



## CONTRACT FOR SERVICES FOR BEAUFORT COUNTY

**THIS AGREEMENT** (the “Agreement”) is made this XX Day of \_\_\_\_\_ 20XX, by and between Beaufort County, a political subdivision of the State of South Carolina (hereinafter referred to as “County”) and \_\_\_\_\_, LLC. (hereinafter referred to as “Design/Builder”).

WITNESSETH:

**WHEREAS**, the Design/Builder and the County desire to enter into an agreement to design and construct the roads as described in RPF/RFQ/IFB XXXXXXE, subject to the terms, specifications, conditions and provisions of the request for proposal as heretofore mentioned.

**NOW, THEREFORE**, the Design/Builder and the County agree to all of these terms, conditions, specifications, provisions and the special provisions as listed below:

- A. This Agreement is deemed to be under and shall be governed by and construed according to the laws of the State of South Carolina.
- B. Any litigation arising out of the Agreement shall be held only in a Circuit Court of Beaufort County, Beaufort, South Carolina, in the Fourteenth Judicial Circuit.
- C. The Design/Builder shall not sublet, assign, nor by means of a stock transfer sale of its business, assign or transfer this Agreement without the written consent of the County.
- D. This Agreement, including the terms, conditions, specifications and provisions listed herein makes up the entire contract between the Design/Builder and County. No other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind either party hereto.
- E. It is understood that this Agreement shall be considered exclusive between the parties.
- F. Any provisions of this Agreement found to be prohibited by law shall be ineffective, to the extent of such prohibition, without invalidating the remainder of the Agreement.

**NOW, THEREFORE**, in consideration of mutual covenants contained herein, the parties agree as follows:

**ARTICLE 1  
DESCRIPTION**

This Agreement shall consist of the terms, conditions, specifications and provisions contained in RFP/RFQ/IFB XXXXXXXE dated \_\_\_\_\_ (Exhibit “A”), the Design/Builder’s Proposal dated \_\_\_\_\_ (Exhibit “B”) and the Approval from County Council dated \_\_\_\_\_ (Exhibit “C”) all of which are made a part hereof and incorporated herein by reference.

In the event that there is any conflict or inconsistency between the terms and conditions of this Agreement and those of the terms and conditions of the RFP/RFQ/IFB XXXXXXXE and the responsive Bid Proposal, the terms of this Agreement shall control and govern the rights and obligations of the Parties.

**ARTICLE 2  
LIABILITY**

The County and Design/Builder shall not be responsible to each other for any incidental, indirect or consequential damages incurred by either Design/Builder or County. Further, Design/Builder’s liability to the County and any other party for any losses, injury or damages to persons or properties or work performed arising out of/in connection with this Agreement and for any other claim, whether the claim arises in contract, tort, statute or otherwise, shall be limited to the amount of the total fees due to the Design/Builder from the County hereunder.

**ARTICLE 3  
INDEMNIFICATION AND HOLD HARMLESS**

The Design/Builder does hereby agree to indemnify and save harmless the County, its officers, agents and employees from and against any and all third party liability, claims, demands, damages, fines, fees, expenses, penalties, suits, proceedings, actions and cost of actions, including attorney’s fees for trial and on appeal of any kind and nature to the extent arising or growing out of or in any way connected with the negligent performance of the Agreement, by Design/Builder, its agents, servants or employees; provided, however that any such liability or damages shall be reduced to the extent caused by the acts or omissions of the County.

**ARTICLE 4  
ASSIGNMENT**

Design/Builder shall not assign or subcontract any rights or duties of this Agreement, except to an affiliated company, without the expressed written consent of the County, which consent shall not be unreasonably withheld, conditioned or delayed. Any assignment or subcontract without the written consent of County shall be void and this Agreement shall terminate at the option of the County.

**ARTICLE 5  
TERM**

The term of this Agreement shall begin \_\_\_\_\_ and continue for XXX days to end on \_\_\_\_\_. Any request for extensions to this completion date MUST be submitted to the County for approval.

**ARTICLE 6  
COMPENSATION**

Compensation is based on Design/Builder's proposed fee as outlined in their proposal. The County's cost of this Agreement through the term of the contract shall not exceed \$XXXX (\_\_\_\_\_dollars) and will follow the fee schedule provided in the Contract proposal subject to the terms and conditions of this Agreement.

The County and the Design/Builder agree that the Design/Builder will track the overall cost of each task and will advise the County in writing PRIOR TO exceeding the maximum cost delineated in this Article. This Scope of Work may be modified in the future by mutual agreement of the County if needed to re-allocate fees among these tasks or to adjust the maximum cost not to exceed.

Work performed on this Contract will be accounted for separately by the Design/Builder.

Termination for Non-appropriation of Funds: All terms of compensation provided for herein, are subject to the County's procurement procedures and practices, including necessary approvals of County Council. In the instance County Council declines to appropriate funds for compensation under the terms provided herein, this contract shall be deemed null and void as of the end of the then current appropriation period. Failure of County Council to appropriate funds shall not result in any penalty nor subject the County to any liability for any claims of specific performance, writ of mandamus, breach of contract, negligence or any other legal claim.

**ARTICLE 7  
INSURANCE**

Design/Builder does hereby covenant, agree and hereby represent to the County that it has obtained worker's compensation insurance, general liability and automobile liability insurance, as well as providing coverage against potential liability arising from and in any manner relating to the Design/Builder's use or occupation of the premises during the course of performing the contracted services, all in accordance with and as described in the County's RFP/RFQ/IFB XXXXXXXE.

**INSURANCE REQUIREMENTS:**

**INSURANCE REQUIREMENTS:** Prior to commencing work/delivery hereunder, Contractor/Vendor, at his expense, shall furnish insurance certification showing the

certificate holder as Beaufort County, P.O. Drawer 1228, Beaufort, SC 29901-1228, Attention: Purchasing Director and with a special notation naming Beaufort County as an additional insured on the liability coverage. Minimum coverage shall be as follows:

- (A) Worker's Compensation Insurance - Contractor shall have and maintain, during the life of this contract, Worker's Compensation Insurance for his employees connected to the work/delivery, in accordance with the Statutes of the State of South Carolina and any applicable laws.
- (B) Commercial General Liability Insurance – Contractor shall have and maintain, during the life of this contract, Commercial General Liability Insurance. Said Commercial General liability Policy shall contain Contractual Liability and Products/Completed Operations Liability subject to the following minimum limits: \$1,000,000 Each Occurrence/ \$2,000,000 General Aggregate and \$2,000,000 Products/Completed Operations Aggregate naming Beaufort County as an additional insured.
- (C) Comprehensive Automobile Liability Insurance - The Contractor shall have and maintain, during the life of this contract, Comprehensive Automobile Liability, including non-owned and hired vehicle, of at least \$1,000,000 COMBINED SINGLE LIMIT.
- (D) ADDITIONAL INSURANCE REQUIREMENT: Umbrella Liability Insurance – Contractor shall have and maintain, during the life of this contract, Umbrella Liability Insurance with a minimum limit of \$2,000,000
- (E) Professional Liability (Errors & Omissions) – The vendor shall maintain a limit no less than \$1,000,000 per occurrence.
- (F) The required insurance policy at the time of issue must be written by a company licensed to do business in the State of South Carolina and be acceptable to the County.
- (G) The Contractor/vendor shall not cause any insurance to be canceled or permit any insurance to lapse. All insurance policies shall contain a clause to the effect that the policy shall not be canceled or reduced, restricted or limited until fifteen (15) days after the County has received written notice, as evidenced by return receipt of registered or certified letter. Certificates of Insurance shall contain transcript from the proper office of the insurer, the location, and the operations to which the insurance applies, the expiration date, and the above-mentioned notice of cancellation clause.
- (H) The information described above sets forth-minimum amounts and coverages and is not to be construed in any way as a limitation on the Contractor's liability.

## **ARTICLE 8 DEFAULT**

In the event of default or breach of any condition of this Agreement resulting in litigation, the prevailing party would be entitled to reasonable attorneys' fees fixed by the Court. The remedies herein given to County shall be cumulative, and the exercise of any one remedy by the County shall not be to the exclusion of any other remedy.

**ARTICLE 9  
TERMINATION**

In the event that Design/Builder fails to perform (or fails to commence the cure of any breach, which shall be diligently prosecuted in good faith) the services described within ten (10) business days of its receipt of a written demand from the County, County may terminate the Agreement immediately upon notice provided such notice is at least ten (10) business days following the County's notice of non-performance. In the event that the County breaches any of the terms of this Agreement including, but not limited to, non-payment, and fails to cure such breach within fifteen (15) business days of its receipt of a written demand from the Design/Builder, Design/Builder may terminate the Agreement immediately upon notice, provided such notice is at least fifteen (15) business days following the Design/Builder's notice of breach. Upon such termination, the County has the right to award a Contract to an alternate Design/Builder.

**ARTICLE 10  
COUNTY RESPONSIBILITIES**

The County will be responsible to provide the Design/Builder reasonable access to County locations when necessary, ensure cooperation of County employees in activities reasonable and appropriate under the project, and obtain authorization for access to third party sites, if required.

**ARTICLE 11  
FORCE MAJEURE**

Should performance of Design/Builder services be materially affected by causes beyond its reasonable control, a Force Majeure results. Force Majeure includes, but is not restricted to, acts of God, acts of a legislative, administrative or judicial entity, acts of Design/Builders other than subcontractors of Design/Builder, fires, floods, labor disturbances, and unusually severe weather. Design/Builder will be granted a time extension and the parties will negotiate an adjustment to the fee, where appropriate, based upon the effect of the Force Majeure upon Design/Builder's performance.

**ARTICLE 12  
SEVERABILITY**

Every term or provision of this Agreement is severable from others. Notwithstanding any possible future finding by a duly constituted authority that a particular term or provision is invalid, void, or unenforceable, this Agreement has been made with the clear intention that the validity and enforceability of the remaining parts, terms and provisions shall not be affected thereby.

**ARTICLE 13  
INDEPENDENT DESIGN/BUILDER**

The Design/Builder shall be fully independent in performing the services and shall not act as an agent or employee of the County. As such, the Design/Builder shall be solely responsible for its employees, subcontractors, and agents and for their compensation, benefits, contributions and taxes, if any.

**ARTICLE 14  
NOTICE**

The Design/Builder and the County shall notify each other of service of any notice of violation of any law, regulation, permit or license relating to the services; initiation of any proceedings to revoke any permits or licenses which relate to such services; revocation of any permits, licenses or other governmental authorizations relating to such services; or commencement of any litigation that could affect such services. Such notice shall be delivered by U. S. mail with proper postage affixed thereto and addressed as follows:

County:                    Beaufort County Administrator  
                                  Attn: Ashley Jacobs  
                                  P. O. Drawer 1228  
                                  Beaufort, SC 29901-1228

                                  Beaufort County  
                                  Attn: Beaufort County Purchasing Director  
                                  P. O. Drawer 1228  
                                  Beaufort, SC 29901-1228

Design/Builder:

**ARTICLE 15  
CHANGE ORDERS**

Should the Scope of Work as noted in Article 1 of this Agreement change as a result of:

- a) County requested changes to the approved Scope of Work, or
- b) Increase in work needed to complete any approved Change Order as a result of unexpected occurrence outside of the control of the Design/Builder, or
- c) The County requests additional Change Orders from the Design/Builder,

Then the Design/Builder will prepare and submit to the County an amendment to the applicable Change Order, or where no Change Order is in place of such additional services, the Design/Builder will prepare a Change Order for the County's review. No additional services will

be undertaken by the Contactor without the approval of a Change Order or Change Order Amendment by the County.

## **ARTICLE 16 AUDITING**

The Design/Builder shall make available and provide to the County if requested, true and complete records with fifteen days' notice, which support billing statements, reports, performance indices, and all other related documentation. The Design/Builder agrees that it will keep and preserve for at least three years all documents related to the Agreement, which are routinely prepared, collected or compiled by the Design/Builder during the performance of this Agreement.

## **ARTICLE 17 GRATUITIES**

The right of the Design/Builder to proceed or otherwise perform this Agreement, and this Agreement may be terminated if the County Administrator or her appointed designee determine, in their sole discretion, that the Design/Builder or any officer, employee, agent, or other representative whatsoever, of the Design/Builder offered or gave a gift or hospitality to a County officer, employee, agent or Design/Builder for the purpose of influencing any decision to grant a County Contract or to obtain favorable treatment under any County Contract.

## **ARTICLE 18 INVOICES**

All invoices for work done under this Agreement should be directed to the County Representative, Andrea Atherton –

Located at:           Beaufort County Engineering Department  
                              2266 Boundary Street  
                              Beaufort, S.C. 29906

Invoices should include:

- a) Period of time covered by the invoice
- b) Summary of work performed for the billing period
- c) Purchase order and Contract Number
- d) Tax Identification Number

Unless otherwise indicated, all invoices must be timely and accurate.

**ARTICLE 19  
PURCHASE ORDERS**

The County will issue Purchase Orders from properly executed requisitions for this Agreement and each approved Change Order. The County shall not be responsible for invoices of \$500 or more that do not have a purchase order covering them.

**ARTICLE 20  
ORDER OF DOCUMENTS**

The following are incorporated into and made a part of this Agreement by reference:  
a) RFP, Bid Response and Beaufort County Council Approval.

In the event that there is any conflict or inconsistency between the terms and conditions of this Agreement and those of the terms and conditions of the RFP/RFQ/IFB XXXXXE and the responsive Bid Proposal, the terms of this Agreement shall control and govern the rights and obligations of the Parties

**ARTICLE 21  
TOTAL AGREEMENT**

This Agreement constitutes the entire contract between the parties hereto. No representations, warranties or promises pertaining to this Agreement have been made or shall be binding upon any of the parties, except as expressly stated herein.

This Agreement shall be construed in accordance and governed by the laws of the State of South Carolina.



**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the day and year first above written.

**WITNESSES:**

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

**BEAUFORT COUNTY**, a political  
Subdivision of the State of South Carolina

Signature: \_\_\_\_\_

Name: Ashley Jacobs,  
County Administrator  
P. O. Drawer 1228  
Beaufort, SC 29901-1228  
Phone: 843-255-2026  
Fax: 843-255-9403  
Date: \_\_\_\_\_

**WITNESSES:**

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

\_\_\_\_\_.  
Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_  
Date: \_\_\_\_\_