

**REQUEST FOR PROPOSALS
WATER RATE STUDY AND METHODOLOGY
NOTICE OF REQUEST FOR PROPOSALS**

NOTICE IS HEREBY GIVEN that Lower Cape Fear Water and Sewer Authority (LCFWASA) is requesting proposals for a Water Rate Study. LCFWASA will receive such proposals emailed to:

Lower Cape Fear Water and Sewer Authority
1107 New Pointe Blvd., Suite 17
Leland, N.C. 28451

ATTENTION: Danielle Hertzog, Finance Administrative Assistant
Email: admin@lcfwasa.gov **(Must confirm receipt)**
UP TO THE HOUR OF 4:00 P.M., November 21, 2022

Copies of the Request for Proposals Document are available from the LCFWASA website at www.lcfwasa.org. Please contact Danielle Hertzog at admin@lcfwasa.gov with questions.

It is anticipated that this Project may be funded with North Carolina Drinking Water State Revolving Fund and/or Federal American Rescue Plan Act of 2021 (“ARPA”) funds. State and Federal terms and conditions will apply.

All proposal forms must be properly executed and submitted as part of the proposal. LCFWASA The Authority reserves the right to reject any or all proposals.

**REQUEST FOR PROPOSALS
WATER RATE STUDY
SCOPE OF SERVICES & PROPOSAL**

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Email: admin@lcfwasa.gov **(Must confirm receipt)**
UP TO THE HOUR OF 4:00 P.M., November 21, 2022

Submittals received after the deadline for submission will not be considered.

It is the submitting firms' responsibility to confirm that LCFWASA has received any proposals prior to the deadline for submission. If email reply is not received from admin@lcfwasa.gov please call (910) 383-1919 before the deadline for submission.

All questions and requests for clarification concerning this Request for Proposals ("RFP") shall be made to Danielle Hertzog, Finance Administrative Assistant at admin@lcfwasa.gov by 4:00 p.m. on November 14, 2022. Questions submitted after this time will not be addressed.

It is anticipated that this project may be funded with North Carolina Drinking Water State Revolving Fund and/or Federal American Rescue Plan Act of 2021 ("ARPA") funds. State and Federal terms and conditions will apply.

All proposal forms must be properly executed and submitted as part of the proposal. LCFWASA reserves the right to reject any or all proposals.

1. Purpose

Lower Cape Fear Water and Sewer Authority (LCFWASA) is requesting proposals from qualified consultants ("Consultant" or "Bidder") with experience in conducting rate studies for water utilities to perform a Water Rate Study for the LCFWASA ("Study" or "Project").

There is no expressed or implied obligation for LCFWASA to reimburse any Bidder for any expenses incurred in preparing proposals in response to this request.

The specifications shown in this RFP shall be considered minimum standards unless otherwise indicated. The specifications, terms, and conditions included with this RFP shall govern in any resulting contract(s) unless approved otherwise in writing by LCFWASA.

The Bidder consents to personal jurisdiction and venue in a court of competent jurisdiction in Brunswick County, North Carolina.

2. Background: The LCFWASA desires to align capital projects more closely with a sustaining rate schedule.
3. Scope of Services

LCFWASA is seeking a qualified consultant to provide the following services. The services will be distributed among tasks and LCFWASA reserves the right to award tasks based on available funding.

Water Rate Study

Task #1:

- A study of the rates, fees, and charges necessary to support LCFWASA.
- The Consultant shall verify the rate setting and pricing priorities and objectives of the LCFWASA Board to incorporate into the rate making process. Note that the LCFWASA Board has expressed interest in Cost Share Methodologies when improvements or additions benefit a subset of customers. It has also expressed interest in exploring both Rate Stabilization and Just on Time rate making philosophies.
- The Consultant shall analyze the performance of the current rate structure (Uniform) and compare it to other NC utilities with a similar customer base. The current rate structure should be assessed for sustainability and ability to generate the necessary revenue.
- Develop a recommendation for the most appropriate rate structure to address cost of service and to incorporate other pricing objectives. The Consultant shall assess performance of the current rate structure and provide recommendations on preferred rate structure.
- The Consultant shall use system data, including customer usage characteristics, system peaking data, operational, and capital costs to construct a Microsoft Excel-based Rate Model that will be an effective tool for setting user rates and charges, address capital and financial planning objectives, providing future information needed to promote effective and informed decision-making.
- The Consultant shall use system data and Microsoft Excel-based Rate Model to:
 - Evaluate and project customer usage patterns and levels of demand.

- Identify and project total revenue requirements, including all operation and maintenance and capital costs.
- A deliverable of this task is the Microsoft Excel-based Rate Model and all intellectual property associated with its use.
 - Consultant shall include up to four (4) hours of virtual training for LCFWASA staff on the construction and use of the Microsoft Excel-based Rate Model.

Task #2:

- Upon completion of Task #1, the Consultant will review the existing water rate structure and develop a simplified wholesale water rate consistent with the cost-of-service principles and methodologies established in Task #1.

Task #3:

- Review the existing rate structure for system development charges and complete an evaluation to develop cost-justified water system development charges as set forth in Article 8 of Chapter 162A of the North Carolina General Statutes, “System Development Fees” (N.C.G.S. § 162A-200, *et seq.*).

Additional Requirements (all Tasks):

- A Draft Report should be available within 120 days after award and execution of contract and presented to staff and the LCFWASA Board. The Draft Report should include, but not be limited to, the items specified in the scope of services.
- Consultant shall consider current and future costs, projected demands, availability of supply, funding requirements for all current long-term liabilities and debt obligations, and age and condition of systems. Projected cash flow patterns should be provided for each alternative.
- The benefits of any proposed modification shall be weighed against the financial impact to ratepayers.
- Document in reasonable detail the facts and data used in the analysis and their sufficiency and reliability.
- Employ generally accepted accounting, engineering, and planning methodologies, including those specific to applicable North Carolina law, necessary to satisfy North Carolina law.
- The successful Consultant will utilize industry accepted methods for each task as described in the American Water Works Association Manual of Water Supply

Practices M1 (“Principles of Water Rates, Fees, and Charges”), the Water Environment Federation Manual of Practice 27 (“Financing and Charges for Wastewater Systems”), or the work of George A. Raftelis, Raftelis Financial Consultants, Inc., and other industry experts (“Water and Wastewater Finance and Practice”), as published by CRC Press, Boca Raton, fourth edition or later; all encompassed by North Carolina law.

- Document and demonstrate the reliable application of the methodologies to the facts and data, including all reasoning, analysis, and calculations.
- Identify all assumptions and limiting conditions affecting the analysis and demonstrate that they do not materially undermine the reliability of conclusions reached.
- Consider a planning horizon of not less than 10 years, nor more than 20 years.
- Documents should be prepared with such care to be suitable for inclusion directly or by reference in budget reports, annual reports, comprehensive annual financial reports, financial plans, bond documents, and other LCFWASA publications.

4. Evaluation Criteria

Bidders submitting proposals to perform the work for the **Water Rate Study** will be evaluated based upon the firm’s experience, proposed personnel experience, personnel knowledge, experience with projects with similar scope of work, the demonstrated ability to deliver large projects on time, and fee proposal by demonstration with previous project experience and references. This scope is defined in the Scope of Services section of this Request for Proposals.

While cost is an important factor in evaluating proposals, it may not be a dominant factor. Low cost is not a requisite for selection. LCFWASA reserves the right to reject any or all proposals, waive technicalities, and to be the sole judge of suitability of the services for its intended use, and further specifically reserves the right to make the award in the best interests of the LCFWASA. Failure to respond to any requirement outlined in this RFP may disqualify the proposal. LCFWASA reserves the right to request additional information as necessary to assist in the selection process.

Proposals will be evaluated based on the following six (6) considerations and the level of importance for each consideration. The Proposal shall be formatted consistent with the evaluation consideration. Criteria shown under each of the considerations are to be addressed in the Proposal. Consultants may provide additional information as necessary.

Item	Evaluation Criteria	Maximum Points
1	Project understanding and approach	10

2	Relevant firm experience	25
3	Overall staff experience	25
4	Approach to project management	10
5	Record of success by the consultant	10
6	Fee Proposal	20
Total Possible Points		100

1. *Project understanding and approach (10%)*
 - a. Understanding of project drivers and success factors.
 - b. Approach for the work and to keep the project on schedule.
 - c. Pertinent new ideas presented during the selection process.
 - d. Description of the Consultant team's quality control program.

2. *Relevant firm experience with Water Rate Studies (25%)*
 - a. Projects of similar size and scope.
 - b. Prior experience with Water Rate Studies.
 - c. References and descriptions of similar projects.

3. *Overall staff experience proposed for this Project (25%)*
 - a. Demonstrated sufficient staffing and resources to perform the work within a compressed schedule.
 - b. Projects of similar size and scope.
 - c. Prior experience with Water Rate Studies.
 - d. References and descriptions of similar projects.

4. *Approach to Project Management (10%)*
 - a. Demonstrated knowledge of local conditions relevant to the Project.
 - b. Demonstrated ability to provide efficient project coordination with LCFWASA and team to meet the schedule.
 - c. Demonstrated ability to provide efficient verification of existing data.
 - d. Demonstrated ability to provide efficient coordination with local agencies.
 - e. Demonstrated ability to provide efficient support of LCFWASA with Project team.

5. *Record of success by the consultant (10%)*
 - a. Demonstrated ability to manage project costs within project budgets.
 - b. Record of project success, demonstrated by work previously performed for LCFWASA or similar work performed for others.
 - c. Demonstrated ability to perform fast-paced complex projects on-time and within budget.

6. *Fee Proposal (20%)*

Staff will review the Proposals, score them based on the evaluation criteria above, and select the best qualified Bidder based on the total points. After review of the Proposals, the best qualified Bidder will be selected based on the demonstrated experience and qualification for the services required for the Project as shown in the Proposals.

5. Proposal Requirements

The following must be included in your Proposal:

- Proposals shall address all items included within Sec. 4, “Evaluation Criteria.”
- A completed and signed proposal sheet (P-1).
 - The Bidder’s travel expenses, and any other incidental or indirect expenses, must be included in the other quotes and should not be separately listed. The Authority will not directly reimburse the Bidder for these types of expenses.
- Anti-Lobbying Certificate (*See*, Sec. 6, “State and Federal Requirements”).
- M/WBE Compliance Form (*See*, Sec. 6, “State and Federal Requirements”).

6. State and Federal Requirements

It is anticipated that this Project may be funded with North Carolina Drinking Water State Revolving Fund and/or Federal American Rescue Plan Act of 2021 (“ARPA”) funds and is subject to the following contract provisions. Additional terms and conditions can be found in the draft agreement attached hereto. State and Federal terms and conditions will apply.

(a) Contracting with Small and Minority Businesses, Women’s Business Enterprises and Labor Surplus Area Firms

Consultant shall take the following affirmative steps to assure that minority businesses, women’s business enterprises, and labor surplus area firms are used when possible as per 2 C.F.R. § 200.321.

- a. Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;
- b. Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women’s business enterprises; and

- e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

An MBE/WBE (SBE) Compliance Form is attached as Exhibit A to this RFP and must be submitted with the Proposal.

(b) Anti-Lobbying (Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended)

Consultants who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Required Certification. If applicable, Consultants must sign and submit to the LCFWASA the attached Anti-Lobbying Certification.

An Anti-Lobbying Certification is attached as Exhibit B to this RFP that must be submitted with the Proposal.

7. Terms and Conditions

- a) Submission of a Proposal indicates acceptance by the Bidder of the conditions contained in this RFP unless clearly and specifically noted in the Proposal submitted and confirmed in the contract between the LCFWASA and the Bidder selected.
- b) The LCFWASA reserves the right without prejudice to reject any or all proposals, to waive any non-material irregularities or informalities in any RFP, to accept or reject any item or combination of items, and to request additional clarification of proposals.
- c) All proposals received become the property of the LCFWASA and information included therein or attached thereto, shall become public record upon their delivery to the LCFWASA. Any information deemed by the Bidder to be protected as a trade secret shall be submitted separately in a sealed envelope along with a statement supporting this assertion.
- d) All costs associated with the preparation of a response to this request are the responsibility of the Bidder and shall not be passed on to the LCFWASA.

P-1

PROPOSAL SHEET

Please provide the following information on your company:

BY: _____

TITLE: _____

COMPANY: _____

ADDRESS: _____

TELEPHONE: _____

EMAIL: _____

Bidder's company is: Corporation _____ Partnership/Proprietorship _____

If corporate name is different from above, please show in full. _

What state is corporation incorporated in? _____

ATTACHMENT A

SAMPLE CONTRACT – DO NOT RETURN

NORTH CAROLINA
COUNTY OF BRUNSWICK

AGREEMENT BETWEEN
THE LOWER CAPE FEAR WATER AND SEWER AUTHORITY
AND

THIS CONTRACT made and entered into this ____ day of _____, 20____, by and between **LOWER CAPE FEAR WATER AND SEWER AUTHORITY**, a water and sewer authority created and existing under the provisions of Chapter 162A of the North Carolina General Statutes (“AUTHORITY” or “LCFWASA”), located in Brunswick County, North Carolina and; _____ a _____ organized under the laws of the State of _____ (“CONSULTANT”), collectively hereinafter referred to as the “Parties.”

WITNESSETH:

WHEREAS Lower Cape Fear Water and Sewer Authority desires to contract with CONSULTANT to provide a Water Rate Study.

WHEREAS, the AUTHORITY has completed necessary steps for retention of professional and other services under applicable policies; and

WHEREAS, the AUTHORITY has agreed to engage the CONSULTANT, and the CONSULTANT has agreed to contract with the AUTHORITY, for performance of services as described, and according to the further terms and conditions, set forth herein.

NOW, THEREFORE, in consideration of the promises and other considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

A. Scope of Services

CONSULTANT shall perform for the AUTHORITY the services as per the proposal document attached hereto and incorporated by reference as Attachment A.

B. Time of Performance

In performing the services described in this Contract, it is mutually agreed that time is of the essence. The Term of this Contract is effective _____, or the date of final execution of the Parties, whichever is later, through and including ----- or upon completion of the work, whichever occurs first.

C. Compensation & Time of Payment

1. The standard AUTHORITY payment term is NET 30 days from the date of invoice. CONSULTANT shall submit invoices monthly.

D. Workmanship and Quality of Services

All work performed under this Contract shall be performed in a workmanlike and professional manner, to the reasonable satisfaction of the AUTHORITY, and shall conform to all prevailing industry and professional standards.

E. Relationship of the Parties

1. No Third-Party Beneficiaries. This Agreement is not intended for the benefit of any third party. The rights and obligations contained herein belong exclusively to the Parties and shall not confer any rights or remedies upon any person or entity other than the Parties.
2. No Joint Venture. CONSULTANT is an independent contractor and not an agent or employee of the AUTHORITY. Nothing in this Agreement shall be construed to create, constitute, give effect to, or otherwise imply a joint venture, partnership, agency, or employment relationship of any kind between the Parties.
3. Assignment. Neither party may assign this Agreement, in whole or in part, by operation of law or otherwise, without the other party's prior written consent, and any attempted assignment without such consent will be void.
4. Personnel. CONSULTANT represents that it has, or will, secure at its own expense, all personnel required in performing the services under this Contract. Such employees shall not be employees of or have any individual contractual relationship with the

AUTHORITY. The CONSULTANT is wholly responsible for all work to be performed and the supervision of its employees. As such, the CONSULTANT, or any employees, sub-contractors, or employees thereof, shall not be entitled to any AUTHORITY employment benefits, including, but not limited to, wages or salary, vacation, sick leave, insurance, Workers' Compensation, or pension and retirement benefits.

5. Subcontracts. The CONSULTANT shall utilize no subcontracts for carrying out the services to be performed under this Contract without the written approval of the AUTHORITY.

F. Suspension or Termination of Agreement

1. Termination. The AUTHORITY may terminate this Contract, in whole or in part, at any time by providing thirty (30) days written notice to the CONSULTANT. In addition, if CONSULTANT (i) makes or has made under this Contract any representation, warranty, or certification that is or was incorrect, inaccurate, or misleading; or (ii) fails to fulfill in timely and proper manner the obligations under this Contract for any reason, including the voluntary or involuntary declaration of bankruptcy, the AUTHORITY shall have the right to terminate this Contract by giving written notice to the CONSULTANT and termination will be effective upon receipt. CONSULTANT shall cease performance immediately upon receipt of such notice.
2. Suspension. The AUTHORITY shall also have the right to suspend this Contract upon written notice to the CONSULTANT. Such written notice shall state the reasons for suspension and allow for a review period of ten (10) days during which the CONSULTANT shall be provided with an opportunity to respond with an explanation or justification, and undertake any reasonable remedial action required by the AUTHORITY. If, in the opinion of the AUTHORITY, the CONSULTANT remains in violation of this Contract at the completion of the ten (10) day suspension period, the AUTHORITY shall have the right to terminate this Contract whereupon all obligations of the AUTHORITY to the CONSULTANT shall cease.
3. In the event of early termination, CONSULTANT will be entitled to receive just and equitable compensation for actual costs incurred prior to receipt of notice of termination and for the satisfactory work completed as of the date of termination and delivered to the AUTHORITY. Notwithstanding the foregoing, in no event will the total amount due to CONSULTANT exceed the total amount due CONSULTANT under this Contract. The CONSULTANT shall not be relieved of liability to the AUTHORITY for damages sustained by the AUTHORITY by virtue of any breach of this Contract, and the AUTHORITY may withhold any payment due to the CONSULTANT for the purpose of setoff until such time as the AUTHORITY can determine the exact amount of damages due the AUTHORITY because of the breach.

4. Non-Appropriation. The AUTHORITY is a governmental entity, and the Contract validity is based upon the availability of public funding under the AUTHORITY's statutory mandate. If funds are not available and not appropriated to the program specified in this Contract, then this Contract shall automatically expire without penalty to either party. In the event of a legal change in the AUTHORITY's statutory authority, mandate, or mandated functions which adversely affects the AUTHORITY's ability to continue performing obligations under this Contract, then this Contract shall automatically expire without penalty to either party.
5. Nothing contained herein shall prevent the AUTHORITY from pursuing any remedy which it may have available in law or equity against CONSULTANT.

G. Notices

All notices, requests for payment, or other communications arising hereunder shall be sent to the following:

**Lower Cape Fear Water and Sewer CONSULTANT
(LCFWASA)**

Tim Holloman, Executive Director
1107 New Pointe Blvd
Leland, NC 28451
Phone: 910-383-1919

Phone:

H. Insurance Requirements

CONSULTANT 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.

1. Additional Insured and Coverages. Before commencing work under this Contract, CONSULTANT 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.

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.

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 CONSULTANT'S performance of professional services under this contract. The CONSULTANT 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 subcontractors insurance.

a. Commercial General Liability

The CONSULTANT shall maintain during the life of this Contract COMMERCIAL GENERAL LIABILITY INSURANCE coverage. Unless otherwise specified, this coverage shall be written providing liability limits at least in the amount of \$1,000,000 per occurrence/\$2,000,000 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

The CONSULTANT shall maintain during the life of this contract WORKERS' COMPENSATION and EMPLOYER'S LIABILITY INSURANCE covering all of the CONSULTANT'S employees to be engaged in the work under this Contract, providing the required statutory benefits under North Carolina Workers Compensation Law, and Employers Liability Insurance providing limits at least in the amount of \$500,000/500,000/500,000 applicable to claims due to bodily injury by accident or disease. Whenever work under this Contract includes exposure to claims under the U. S. Longshoremen's and Harborworker's Act, such coverage shall be provided by appropriate endorsement to this policy.

c. Professional Liability Insurance

CONSULTANT shall maintain during the life of this Contract professional liability or errors and omissions liability insurance appropriate to the Contractor's profession, naming as insured any professional, individual, or firm performing the services required in this Contract. Coverage as required in this paragraph shall apply to liability for professional errors, acts, omissions or any other negligent acts arising out of the scope of the contractor's services as defined in this contract. Coverage shall be written subject to limits of not less than \$1,000,000 per claim.

2. Waiver of Subrogation. The insurer shall agree to waive all rights of subrogation against the Lower Cape Fear Water and Sewer Authority, its officers, officials, and employees for losses arising from work performed by the CONSULTANT for Lower Cape Fear Water and Sewer Authority
3. Claims-Made Coverage. If any of the above policies provide claims-made coverage:
 - a. The Retroactive Date must be shown on the Certificate of Insurance and must be before the effective date of this Contract.
 - b. Insurance must be maintained, and evidence of insurance must be provided, for at least five (5) years after completion of the Contract work.

- c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Contract effective date, CONSULTANT must purchase “extended reporting” coverage for a minimum of five (5) years after completion of work.
4. Certificates of Insurance and Notice of Non-Renewal. The CONSULTANT 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 six (6) counterparts and when the Contract is signed by the CONSULTANT, a copy thereof shall be inserted in each copy of the contract documents and upon insertion become a part of such documents. The insurance carrier or its agent shall also certify on these documents that it will notify the AUTHORITY by registered mail at least thirty (30) days prior to the cancellation or non-renewal of any coverages.

I. Indemnity

To the fullest extent permitted by law, CONSULTANT shall save, defend, hold harmless, and indemnify the AUTHORITY, its officers, directors, members, partners, and employees from liability of any kind, including all claims, costs (including but not limited to, defense, all fees and charges of any consultant, architect, attorney, or other professional, and all court or arbitration or other dispute resolution costs), damages, and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the CONSULTANT, directly or indirectly, in the performance of this Contract. This representation and warranty shall survive the termination or expiration of this Contract.

J. Warranty

The CONSULTANT by acceptance of this Contract warrants full compliance with all applicable local, state, and federal laws and regulations and agrees to indemnify and defend the AUTHORITY against any loss, cost, liability or damage by reason of CONSULTANT’s violation of this paragraph. The CONSULTANT expressly warrants that all items specified are fit and sufficient for their intended purpose. If the specifications contain a statement of the particular purpose for which the goods will be used, the goods offered by CONSULTANT shall be fit for this purpose.

K. No Waiver of Immunity

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. Nothing herein shall be construed to mandate purchase of insurance by the AUTHORITY, or to in any other way waive the defense of sovereign or governmental immunity from any cause of action alleged or brought against the AUTHORITY for any reason if otherwise available as a matter of law.

L. General Terms & Conditions

1. Applicable Law

All matters relating to this Agreement shall be governed by the laws of the State of North Carolina, without regard to its choice of law provisions, and venue for any action relating to this Agreement shall be Brunswick County Civil Superior Court or the United States District Court for the Eastern District of North Carolina, Southern Division.

2. Conflict of Interest.

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

3. Non-Waiver of Rights

No failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Contract or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach of any other covenant, duty, agreement, or condition.

4. Applicability of North Carolina Public Records Law and Confidentiality

a. Notwithstanding any other provisions of this Contract, this Contract and all materials submitted to the AUTHORITY by the CONSULTANT are subject to the public records laws of the State of North Carolina and it is the responsibility of the CONSULTANT to properly designate materials that may be protected from disclosure as trade secrets under North Carolina law as such and in the form required by law prior to the submission of such materials to the AUTHORITY. CONSULTANT understands and agrees that the AUTHORITY may take any and all actions necessary to comply with federal, state, and local laws and/or judicial orders and such actions will not constitute a breach of the terms of this Contract. To the extent that any other provisions of this Contract conflict with this paragraph, the provisions of this section shall control.

b. Except to the extent designated as a public record without exception, the information, reports, cost estimates, plans, specifications, and documents produced, prepared, or assembled by or on behalf of the CONSULTANT under this Contract are confidential. The CONSULTANT agrees that any such documents shall not be made available to any individual or organization other than designated AUTHORITY officials without the prior express written approval of the AUTHORITY. Nothing contained in this paragraph shall be construed to prevent the CONSULTANT from making information, reports, or documents available to those individuals or firms with a direct relationship to the completion of the Project, with the prior express written consent of the AUTHORITY.

5. Entire Agreement

This Contract and any documents incorporated herein, represent the entire Contract between the parties and suspend all prior oral or written statements, agreements, or contracts.

6. Binding Effect

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

7. Continuing Obligation

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

8. 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 Contract.

9. 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.

10. Severability

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

11. Other Laws and Regulations

CONSULTANT will comply with 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. CONSULTANT 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.

12. Amendments

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

13. Survival

The respective rights and obligations under Articles E, I, J and K shall survive the expiration or termination of this Contract regardless of how or when such termination becomes effective.

14. Non-Discrimination

CONSULTANT 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 Contract because of race, creed, color, sex, age, disability, or national origin. To the extent applicable, CONSULTANT 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 Contract and may result, at AUTHORITY'S option, in a termination or suspension of this Contract in whole or in part.

15. Advertising

The CONSULTANT shall not use the existence of this Contract, or the name of the Lower Cape Fear Water and Sewer Authority, as part of any advertising without the prior written approval of AUTHORITY. Exception may be taken to the above with regard to listing the Authority as a job history reference in responses to requests for proposals.

16. E-Verify

CONSULTANT shall comply with E-Verify, the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law and as in accordance with N.C.G.S. §64-25 et seq. In addition, to the best of CONSULTANT's knowledge, any subcontractor employed by CONSULTANT as a part of this Contract shall comply with the requirements of E-Verify and N.C.G.S. §64-25 et seq.

17. Iran Divestment Act Certification

CONSULTANT certifies that, as of the date listed below, it is not on the Final Divestment List as created by the State Treasurer pursuant to N.C.G.S. §147-86.55, et seq. In compliance with the requirements of the Iran Divestment Act and N.C.G.S. §147-86.59,

CONSULTANT shall not utilize in the performance of the Contract any subcontractor that is identified on the Final Divestment List.

18. Divestment From Companies Boycotting Israel.

CONSULTANT certifies that, as of the date listed below, it is not on the Final Divestment List as created by the State Treasurer pursuant to N.C.G.S. §147-86.80, et seq. In compliance with the requirements of the Divestment from Companies Boycotting Israel Act and N.C.G.S. §147-86.82, CONSULTANT shall not utilize in the performance of the Contract any subcontractor that is identified on the Final Divestment List.

19. 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 its behalf are made aware of the Environmental Policy. The Environmental Policy can be found under Environmental Management on the AUTHORITY website, www.lcfwasa.org. CONSULTANT certifies by signing this Contract 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.

M. Federal Terms and Conditions

This Project is being funded with federal ARPA funds and is subject to the following additional contract provisions:

1. Contracting with Small and Minority Businesses, Women’s Business Enterprises, and Labor Surplus Area Firms

CONSULTANT shall take the following affirmative steps to assure that minority businesses, women’s business enterprises, and labor surplus area firms are used, when possible, as per 2 C.F.R. § 200.321.

- a. Placing qualified small and minority businesses and women’s business enterprises on solicitation lists
- b. Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources
- c. Dividing total requirements, when economically feasible into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women’s business enterprises
- e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

An MBE/WBE (SBE) Compliance Form is attached as Exhibit A to the RFP that must be submitted with the qualification statement.

2. Anti-Lobbying (Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended)

Consultants who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Required Certification. If applicable, CONSULTANT must sign and submit to the non-federal entity the certification attached.

An Anti-Lobbying Certificate is attached as Exhibit B to this RFP that must be submitted with the qualification statement.

3. Clean Air Act

- a. The CONSULTANT agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- b. The CONSULTANT agrees to report each violation to the Lower Cape Fear Water and Sewer Authority and understands and agrees that the Lower Cape Fear Water and Sewer Authority will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The CONSULTANT agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

4. Federal Pollution Control Act

- a. The CONSULTANT agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- b. The CONSULTANT agrees to report each violation to the Lower Cape Fear Water and Sewer Authority and understands and agrees that the Lower Cape Fear Water

and Sewer Authority will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

- c. The CONSULTANT agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

5. Suspension and Debarment

- a. This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the CONSULTANT is required to verify that neither the CONSULTANT, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- b. The CONSULTANT must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- c. This certification is a material representation of fact relied upon by Lower Cape Fear Water and Sewer Authority. If it is later determined that the CONSULTANT did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to Lower Cape Fear Water and Sewer Authority, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- d. The CONSULTANT agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the period of this Contract. The CONSULTANT further agrees to include a provision requiring such compliance in its lower tier covered transactions.

[Remainder of page intentionally blank]

Lower Cape Fear Water and Sewer Authority **Contract #** _____

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

This Agreement will be effective on ____ day of _____, 20 ____.

CONSULTANT

SEAL:

ADDRESS:

ATTEST:

BY: _____

BY: _____

PRINTED: _____

PRINTED: _____

TITLE: _____

TITLE: _____

(President, VP, Assistant VP)

(Secretary, Assistant Sec)

I, _____, a Notary Public, certify that the corporation's Secretary, Assistant Secretary, Mr./Mrs./Ms. _____ personally came
Name of Secretary, Assistant Sec

before me this day and acknowledged that s/he is the _____ of
(Secretary, Assistant Secretary)

_____, 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, Mr./Mrs./Ms. _____, sealed with its Corporate Seal, and
Name of President, VP, Assistant VP

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: _____ (SEAL)

Lower Cape Fear Water and Sewer Authority

AUTHORITY

Lower Cape Fear Water and Sewer Authority

1107 New Pointe Blvd

Suite 17, North Carolina 28451

BY: _____
Tim H. Holloman
Executive Director

NORTH CAROLINA
_____ COUNTY

I, _____, the undersigned Notary Public of the County of _____ and State aforesaid, certify that Tim H. Holloman personally came before me this day and acknowledged that he is the Executive Director of Lower Cape fear Water and Sewer Authority, a body corporate and politic, and that he, as Executive Director, being authorized to do so, executed the foregoing on behalf of said Lower Cape Water and Sewer Authority.

WITNESS my hand and Notarial stamp or seal this _____ day of _____, 20____.

Notary Public

Printed Name

My Commission Expires:

(AFFIX STAMP OR SEAL)

PREAUDIT CERTIFICATE

This instrument has been pre-audited in the manner required by the Local Government Budget and

Fiscal Control Act this the _____ day of _____, 20____.

Finance Officer