

**Stormwater Program Action Plan**

**Request for Proposal (RFP)**

**Town Of Smithfield, N.C.**

The Town of Smithfield, North Carolina, is soliciting qualified consulting firms to submit a proposal to prepare a Stormwater Action Plan for the Town to identify, prioritize and plan to address flooding and stormwater quality problems through the community. This will be the first step in the development of a comprehensive, long term stormwater program.

The Town of Smithfield is located within Johnston County along the I-95 corridor. The Town has an estimated population of 12,266 and is primed for significant growth. Development in the Town consists of a variety of commercial, industrial, mixed use and limited residential projects.

**I. DATE OF RFP: September 30, 2017**

**II. PROJECT MANAGER AND CONTACT WITH TOWN; QUESTIONS ABOUT THIS RFP.** Direct questions and concerns to:

Attn: Michael Scott, Town Manager

Smithfield Planning Department

350 East Market Street

P.O. Box 761

Smithfield, NC 27577

Phone: (919) 934-2116 ext. 1101

Email: michael.scott@smithfield-nc.com

In order to facilitate understanding of the RFP requirements and submittals, a Question and Answer period will be conducted during the submittal process. Questions regarding RFP requirements or submittals may be directed to the above named individual until October 20, 2017. A response to all inquiries received will be delivered by email by October 27, 2017.

**III. SCOPE OF WORK**

The following section describes the specific minimum components which should be included in the scope of work. Town staff will finalize the scope of work with the selected consultant prior to contract authorization. The Town is open to suggestions other than those items listed which the consultant believes will be of value in producing a viable Stormwater Program Action Plan that will have practical applications for day‐to‐day planning and operational activities. The completion date for the plan is April 30, 2018.

**IV. STORMWATER PROGRAM ACTION PLAN OBJECTIVES**

1. Review existing and future stormwater regulations that will impact the Town.
2. Evaluate current Town stormwater program activities and identify additional needs.
3. Hold stormwater management workshop with the Town staff to evaluate internal processes and perspectives on stormwater management.
4. Implement a public education campaign to raise awareness and understanding of flooding and water quality issues.
5. Hold a public meeting to allow citizens to voice concerns and needs related to flooding and water quality. Follow up with a citizens’ survey.
6. Summarize the project with an Action Plan Report, with findings and recommendations for:
* Identify needs to assure regulatory compliance
* Determine program costs and staffing resources to support the stormwater program
* Recommend improvements for a Stormwater Capital Improvement Program
* Recommend a process to address citizen stormwater complaints
* Identify options and recommend a means to fund the Stormwater Program.
1. One digital copy in Microsoft Word format, print‐ready graphics included in each preliminary report, 25 color copies of final plan draft for comments, final plan copies to include 25 bound color copies, one unbound color copy, one digital Microsoft Word format.

**V. PRODUCTS AND DELIVERABLES**

* See Section IV.

**VI. PROPOSAL AND CONTRACT REQUIREMENTS**

* Submittal address: 350 East Market Street, Smithfield, N.C. 27577
* Proposal submittal deadline: October 31, 2017
* Contact Person: Michael Scott, Town Manager
* Number of proposal copies: 10 bound and 1 unbound and one digital copy (.pdf format)
* Evaluation Period: November, 2017
* Interview Period: December, 2017
* Contract presented to Town Council: February 2018

**VII. RESPONSE TO THIS REQUEST FOR PROPOSAL IS TO BE PROVIDED IN THE FOLLOWING FORMAT:**

* Letter of Interest: Cover letter indicating interest in the project and identifying the firm's ability to provide services needed.
* Introduction: A brief description of the firm including the number of years the firm has been in existence, range of professional services, office locations, and staff size.
* Work Program: In the project overview, describe the general project approach and process to be employed, describe a process approach that was used in the past to successfully complete a similar project, describe the proposed project schedule including timeline of major milestones, deliverables, and completion.
* Experience and Qualifications: Brief documentation of the firm's prior work relevant to this RFP including the name, address, and phone numbers of client references and the primary contact persons.
* Consultant Personnel: Identify individuals from the firm's professionals and others who will work on the project, including resumes.
* A List of Clients: Provide a list of comparable clients for which similar services have been provided in addition to contact information.
* Timeframe Flow Chart: Submit a flow chart with estimated project timeframe for meeting important project targets.

**VIII. CONSULTANT SELECTION PROCESS**

Proposals will be reviewed by the RFP Review Committee. The Committee reserves the right to request additional information from consultants submitting proposals. The following criteria will be considered in evaluation of the proposals and the recommendation of up to three consultants by the selection committee:

* Capabilities and previous experience in comparable projects and specialized experience and technical competence of the consultant.
* The firm's general approach to the project. Although the Town has identified the general nature of services required, the consultant is given leeway toward the approach to the methodology to provide the proposed services.
* Past record of performance on contracts with other governmental agencies including such factors as quality of work, cost control, and demonstrated ability to meet scheduled deadlines.
* Capabilities of the candidate to perform the work in a timely manner and affirmatively respond to the inquiries and schedule of the Town and dedicate the appropriate personnel as the schedule dictates.
* Qualifications of individuals who will have direct involvement in tasks on this project.
* Compatibility with the Town's financial obligations.

The Consultant Selection Committee will interview firms and requires that principal personnel to be assigned to the project be present for the interview. Upon selection, the Town will negotiate a contract with the firm.

The estimated schedule for review of the submittals and consultant selection is identified below. The following dates are tentative and subject to change.

* October 31, 2017: Submission deadline
* November 14, 2017: Town review of submittals completed
* Early December, 2017: Interviews conducted with selected consultants
* Early January, 2018: Selected firm notified
* Early February, 2018: Contract finalized
* Mid-February, 2018: Project commences

**IX. EVALUATION CRITERIA**

The Town of Smithfield will evaluate the submittals in context of the respondent’s overall capabilities and experience. Submissions will be evaluated based on the following criteria which are not listed in order of importance:

1. Proposed methodology and approach.
2. Project team qualifications.
3. Past experience with land use or comprehensive planning efforts.
4. Familiarity with Smithfield and its previous planning efforts.
5. Overall structure, content, and quality of the proposal.

**X. COMPENSATION AMOUNT AND SCHEDULE**

The total budget, to cover all professional fees and associated expenses, is $30,000, funded by the Town of Smithfield. The consultant should submit a proposed schedule with the RFP response.

**XI. CONTRACT**

The Town anticipates that the conclusion of the RFP process will be a contract between the Town and the successful candidate under which the successful candidate will provide the goods and services generally described in this RFP. It is the Town’s intention to use the contract that is attached as Attachment A, modified and filled in to reflect the RFP and the proposal. If a candidate objects to any of the contract, it should state the objections in the proposal.

**XII. INSURANCE**

Consultants shall purchase and maintain insurance coverage for not less than the following:

1. Commercial Auto Liability, covering:
	1. All vehicles
	2. Combined single limit of $2,000,000
	3. Town of Smithfield must be named additional insured
2. Professional Liability, covering
	1. Covering claims arising out of professional advisement/consultation services performed in connection with this contract
	2. Self-insured retentions/deductibles in excess of $25,000 must be approved by the Town Finance Director
	3. Combined single limit not less than $1,000,000 per occurrence; if coverage is only available on claims made basis, then additional coverage requirements may apply, subject to review by the Town Finance Director
3. Workers’ Compensation Insurance, covering:
	1. Statutory benefits
	2. Covering employees; covering owners partners, officers, and relatives (who work on this contract) (this must be stated on the certificate)
	3. Employers’ liability, $1,000,000
	4. Waiver of subrogation in favor of the Town of Smithfield

Insurance shall be provided by companies authorized to do business in the State of North Carolina and with Best rating of A-, VII or better. Insurance shall be evidenced by a certificate providing notice to the Town of not less than 30 days prior to cancellation or reduction of coverage. Certificates will be addressed to:

Smithfield Planning Department

350 East Market Street

P.O. Box 761

Smithfield, NC 27577

The insurance certificates and the additional insured endorsements must be originals and must be approved the Town Finance Director before the consultant can begin any work under this contract. If the consultant does not have commercial auto liability, the proposal should include a letter on the company’s letterhead stating there are no vehicles titled to the organization. Likewise, if the consultant does not have workers compensation insurance, the proposal should include a letter on the company’s letterhead stating workers compensation insurance isn’t carried because there are less than three employees and therefore are not required by law to carry workers compensation insurance.

**XIII. DISCREATION OF THE TOWN**

1. The Town of Smithfield reserves the right to reject any or all proposals.
2. NOTWITHSTANDING anything to the contrary in this document or in any addendums to this document, unless the contrary provision refers specifically to this provision, the Town reserves the right (i) to negotiate changes of any nature with the candidate with respect to any term, condition, or provision in this document and/or in any proposals, whether or not something stated to be mandatory and whether or not it said that a proposal will be rejected if certain information or documentation is not submitted with it, and (ii) to enter into an agreement for some or all of the work with one or more persons, firms, or corporations that do not submit proposals. For example, all deadlines are for the administrative convenience or needs of the Town and may be waived by the Town in its discretion. This subparagraph B applies to the entire RFP.
3. Where the Town asks or tells candidates to do stated things, such as that a proposal should follow a stated format or that the candidate should do stated things in seeking the contract, the Town may reject a proposal because it does not comply with those requests, so the candidate is adding to its risk of rejection by non-compliance. Still, the Town may, in its discretion, waive non-compliance. This subsection (C) does not limit subsections (A) and (B).
4. Of course, once a contract is signed, the parties to the contract may enforce the contract according to the terms as allowed by applicable law.

**XIV. SCHEDULE TO BEGIN WORK**

The Town expects the work to begin within 30 days of the contract execution. Candidates should include a proposed schedule of milestones and deliverables (the time-product-payment schedule) in their proposal. The Planning staff will finalize the time-product-payment schedule with the selected consultant, and payments will be made periodically in accordance with the schedule.

**XV. DEADLINE AND SUBMITTAL DETAILS**

Submittals are due no later than 3:00 p.m. (EST) on Tuesday, October 31, 2017. No submittals will be accepted after this time. Submittals may be delivered to:

Physical Acceptance Location and Mailing Address:

Town of Smithfield

350 East Market Street

P.O. 761

Smithfield, NC 27577

No less than 12 bound and 1 unbound copies and one digital copy (.pdf format) of the proposal should be submitted. Submittal packages should be in a sealed envelope marked: Request for Proposals: Comp Plan Update to the attention of the Planning Director. The digital copy should be included on a CD or USB drive.

**XVI. CANDIDATE TO BEAR EXPSENSE; NO CLAIMS AGAINST TOWN**. No candidate will have any claims or rights against the Town arising out of the participation by a candidate in the RFP process. No candidate will have any claims or rights against the Town for the Town’s failure to award a contract to it or for awarding a contract to another person, firm, or corporation, regardless of whether the other person, firm, or corporation participated in the RFP process or did not submit a response that complied with the RFP. A notice of award will not constitute acceptance by the Town; the Town’s only method of acceptance is the Town’s execution of a formal contract in accordance with law.

**NON-COLLUSION**. Sign the following and include it with your response:

**NON-COLLUSION AFFIDAVIT**

By executing this submittal, I certify that this proposal is submitted to the Town of Smithfield competitively and without collusion. I am authorized to represent the candidate both in submitting this bid and in making this Non-collusion Affidavit. To the best of my knowledge and belief, (1) the candidate has not violated N. C. General Statute section 133-24 in connection with the proposal, (2) the candidate has not entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with its proposal, and (3) the candidate intends to do the work with its own bonafide employees or sub-consultants and is not bidding for the benefit of another consultant. The neuter includes the masculine and the feminine. The candidate to whom this Non-Collusion Affidavit refers is:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

*(Insert name of candidate)*

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

*(Signature of individual)*

ACKNOWLEDGMENT

*Type or print name of the individual who signed the* affidavit:

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* .

*Type or print the name of Notary Public signing this acknowledgment:*

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

*Place where acknowledgment occurred:* County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, State of \_\_\_\_\_\_\_\_

*Notary’s residence:* County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, State of \_\_\_\_\_\_\_\_\_\_\_

I, the Notary Public named above, certify (1) the individual named above personally appeared before me this day, (2) I have personal knowledge, or satisfactory evidence, of the individual’s identity; and (3) the individual acknowledged signing the foregoing affidavit.

This the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_.

Notary Public

My commission expires:

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

**ATTACHMENT A**

**DRAFT Contract for Services**

**Town of Smithfield Stormwater Program Action Plan**

This contract is dated, made, and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_, by the Town of Smithfield (“Town”), a N. C. municipal corporation, and [*name of firm*] (“Contractor”),

[*Indicate type of entity, for instance:*

*a corporation organized and existing under the laws of [name of State]; a limited liability company organized and existing under the laws of [name of State]; a professional corporation organized and existing under the laws of [name of State]; a professional association organized and existing under the laws of [name of State]; a limited partnership organized under the laws of [name of State]; a sole proprietorship; or a general partnership*].

**A. BACKGROUND AND PURPOSE**

The purpose of this contract is for professional services to develop the Town of Smithfield Transportation Plan. Review will be coordinated with the Smithfield Planning Department.

**B. SERVICES AND SCOPE TO BE PERFORMED. PRESUMPTION THAT DUTY IS CONTRACTOR’S.**

The Contractor shall [s*tate the services to be provided and the schedule for those services.*]. In this contract, “Work” means the services that the Contractor is required to perform pursuant to this contract and all of the Contractor’s duties to the Town that arise out of this contract. Unless the context requires otherwise, if this contract states that a task is to be performed or that a duty is owed, it shall be presumed that the task or duty is the obligation of the Contractor.

**C. COMPLETE WORK WITHOUT EXTRA COST.**

Except to the extent otherwise specifically stated in this contract, the Contractor shall obtain and provide, without additional cost to the Town, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

**D. CONTRACTOR’S BILLINGS TO TOWN. COMPENSATION.**

The Contractor shall send invoices to the Town on a monthly basis for the amounts to be paid pursuant to this contract. Each invoice shall document, to the reasonable satisfaction of the Town: such information as may be reasonably requested by the Town. Within twenty days after the Town receives an invoice, the Town shall send the Contractor a check in payment for all undisputed amounts contained in the invoice.

The Town shall pay the Contractor for the Work as follows: [Describe the timing of payments, how amounts are calculated, etc. List the kinds of expenses, if any, that the Town will reimburse.]. The Town shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this section.

**E. PROMPT PAYMENT TO SUB-CONTRACTORS.**

1. Within 7 days of receipt by the Contractor of each payment from the Town under this contract, the Contractor shall pay all Sub-Contractors based on work completed or service provided under the subcontract. Should any payment to the Sub-Contractor be delayed by more than 7 days after receipt of payment by the Contractor from the Town under this contract, the Contractor shall pay the Sub-Contractor interest, beginning on the 8th day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Sub-Contractors shall have the right to enforce this subsection (1) directly against the Contractor, but not against the Town of Smithfield.
2. If the individual assigned to administer this contract for the Town (in this section, titled “Prompt Payment to Subcontractors,” he or she will be referred to as the “Project Manager”) determines that it is appropriate to enforce subsection (1) in this manner, the Town may withhold from progress or final payments to the Contractor the sums estimated by the Project Manager to be a. the amount of interest due to the Subcontractor under subsection (1), and/or b. the amounts past-due under subsection (1) to the Subcontractor but not exceeding 5% of the payment(s) due from the Town to the Contractor. This subsection (2) does not limit any other rights to withhold payments that the Town may have.
3. Nothing in this section (titled “Prompt Payment to Sub-Contractors”) shall prevent the Contractor at the time of invoicing, application, and certification to the Town from withholding invoicing, application, and certification to the Town for payment to the Sub- Contractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the sub-Contractor to make timely payments for labor, equipment, and materials; damage to the Contractor or another sub-Contractors; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%.
4. The Project Manager may require, as a prerequisite to making progress or final payments, that the Contractor provide statements from any Sub-Contractors designated by the Project Manager regarding the status of their accounts with the Contractor. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

**F. INSURANCE.**

Contractors shall purchase and maintain insurance coverage for not less than the following:

1. Commercial Auto Liability, covering:
	1. All vehicles
	2. Combined single limit not less than $1,000,000 per occurrence
	3. Town of Smithfield must be named additional insured
2. Professional Liability, covering:
	1. Covering claims arising out of professional advisement / consultation services performed in connection with this contract
	2. Combined single limit not less than $1,000,000 per occurrence; if coverage is only available on claims made basis, then additional coverage requirements may apply, subject to review of Town Risk Manager
3. Workers' Compensation Insurance, covering:
	1. Statutory benefits
	2. Covering employees; covering owners partners, officers, and relatives (who work on this contract) (this must be stated on the certificate)
	3. Employers' liability, $1,000,000
	4. Waiver of subrogation in favor of the Town of Smithfield

**G. PERFORMANCE OF WORK BY THE TOWN.**

If the Contractor fails to perform the Work in accordance with the schedule referred to in section \_\_\_\_, the Town may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the Town’s rights and remedies. Before doing so, the Town shall give the Contractor notice of its intention. The Contractor shall reimburse the Town for additional costs incurred by the Town in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

**H. EXHIBITS. None**

**I. TERMINATION BY TOWN OF CONTRACT FOR CAUSE.**

If the Contractor fails to fulfill in a timely and proper manner his/her obligations under this Contract, or if the Contractor violates any provisions of this Contract, the Town shall have the right to terminate the Contract for cause by giving written notice to the Contractor specifying the reasons for and effective date of termination. In such event, the Contractor shall cease work immediately upon receipt of such notice. The Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed prior to termination.

**J. NOTICE.**

1. All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, UPS, Federal Express, or certified United States mail, return receipt requested, addressed as follows. The parties are requested to send a copy by email.

To the Town:

Michael Scott, Town Manager

Smithfield Planning Department

350 East Market Street

P.O. Box 761

Smithfield, NC 27577

 Email: michael.scott@smithfield-nc.com

To the Contractor:

[Insert name and address]

Email: [Insert email address]

**2. CHANGE OF ADDRESS. DATE NOTICE DEEMED GIVEN.** A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given and sent at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

**K. INDEMNIFICATION.**

1. To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection “1,” the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to Town.
2. Definitions. “Charges” means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within “Charges” are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). “Indemnitees” means Town and its officers, officials, independent contractors, agents, and employees, excluding the Contractor.
3. Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the Town that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract.
4. Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract.
5. Limitations of the Contractor's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection “1” above shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

**L. RESERVED.**

**M. TERMINATION FOR CONVENIENCE (“TFC”).**

1. Procedure*.* Without limiting any party’s right to terminate for breach, the parties agree that the Town may, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice.
2. Obligations. Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this contract titled Trade Secrets and Confidentiality, if any, shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the Town all Work, including partly completed Work. In case of TFC, the Contractor shall follow the Town’s instructions as to which subcontracts to terminate.
3. Payment. The Town shall pay the Contractor an equitable amount for the costs and charges that accrue because of the Town’s decisions with respect to the subcontracts, but excluding profit for the Contractor. Within 20 days after TFC, the Town shall pay the Contractor one *Draft Contract between the Town of Smithfield and [name of Contractor]*hundred dollars as a TFC fee and shall pay the Contractor for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump sum basis, the Town shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to any payment because of TFC except as stated in this section, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

**N. E-VERIFY REQUIREMENTS.**

1. If this contract is awarded pursuant to North Carolina General Statutes (NCGS) 143-129 – (i) the contractor represents and covenants that the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the NCGS; (ii) the words "contractor," "contractor’s subcontractors," and "comply" as used in this subsection (a) shall have the meanings intended by NCGS 143-129(j); and (iii) the Town is relying on this subsection (a) in entering into this contract.
2. If this contract is subject to NCGS 143-133.3, the contractor and its subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the NCGS.

**O. MISCELLANIOUS**

1. **Choice of Law and Forum; Service of Process.** (i) This contract shall be deemed made in Smithfield County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Smithfield County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection. (ii) If the Contractor is not a natural person (for instance, the Contractor is a corporation or limited liability company), this subsection (ii) applies. “Agent for Service of Process” means every person now or hereafter appointed by the Contractor to be served or to accept service of process in any State of the United States. Without excluding any other method of service authorized by law, the Contractor agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint. The Contractor will instruct each Agent for Service of Process that after such agent receives the process, summons, or complaint, such agent shall promptly send it to the Contractor. This subsection (ii) does not apply while the Contractor maintains a registered agent in North Carolina with the office of the N. C. Secretary of State and such registered agent can be found with due diligence at the registered office.
2. **Waiver.** No action or failure to act by the Town shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.
3. **Performance of Government Functions**. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the Town from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.
4. **Severability.** If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.
5. **Assignment; Successors and Assigns**. Without the Town's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The Town Manager may consent to an assignment *Draft Contract between the Town of Smithfield and [name of Contractor]* without action by the Town Council. Unless the Town otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the Town’s defenses and shall be liable for all of the Contractor’s duties that arise out of this contract and all of the Town’s claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.
6. **Compliance with Law**. In performing all of the Work, the Contractor shall comply with all applicable law.
7. **Notice of Town Policy**. The Town opposes discrimination on the basis of race and sex and urges all of its contractors to provide a fair opportunity for minorities and women to participate in their work force and as subcontractors and vendors under Town contracts.
8. **No Third Party Rights Created**. This contract is intended for the benefit of the Town and the Contractor and not any other person.
9. **Principles of Interpretation and Definitions.** (1) The singular includes the plural and the plural the singular. The pronouns “it” and “its” include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words “include,” “including,” etc. mean include, including, etc. without limitation. (2) References to a “Section” or “section” shall mean a section of this contract. (3) “Contract” and “Agreement,” whether or not capitalized, refer to this instrument. (4) “Duties” includes obligations. (5) The word “person” includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (6) The word “shall” is mandatory. (7) The word “day” means calendar day. (8) The word “Work” is defined in Section 2. (9) A definition in this contract will not apply to the extent the context requires otherwise.
10. **Modifications; Entire Agreement.** A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the Town unless it is signed by the Town Manager, a deputy or assistant Town Manager, or, in limited circumstances, a Town department director. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.
11. **Town’s Manager’s Authority**. To the extent, if any, the Town has the power to suspend or terminate this contract or the Contractor’s services under this contract, that power may be exercised by Town Manager or a deputy or assistant Town Manager without Town Council action.

\* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \*

**IN WITNESS WHEREOF**, the Town and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

**ATTEST: TOWN OF SMITHFIELD**

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

Pre-audit certificate, if applicable \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[*Signature block for the contractor will be added based upon the contractor is selected*]