agreement for On-Call Engineering Services, attached as Attachment B. Any exception to the terms

of this Agreement or additional terms must be included as part of the Firm's Response to Request for Qualifications. Execution of a Master Services Agreement is not a guarantee Firm be will contacted to provide on-call engineering services.

### **EVALUATION METHOD - SELECTION PROCESS**

Catawba County will use the following selection process. This process is designed to ensure that firms are selected in a fair and uniform manner, those selected for work are qualified and experienced in the professional services desired, and to ensure that every qualified consultant has the opportunity to be considered for providing professional services to Catawba County.

A Selection Committee will evaluate responses to the Request for Qualifications and determine the most qualified applicants. Upon receipt of the packages from respondents, the Selection Committee will review using a scoring program that has been determined by the committee and detailed below. Past performance will be scored based on responses from the references submitted by the responder and/or the experience of Catawba County staff with particular firm's past performance. Only one reviewer will contact any given reference.

The Selection Committee will use the total point scores to rank the prospective Firms. The Selection Committee will determine a list of the most highly qualified Firms based upon the ranking scores. Once the Firms are selected, authorization will be sought from the Catawba County Board of Commissioners for contract award.

### **EVALUATION CRITERIA**

The Content of Qualifications Statement, as referenced above, shall be evaluated as follows:

<b>Description</b>	<b>Total Possible Points</b>
Qualifications of Firm	30
Project Management	40
References – Past Performance and Existing	30
	<b>100 Points</b>

### **CONTRACT NEGOTIATION**

The Master Agreement for On-Call Engineering Services will be contracted based on the proposals submitted by each selected Firm. Attachment B contains the County's standard Master Agreement for On-Call Engineering Services that will serve as the basis for each Task Order contract with the selected Firm(s). All Task Orders issued under the Master Agreement will be negotiated with a selected Firm under contract based on the proposed scope of work, deliverables, project schedule, fee schedule, and project team as outlined in their proposal.

## **FIRM INSURANCE REQUIREMENTS**

The successful Firm will be required to provide the County with Certificates of Insurance meeting the County's minimum insurance requirements as specified below. Failure to provide the required insurance will result in cancellation of the selection and the County will have the right to enter into an agreement with the Firm with the next highest ranking. Please note, County reserves the right to increase the minimum insurance requirements in a task order if the County determines higher insurance limits are needed based on project value. Unless insurance requirements per task order, Firm shall maintain at all times during the term of this Agreement and at the Firm's sole expense, the following:

### **I. Commercial General Liability Insurance**

Firm shall maintain Commercial General Liability insurance written on an occurrence basis, including coverage for products and completed operations liability, contractual liability, liability from independent contractors, property damage liability, bodily injury liability, and personal injury liability with limits of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. The aggregate limit shall apply separately to each location. The limits may be satisfied by a combination of primary and excess insurance.

### **II. Business Automobile Insurance**

At all times while the Firm's representatives are conducting on-site work, the Firm shall maintain Automobile Liability insurance for any owned, hired, rented, or borrowed vehicle with a limit of not less than \$1,000,000 per occurrence for bodily injury and property damage liability. The limit may be satisfied by a combination of primary and excess insurance.

### **III. Workers Compensation & Employers Liability Insurance**

At all times while the Firm's representatives are conducting on-site work, Firm shall maintain statutory Workers Compensation insurance in accordance with the laws of North Carolina. Firm shall also maintain Employers' Liability insurance with limits of not less than \$500,000 per accident and \$500,000 each employee for injury by disease.

### **IV. General Requirements**

1. Catawba County shall be named as an additional insured under Firm's automobile and general liability insurance. In the event of a loss arising out of, or related to the Firm's services performed under this Agreement, Firm's Liability insurance shall be primary (pay first) with respect to any other insurance which may be available to the County, regardless of how the "other insurance" provisions may read.
2. The Firm's General Liability, Automobile Liability, and Workers Compensation insurance must contain a waiver of subrogation in favor of the County.

3. Firm shall be responsible for insuring all of its own personal property, improvements, and betterments.
4. All insurance policies put forth to satisfy the above requirements shall require the insurer to provide a minimum of sixty (60) days' notice to the County of any material change in coverage, cancellation, or non-renewal.
5. All insurance put forth to satisfy the above requirements shall be placed with insurance companies licensed to provide insurance in the state of North Carolina. Any deductibles or self-insured retentions in the required insurance shall be subject to approval by the County.
6. Prior to beginning the work, Firm shall provide written evidence of insurance as requested by the County to confirm that these insurance requirements are satisfied. Firm agrees to provide complete copies of policies if requested. Failure of Firm to provide timely evidence of insurance, or to place coverage with insurance, or to place coverage with insurance companies acceptable to the County, shall be viewed as Firm's delaying performance entitling the County to all appropriate remedies under the law including termination of the contract.

**ATTACHMENT A  
REFERENCE DISCLOSURE FORM**

Firm shall provide information regarding experience in work similar this scope of work by listing FIVE (5) RECENT CLIENTS, ONLY ONE OF WHICH MAY BE A CATAWBA COUNTY GOVERNMENT LISTING. References should be clients of a similar scale as the services requested in this RFQ.

1. COMPANY NAME: \_\_\_\_\_  
PERSON TO CONTACT: \_\_\_\_\_  
TELEPHONE NUMBER: \_\_\_\_\_  
TYPE OF SERVICE PROVIDED: \_\_\_\_\_  
SIZE: \_\_\_\_\_  
JOB DATES:  
BEGINNING \_\_\_\_\_ END \_\_\_\_\_

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2. COMPANY NAME: \_\_\_\_\_  
PERSON TO CONTACT: \_\_\_\_\_  
TELEPHONE NUMBER: \_\_\_\_\_  
TYPE OF SERVICE PROVIDED: \_\_\_\_\_  
SIZE: \_\_\_\_\_  
JOB DATES:  
BEGINNING \_\_\_\_\_ END \_\_\_\_\_

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3. COMPANY NAME: \_\_\_\_\_  
PERSON TO CONTACT: \_\_\_\_\_  
TELEPHONE NUMBER: \_\_\_\_\_  
TYPE OF SERVICE PROVIDED: \_\_\_\_\_  
SIZE: \_\_\_\_\_  
JOB DATES:  
BEGINNING \_\_\_\_\_ END \_\_\_\_\_

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4. COMPANY NAME: \_\_\_\_\_  
PERSON TO CONTACT: \_\_\_\_\_  
TELEPHONE NUMBER: \_\_\_\_\_  
TYPE OF SERVICE PROVIDED: \_\_\_\_\_  
SIZE: \_\_\_\_\_  
JOB DATES:  
BEGINNING \_\_\_\_\_ END \_\_\_\_\_

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5. COMPANY NAME: \_\_\_\_\_  
PERSON TO CONTACT: \_\_\_\_\_  
TELEPHONE NUMBER: \_\_\_\_\_  
TYPE OF SERVICE PROVIDED: \_\_\_\_\_  
SIZE: \_\_\_\_\_  
JOB DATES:  
BEGINNING \_\_\_\_\_ END \_\_\_\_\_

## **ATTACHMENT B**

### **MASTER AGREEMENT FOR ON-CALL ENGINEERING SERVICES**

This Master Agreement for On-Call Engineering Services ("Agreement"), made as of the \_\_\_\_ day of \_\_\_\_\_, 2019, by and between Catawba County, a political subdivision of the State of North Carolina (hereinafter "County") and \_\_\_\_\_, an Engineering Firm with a partner or principal registered in North Carolina as a licensed Engineer and with offices located in North Carolina (hereinafter "Firm").

#### **RECITALS**

**WHEREAS**, County issued a "Request for Qualification" entitled Master Agreement for On-Call Engineering / Planning Services dated October \_\_, 2019 ("RFQ"); and

**WHEREAS**, Firm responded to such request with a Qualifications statement dated November \_\_, 2019, and attached to this Agreement as Attachment A; and

**WHEREAS**, County has qualified firm to provide professional On-Call Engineering Services for the County, at County's request, and Firm desires to provide such services ("Basic Services").

**NOW, THEREFORE**, the parties agree as follows:

#### **ARTICLE 1**

##### **EFFECTIVE DATE AND SCOPE OF SERVICES**

1.1 The Recitals are incorporated into Agreement. This Agreement shall have a term of five (5) years and become effective December 17, 2019 and expire on December 16, 2024.

1.2 This Agreement is for professional engineering services to be provided by Firm with respect to the Project known as On-Call Engineering Services, located in Catawba County, North Carolina, and generally consisting of planning, regulatory compliance, engineering design, construction administration and management of the County's Solid Waste facilities and programs.

1.3 Basic Services shall commence after Effective Date and approval of a fully executed Task Order subject to this Agreement. Basic Services shall be performed in accordance with any schedule contained in Task Order. Firm shall also provide additional services as may from time-to-time be agreed upon by written amendment to this Agreement.

1.4 Firm represents and agrees that now and continuing for the term of this Agreement that Firm:

- a. is experienced, qualified, skilled and fully capable of performing Services in a competent and professional manner;
- b. shall exercise reasonable care and diligence, and shall act in the best interest of the County;
- c. shall act in accordance with generally accepted standards of Firms practice application to the locality; and shall comply with this Agreement and with all applicable federal, state and local laws, ordinances, codes, rules and regulations;
- d. possesses all necessary qualifications, licenses and certifications;

- e. shall perform in a timely manner and in accordance with all dates or schedules required under this Agreement, time being of the essence;
- f. shall work in good faith with County to meet requirements imposed by the federal or state government or other funding entity if grants are used to fund any portion of Project; and
- g. the individual(s) signing this Agreement have the right and power to do so and bind Firm to the obligations set forth herein and such individuals do so personally warrant that they have such authority.

## **ARTICLE 2 RESPONSIBILITIES OF FIRM**

### **2.1 STANDARD OF CARE**

2.1.1 Firm shall assure that all drawings, specifications, plans, surveys, reports, technical memoranda, testing protocol, designs, electronic databases and other documents and deliverables prepared by Firm are in accordance with all Laws and Regulations.

2.1.2 Firm shall be responsible for all errors or omissions in Documents and Deliverables and shall correct at no additional cost to County any and all errors, omissions, discrepancies, ambiguities, mistakes or conflicts in the Documents and Deliverables. Firm shall reimburse County for the aggregate cost to County for all errors and premium value of omissions of Firm.

2.1.3 In addition to any other damages that might be due to County hereunder in connection with the breach of this Agreement by Firm, Firm shall reimburse County for costs, damages and expenses that are the result of errors, omissions or delays of Firm, including those of Firm's subcontractors.

2.1.4 Firm shall expedite and accelerate its efforts as necessary to perform in accordance with this Agreement at no additional cost to County, if County reasonably determines that Firm is behind schedule.

2.2 **KEY PERSONNEL AND SUBCONTRACTORS.** No change in Firms personnel or subcontractors designated in the Task Order as those who will provide Services shall be permitted except with the prior written consent of County, which consent shall not be unreasonably withheld. Such replacement personnel and subcontractors shall have the same or higher qualifications and experience as those being substituted. If Firm provides any Services through the use of subcontractors, Firm shall be solely responsible for all aspects of subcontractor(s) conduct and performance. Additionally, Firm's contracts with subcontractor(s) shall include a provision that, in the event this Agreement is terminated for cause by County, County may take assignment of such contract of Firm with their subcontractor.

2.3 **TAXES, PERMITS AND LICENSES.** Unless otherwise provided, Firm is responsible for all applicable taxes and license fees and shall acquire all licenses and permits required by Laws and Regulations.

## **ARTICLE 3 COMPENSATION FOR SERVICES**

### 3.1 COMPENSATION FOR BASIC SERVICES

3.1.1 Compensation for Firm's services for each specific Project shall be as set forth in applicable Task Order. Compensation shall be in accordance with the unit rate schedule included in Attachment A of this Agreement.

3.1.2 Payment shall be made within thirty (30) days of receipt of invoice upon completion of each Task Order.

3.1.3 Invoices shall be in form and substance acceptable to the County. In the event the County finds any part of an invoice not to be acceptable, it shall identify to the Firm the part or parts, which are not acceptable and shall pay the part or parts of the invoice, which are acceptable, if any. The County shall have the right to deduct from payments to the Firm any costs or damages incurred, or which may be incurred, by the County as a result of the Firm's failure to perform on any portion of the Task Order.

3.2 COMPENSATION FOR ADDITIONAL SERVICES. Additional services shall be as set forth in a Written Amendment. Payments for Additional Services that have been properly approved and satisfactorily completed will be made by County within thirty (30) calendar days of receipt of an invoice that is in form and substance acceptable to County. In the event the County finds any part of an invoice not to be acceptable, it shall identify to the Firm the part or parts which are not acceptable and shall pay the part or parts of the invoice which are acceptable, if any. County shall have the right to deduct from payments to Firm any costs or damages incurred, or which may be incurred, by County as a result of Firm's failure to perform any Service, following reasonable notice and opportunity to cure such nonperformance by Firm. Unless otherwise agreed, compensation shall be on a time-spent basis at the hourly rates shown in Attachment A.

3.3 ACCOUNTING RECORDS AND OTHER RECORDS. Accounting records of Firm's compensation for Services and Additional Services (and Reimbursable Expenses, if permitted under this Agreement) shall be maintained by Firm in accordance with generally accepted accounting practices and shall be available for inspection and copying by County at mutually convenient times for a period of three (3) years after termination of this Agreement.

3.4 NON-APPROPRIATION. Payment to Firm for services is expressly conditioned upon availability of funds, and upon the actual receipt of funds, from appropriate revenue sources. If funds are insufficient to meet expected performances hereunder due to non-appropriation or reduction of funds by the source, services to be provided hereunder may be adjusted by the parties, in writing, to conform with the funds which are actually available. If such adjustment is impractical or would defeat the intent or purpose of this Agreement, same may be terminated accordingly without penalty.

## **ARTICLE 4 RESPONSIBILITIES OF COUNTY**

4.1 COOPERATION AND COORDINATION. County may designate, in writing, a person to act as project manager who shall coordinate the project work and who shall be available during working hours as often as may be reasonably required to render decisions within guidelines established by the Utilities and Engineering Director. County shall examine

documents submitted by Firm and shall make reasonable efforts to render timely decisions pertaining thereto so as not to unduly delay the orderly progress of Firm's Services.

## **ARTICLE 5 INSURANCE**

5.1 INSURANCE. Firm shall maintain at all times during the term of this Agreement, at the Firm's sole expense the following minimum insurance requirements. Please note, County reserves the right to increase the minimum insurance requirements in a task order if the County determines higher insurance limits are needed based on project value.

### **I. Commercial General Liability Insurance**

Firm shall maintain Commercial General Liability insurance written on an occurrence basis, including coverage for products and completed operations liability, contractual liability, liability from independent contractors, property damage liability, bodily injury liability, and personal injury liability with limits of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. The aggregate limit shall apply separately to each location. The limits may be satisfied by a combination of primary and excess insurance.

### **II. Business Automobile Insurance**

At all times while the Firm's representatives are conducting on-site work, the Firm shall maintain Automobile Liability insurance for any owned, hired, rented, or borrowed vehicle with a limit of not less than \$1,000,000 per occurrence for bodily injury and property damage liability. The limit may be satisfied by a combination of primary and excess insurance.

### **III. Workers Compensation & Employers Liability Insurance**

At all times while the Firm's representatives are conducting on-site work, Firm shall maintain statutory Workers Compensation insurance in accordance with the laws of North Carolina. Firm shall also maintain Employers' Liability insurance with limits of not less than \$500,000 per accident and \$500,000 each employee for injury by disease.

### **IV. General Requirements**

1. Catawba County shall be named as an additional insured under Firm's automobile and general liability insurance. In the event of a loss arising out of, or related to the Firm's services performed under this Agreement, Firm's Liability insurance shall be primary (pay first) with respect to any other insurance which may be available to the County, regardless of how the "other insurance" provisions may read.

2. The Firm's General Liability, Automobile Liability, and Workers Compensation insurance must contain a waiver of subrogation in favor of the County.

3. Firm shall be responsible for insuring all of its own personal property, improvements, and betterments.

4. All insurance policies put forth to satisfy the above requirements shall require the insurer to provide a minimum of sixty (60) days' notice to the County of any material change in coverage, cancellation, or non-renewal.

5. All insurance put forth to satisfy the above requirements shall be placed with insurance companies licensed to provide insurance in the state of North Carolina. Any deductibles or self-insured retentions in the required insurance shall be subject to approval by the County.

6. Prior to beginning the work, Firm shall provide written evidence of insurance as requested by the County to confirm that these insurance requirements are satisfied. Firm agrees to provide complete copies of policies if requested. Failure of Firm to provide timely evidence of insurance, or to place coverage with insurance, or to place coverage with insurance companies acceptable to the County, shall be viewed as Firm's delaying performance entitling the County to all appropriate remedies under the law including termination of the contract.

## **ARTICLE 6 DAMAGES AND REMEDIES**

### **6.1 SERVICES, REIMBURSEMENT AND DEDUCTIONS**

6.1.1 Firm shall reimburse County for costs, damages and expenses, including reasonable attorney's fees and expert's fees incurred by County if such costs, damages and expenses are the result of any error, omission or delay of, or failure by Firm to perform as required by Agreement.

6.1.2 In addition to any other remedies available to County, County shall have the right to deduct from payments to the Firm any costs, damages and expenses, including reasonable attorney's fees, that have been or may be incurred by County as a result of Firm's failure to perform as required by Agreement.

### **6.2 INDEMNITIES**

6.2.1 General Indemnity. To the fullest extent permitted by Laws and Regulations, Firm shall indemnify and hold County, its officers and employees, harmless from and against all claims, costs, charges, civil penalties, fines, losses, liabilities and damages (including but not limited to reasonable professionals' fees and charges and all court or other dispute resolution costs), by whomsoever brought or alleged, arising out of, resulting from, or in connection with (a) any breach by Firm of any term or condition of this Agreement or Written Amendment, (b) any breach or violation by Firm of any applicable Law or Regulation, or (c) any other cause resulting from any act or failure to act by Firm under this Agreement or Written Amendment, but only to the extent caused by any negligence of Firm. This indemnification shall survive the termination of this Agreement.

6.2.2 Intellectual Property Indemnity. To the fullest extent permitted by Laws and Regulations, Firm shall indemnify and hold County, its officers and employees harmless from and against all claims, costs, charges, civil penalties, fines, losses, liabilities and damages (including but not limited to all professionals' fees and charges and all court or arbitration or other dispute resolution costs), by whomsoever brought or alleged, arising out of or related to infringement of patent rights, copyrights, or other intellectual property rights, except with

respect to designs, processes or products of a particular manufacturer expressly required by the County in writing. If Firm has reason to believe the use of a required design, process or product is an infringement of a patent, copyright or other intellectual property, the Firm shall be responsible for such loss unless such information is promptly given to the County.

6.3 NON-EXCLUSIVITY OF REMEDIES/NO WAIVER OF REMEDIES. A party's selection of one or more remedies for breach of this Agreement shall not limit that party's right to invoke any other remedy available under this Agreement or by law. No delay, omission or forbearance to exercise any right, power or remedy accruing to a party shall impair any such right, power or remedy or shall be construed to be a waiver of any breach hereof or default hereunder. Every such right, power or remedy may be exercised from time-to-time and as often as deemed expedient.

6.4 WAIVER OF DAMAGES. Firm shall not be entitled to, and hereby waives any monetary claims for, or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead or any consequential damages.

## **ARTICLE 7 AMENDMENTS TO AGREEMENT**

7.1 CHANGES IN THE BASIC SERVICES. Changes in the Basic Services and entitlement to additional compensation or a change in duration or any other term of this Agreement shall be made only by a Written Amendment executed by both parties. County may, without invalidating Agreement, make written changes in Services by preparing and executing a Written Amendment for review and execution by Professional. Within three (3) days of receipt of such Written Amendment, Firm shall notify County in writing of any change contained therein that Firm believes significantly increases or decreases Services and request an adjustment in compensation with respect thereto. If Written Amendment significantly increases or decreases Services, the compensation may be equitably adjusted.

## **ARTICLE 8 TERMINATION AND SUSPENSION**

8.1 TERMINATION FOR CONVENIENCE. This Agreement may be terminated without cause by County and for its convenience upon ten (10) days written notice to Firm.

8.2 OTHER TERMINATION. After ten (10) days written notice to the other party of its material breach of the Agreement, this Agreement may be terminated by the noticing party, provided that the other party has not taken all reasonable actions to remedy the breach.

8.3 COMPENSATION AFTER TERMINATION

8.3.1 In the event of termination for the convenience of County, Firm shall be paid that portion of its fees and expenses that it has earned to the date of termination, plus five percent (5%) of its Compensation for Basic Services earned to date or of its unearned Compensation for Basic Services, whichever is less, less any costs or expenses incurred or anticipated to be incurred by County due to errors or omissions of Professional. Upon receiving notice of termination, Firm shall immediately terminate any ongoing Services it is to provide hereunder.

8.3.2 In the event of termination by reason of a material breach of the Agreement by County, Firm shall be entitled to the same compensation as it would have received had County terminated the Agreement for convenience, and Firm expressly agrees that said compensation is fair and appropriate as liquidated damages for any and all costs and damages it might incur as a result of such termination.

8.3.3 In the event of termination by reason of a material breach of the Agreement by Professional, Firm shall be paid that portion of its fees and expenses that it has earned to the date of termination, less any costs or expenses incurred or anticipated to be incurred by County due to errors or omissions of Firm or by reason of Firm's breach of this Agreement.

8.3.4 Should this Agreement be terminated for any reason, County shall nevertheless have the right to require Firm to (a) turn over to County all finished or unfinished Documents and Deliverables and (b) expend such additional effort as may be necessary to provide to the County professionally certified and sealed reports and such other information and materials as may have been accumulated by Firm in the performance of this Agreement, whether completed or in process. If Firm provides such certified and sealed information as outlined above, Firm shall be compensated in accordance with this Agreement.

8.4 SURVIVAL. Termination of this Agreement, for whatever reason, shall not terminate a party's representations and warranties nor nullify any indemnity hereunder.

#### 8.5 SUSPENSION

8.5.1 County may order Firm in writing to suspend, delay or interrupt all or any part of the Services for the convenience of County.

8.5.2 In the event Firm believes that any suspension, delay or interruption of the Services ordered by County may require an extension of the duration of Basic Services or an increase in the level of staffing by Professional, it shall so notify County and propose an amendment to Agreement, which shall be effective only upon the written approval of County. In the event the duration of Basic Services is extended or shortened or the level of staffing by Firm is increased or decreased, the Compensation for Basic Services may be equitably adjusted by Written Amendment.

8.5.3 A suspension, delay or interruption of the Services shall not terminate this Agreement; provided, however, that if such suspension, delay or interruption causes a suspension of Services for a period exceeding ninety (90) days, the Compensation for Basic Services may be equitably adjusted by Written Amendment.

### **ARTICLE 9 OWNERSHIP OF DOCUMENT AND DELIVERABLES**

9.1 OWNERSHIP OF DOCUMENTS AND DELIVERABLES. County shall be granted, at no additional cost, ownership of all drawings, specifications, plans, surveys, reports, technical memoranda, testing protocol, designs, electronic databases and other documents or instruments identified as 'deliverables' herein or which, by their nature, are designed to be delivered to County under this Agreement. Firm shall turn over to County in good unaltered condition, documents as described in Section 10.8 of all Deliverables prior to final payment,

if not delivered earlier hereunder, or within seven (7) days after termination if this Agreement is terminated for any reason. Firm may retain one set of Deliverables for its records.

9.2 TERMINATION. In the event of termination, for whatever reason, should County use drawings or other Documents or Deliverables for completion of the Project, County shall indemnify and hold Firm harmless from and against any cost, expense, damage or claim arising out of the loss of life, personal injury or damage to tangible property occasioned wholly or in part by any act or omission by County or a Contractor in connection with County's improper use (or misuse) of Documents and Deliverables.

9.3 OTHER PROJECTS. Documents and Deliverables may be used by County for any reason not related to this Project without additional compensation to the Professional. Such use of Documents and Deliverables by County for other projects shall be at the full risk of County and County shall indemnify and hold Firm harmless, to the extent allowed by law and covered by insurance, from and against any costs, expense, damage or claim arising out of the loss of life, personal injury or damage to tangible property occasioned wholly or in part by any act or omission by County, its agents or employees, in connection with County's improper use (or misuse) of Documents and Deliverables.

## **ARTICLE 10 ADDITIONAL PROVISIONS**

10.1 DISSEMINATION OF INFORMATION. County takes efforts to assure that accurate information about the County is disseminated such that neither the public trust nor the public's perception of County impartiality is compromised. Professional, mindful of those efforts, agrees that it shall not publicly disseminate any information concerning Services without prior approval of County. Any approval by County may be given with certain stipulations, such as County's participation in the creation of the public product or County's review and the option to refuse ultimate release of the final product should it fail to meet the County's standards and goals. Publicly disseminate means but is not limited to electronic, video, audio, photographic or hard copy materials serving as, in whole or part, advertising, sales promotion, Firm papers or presentations, news releases, articles, or other media products, and/or Firm's business collateral pieces. Notwithstanding the foregoing, the parties agree that Firm may list County as a reference in response to requests for proposal and may identify the County as a customer in presentations to potential customers.

10.2 LIMITATION ON ASSIGNMENT. Each party binds itself, its successors, permitted assigns and legal representatives to the terms of this Agreement. Neither County nor Firm shall assign or transfer its interest in this Agreement without the written consent of the other.

10.3 GOVERNING LAW. This Agreement and the duties, responsibilities, obligations and rights of respective parties hereunder shall be governed by the laws of the State of North Carolina. Venue for any adversarial proceeding shall be set in Catawba County.

10.4 DISPUTE RESOLUTION. No services shall be delayed or postponed pending the resolution of any dispute unless County otherwise agrees in writing. Any and all suits or actions to enforce, interpret or seek damages with respect to any provision of, or the performance or non-performance of, this Agreement shall be brought in the General Court of Justice of North Carolina sitting in Catawba County, North Carolina and it is agreed by the parties that no other court shall have jurisdiction or venue with respect to such suits or

actions. If and to the extent the project is subject to the dispute resolution requirement of N.C.G.S. 143-128(f1), then Firm shall participate in the County's dispute resolution process which shall be considered part of Basic Services unless specifically agreed otherwise herein.

10.5 EXTENT OF AGREEMENT. This Agreement represents the entire and integrated agreement between County and Firm and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by Written Amendment.

10.6 SEVERABILITY. If any provision of this Agreement is held as a matter of law to be unenforceable, the remainder of this Agreement shall be enforceable without such provision.

10.7 E-VERIFY. Firm shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if Firm utilizes a subcontractor, Firm shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.

10.8 PROTOCOL FOR DOCUMENTS AND DELIVERABLES. Firm shall provide all documents and deliverables in electronic form to the County in read-only MS-Windows compatible format (including either screen readable .pdf or HTML formats). All drawings shall be CAD generated and shall be provided on electronic media downloadable onto an AutoCAD based system. In order to meet US Justice Department standards for Internet accessibility, all Deliverables (draft and final) intended for presentation on the County of Catawba's Web site must be provided in a manner and format compatible, consistent, and in compliance with all County technology standards. Such material must be provided in screen readable PDF or HTML versions, be screen-reader friendly and contain alternate text tags of no more than 34 characters. In the event that Firm notices any errors in electronic data provided to the County under this Agreement, Firm shall immediately notify County, and if Firm provided such electronic data, Firm shall immediately replace same with correct versions thereof.

10.9 NOTICE. Whenever any provision of this Agreement requires the giving of written notice, it will be deemed to have been validly given if (i) delivered in person to the Project Manager, if to the County, or to the Project Manager, or equivalent position, or officer/member of the entity that is the Professional, if to the Professional, or (ii) if delivered at or sent by a nationally recognized overnight courier service or overnight express mail or registered or certified mail, postage prepaid, to the County's or Firm's address. The date of said notice shall be the date of such delivery or mailing.

The notice address for the County shall be:

Catawba County  
Utilities and Engineering Department  
Post Office Box 389  
25 Government Drive  
Newton, North Carolina 28658

The notice address for the Firm shall be:

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

10.10 GIFTS AND FAVORS. Firm shall become aware of and comply with laws related to gifts and favors, conflicts of interest and the like, including G.S. §14-234, G.S. §133-1, and G.S. §133-32.

10.11 PUBLIC RECORDS. Firm acknowledges that records made or received in connection with the transaction of public business are public records and subject to public records requests. County may provide copies of such records, including copyrighted records, in response to public record requests, except that, upon request of and indemnification by Professional, the County will not disclose records that meet all of the requirements of a trade secret as set forth in N.C.G.S. 66-152, that are specifically designated as a “trade secret” or “confidential” at the time of initial disclosure by contractor, and that are otherwise entitled to protection under N.C.G.S. 132-1.2(1). Firm shall make County aware of any public records requests made in regard to Services or this Agreement.

10.12 RESOLVING DISCREPANCIES. Except as otherwise stated in the Agreement, the provisions of the Agreement take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of the Agreement and the Attachments and the provisions of any standard, specification, manual, code or instruction of any technical society, organization or association (collectively ‘Other Standards’), provided that if any of the Other Standards impose a more stringent standard or obligation upon Firm than in the Agreement, the Other Standard shall take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of this Agreement and the Other Standard.

IN WITNESS WHEREOF, Firm and County, being duly authorized, have caused these presents to be signed in their names as of the day and year first above written.

CATAWBA COUNTY

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FIRM

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**THIS INSTRUMENT** has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act as amended.

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

\_\_\_\_\_  
Robert Miracle, Chief Financial Officer

**APPROVED AS TO FORM:**

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

\_\_\_\_\_  
Jodi Stewart, Assistant County Attorney

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

\_\_\_\_\_  
Cynthia Eades, Risk Management