



**REQUEST FOR PROPOSALS  
LAB TESTING SERVICES  
NOTICE OF REQUEST FOR PROPOSALS  
21-S0821**

NOTICE IS HEREBY GIVEN that the Cape Fear Public Utility Authority (hereinafter referred to as “CFPUA” or “the Authority”) is requesting bids for Lab Testing Services. CFPUA will receive bids by email (must confirm receipt):

Cape Fear Public Utility Authority  
ATTENTION: Julia V. Faircloth, Procurement Manager  
[Julia.Faircloth@cfpua.org](mailto:Julia.Faircloth@cfpua.org)  
UP TO THE HOUR OF 2:00 P.M. THURSDAY, APRIL 15, 2021

Questions will be answered until April 8, 2021 at 12:00 p.m. All questions shall be in writing to the attention of Julia Faircloth, Procurement Manager, [Julia.Faircloth@cfpua.org](mailto:Julia.Faircloth@cfpua.org).

There will not be a public bid opening for this project.

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

Julia Faircloth  
Procurement Manager

**REQUEST FOR PROPOSAL  
LAB TESTING SERVICES  
GENERAL SPECIFICATIONS & INSTRUCTIONS TO BIDDERS  
21-S0821**

Scope

It is the intent of this bid invitation to obtain proposals for supplying laboratory testing and reporting services listed on the Proposal Sheet. You are requested to submit your bid on the enclosed Proposal Sheet and return the entire package to the Procurement Manager, Cape Fear Public Utility Authority, 235 Government Center Drive, Wilmington, North Carolina 28403 no later than the time specified in the bid advertisement.

Marking of Bid Envelopes

Bids must be contained in a sealed envelope, plainly marked, showing the bid name, bid number, date, time for opening bids and the bidder's name.

Late Bids Not Considered

Bids received after the stipulated bid opening date and time will not be considered.

Compliance With Specifications

Your bid must be in strict compliance with the specifications. Exceptions are to be listed separately in a letter which will become a part of your proposal, otherwise it is fully understood that the services offered is exactly as specified. The Cape Fear Public Utility Authority reserves the right to allow or disallow minor deviations from the specifications.

Unit Prices to Prevail

Prices shall be submitted per unit basis by line item.

Bid Price Corrections

All prices and notations shall be written in ink or typed. Changes or corrections made on the bid form must be initialed by the individual signing the bid. No corrections will be permitted once bids have been opened.

Rejection of Bids

The Authority reserves the right to reject any and all bids.

Award

Award shall be made by group on the proposal sheet. A primary and secondary laboratory will be selected for each group.

Addendums

The Cape Fear Public Utility Authority shall not be responsible for any oral instructions made by its employees or officers of the Authority in regards to the bidding instructions, drawings, specifications or contract documents. Any changes to the specifications will be in the form of an Addendum which will be emailed to all bidders who are listed with the Purchasing Division as having received the invitation or any other bidder who requests an Addendum.

Responsibility of Compliance With Legal Requirements

The bidder's products, service and facilities shall be in full compliance with any and all applicable state, federal, local, environmental and safety laws, regulations, ordinances and standards or any standards adopted by nationally recognized testing facilities regardless of whether or not they are referred to in this invitation.

**REQUEST FOR PROPOSAL  
LAB TESTING SERVICES  
TECHNICAL SPECIFICATIONS**

- 1) **Facility Information:** Laboratory testing and reporting will be performed for the Cape Fear Public Utility Authority (CFPUA), Wilmington, NC during the fiscal year commencing July 1, 2021 and ending June 30, 2024. The majority of samples will be collected from three public water systems and four wastewater treatment systems owned and operated by the CFPUA. Testing is being performed to comply with State/Federal drinking water monitoring requirements or with NPDES permit requirements. Some testing is being performed for operational purposes.
- 2) **Contract Period:** This is an annual contract for performing environmental laboratory testing on samples grouped by sample matrix and certification requirements. The term of the agreement shall be for Three (3) Years. Prices are to held firm for the three-year period. This agreement may be renewed for up to one (1) additional twelve (12) month periods at the same prices, terms and conditions, if all contracting parties so agree and services provided by the vendor have been satisfactory. The contract period runs from July 1, 2021 through June 30, 2024 with the option for one additional 12-month period through June 30, 2025.
- 3) **Evaluation Criteria:** Award shall be made for each testing group to the lowest responsible and responsive bidder whose bid conforms in all material and services respect to the requirements set forth in the request. In determining whether a bid is lowest and responsive, and the bidder responsible, the following may be considered by the CFPUA:
  - Completeness and quality of proposal
  - Lab Qualifications
  - Total cost
  - Client references
  - Submission of Required Documents
  - Ability to perform the service required within the specific time
  - Experience
  - The quality of performance in previous contracts
  - Previous compliance with laws, as well as employment practices
- 4) **Laboratory Certification:** The laboratory shall be certified to conduct testing for the chemical/method by NCDEQ - North Carolina Wastewater/Groundwater Laboratory Certification (or successor agency), North Carolina State Lab of Public Health - Drinking Water Laboratory Certification (or successor agency), and/or the EPA. The laboratory shall have the ability to maintain the required certifications and approval throughout the contract monitoring period and shall provide the CFPUA with copies of any correspondence from a certifying agency related to losing a certification for a chemical/method while under this contract. In the event that the laboratory loses certification or approval status for any reason, the CFPUA reserves the right to terminate

the analytical services contract and seek lab testing services from another certified and approved laboratory.

- 5) **Primary/Secondary Award:** A primary and secondary lab will be chosen for each group. The Secondary lab will be used in the event that the primary lab cannot fulfill their obligations or for split-sample monitoring events.
- 6) **Subcontracting:** The Laboratory may subcontract to another qualified Laboratory. The subcontracted Laboratory must meet all qualifications in the bid. The Laboratory placing the bid must provide the name, location, and sections of the bid form being subcontracted out in Section 3 of the Proposal Sheet. The Laboratory may not subcontract out the whole bid. If the Laboratory is the low bidder on subcontracted section, they must submit documents for the subcontracted lab as per Section 22 of the Technical Specs within 10 days of being notified by CFPUA.
- 7) **Sample Number & Frequency:** The number of samples is approximate and could increase or decrease dependent on regulatory modifications and operational needs. The CFPUA's EMD laboratory may gain additional testing capability and the number of samples may decrease during the contract period. The price of testing will be based on the unit costs provided regardless of the number of samples actually taken during the year.
- 8) **Sample Type & Volume:** The CFPUA will submit samples of various matrices including drinking water, domestic wastewater, industrial wastewater, ground water, surface water, sludge, and solid materials for testing. The volume will be variable dependent upon testing needs; sample volume is negotiable with the laboratory.
- 9) **Analytical Method:** Analytical testing, using state of the art equipment to achieve low levels of detection, is expected. The laboratory shall use only approved, certified methods. Substitution of alternate certified testing methods during the contract period must be approved by CFPUA. Drinking water samples submitted as compliance samples may not be reported with qualifiers. If quality control does not pass for an analytical batch containing CFPUA compliance samples, it is expected the sample will be reanalyzed. If the lab is unable to produce unqualified data, the CFPUA EMD lab must be notified immediately. If the lab continues to be unable to produce unqualified data, CFPUA may discontinue using the lab for this analysis.

Reporting limits for some metals and inorganics are included in the cost proposal form. The lab must be able to meet these minimum reporting limits in order to bid. NC PWS has additional reporting limits for inorganics and organics found in drinking water rules and regulations. The lab may report lower than the Reporting Limit listed in the table, but may not report higher unless approved by CFPUA EMD laboratory.

- 10) **Sample Schedule:** Samples will be collected throughout the fiscal year on a weekly, bi-weekly, monthly, quarterly, semi-annual, or annual basis to comply with regulatory and

organizational monitoring requirements. A monitoring schedule will be provided by CFPUA to the laboratory for scheduling purposes. Exact day & date for some sample collection is negotiable with the laboratory. Monitoring shall begin in July 2021.

- 11) **Duplicate Backup Samples:** Some testing will require that the laboratory provide additional sample containers so that duplicate backup samples may be taken. This is particularly true for monitoring that cannot be easily repeated. These samples will be identified in the monitoring schedule which will be provided to the laboratory.
- 12) **Sample Services:** The laboratory shall furnish, at no charge, a supply of sample containers, ice packs and materials for holding wet ice, preservatives and preservation/sampling instructions, sufficient shipping labels, chain of custody forms, and shipping containers for each event suitable for delivery of bulk samples. Shipping containers must be large enough to accommodate the sample containers and ice sufficient to maintain appropriate preservation temperature during shipping. These items shall be shipped or delivered so that they arrive within at least 5 business days following our request. Coolers and containers should be shipped or delivered to CFPUA's EMD Laboratory located at 628 Groundwater Way, Wilmington, NC 28411 on a schedule that allows for strict adherence to the established monitoring schedule. The EMD lab will keep on-hand one emergency set of sample and shipping containers throughout the contract period.
- 13) **Sample Shipping:** Cost of testing shall include the cost of pick-up or shipment of the samples from 628 Groundwater Way, Wilmington, NC. Sampling and packaging of the samples to the laboratory will be coordinated and conducted by staff of the EMD laboratory.
- 14) **Sample & Analytical Quality Assurance:** The laboratory shall maintain a quality assurance program and conduct all quality control testing required by the analytical method and certifying authorities.
- 15) **Sample Submission:** The laboratory shall provide immediately following receipt of samples an electronic notice to the EMD Laboratory Manager and/or designees that includes a copy of the signed chain of custody form.
- 16) **Data Deliverables and Invoice:** The laboratory shall submit electronically the standard analytical report, completed NC PWS report or DWQ AT-2 report, chain of custody, EDD if available and invoice within the expected turnaround time (TAT) to the EMD Laboratory Manager for review and approval. An invoice detailing cost for each test performed as requested on the chain of custody should be provided within 10 business days of submittal of the report. The laboratory's standard analytical report shall provide at least the following information for each sample:
  - Sample identification information.
  - Sample analytical results.
  - Tracking number associated with the sample.
  - Reporting limit, method of analysis, testing date.

- For organic testing - trip blank analytical results, surrogate recoveries, matrix spike analytical results.
- Laboratory comments associated with the analyses.
- Completed state form if applicable.
- Signed chain of custody form that was submitted with samples.

17) **Data Turnaround & Submission Requirements:** Prompt reporting is required. The laboratory shall submit electronic data and send hardcopy deliverables to the CFPUA within the expected turnaround time. Turnaround time commences from the date of receipt of samples and is based upon a business day, Monday through Friday excluding holidays. Maximum turnaround time are as follows:

Inorganics and microbiological constituents should not exceed 10 business days.

Organics should not exceed 15 business days.

Radiologicals should not exceed 20 business days.

Exceeding the expected turnaround times without written approval of the CFPUA is grounds for suspension of the contract as per section E of the contract.

The Lab shall electronically submit compliance data to NC PWS.

18) **Replacement Samples & Re-Analysis:** Replacement samples will be collected by EMD staff and analyzed by the laboratory in the event that problems occur with shipping or testing or in the event that analytical results are invalidated due to unacceptable QA/QC or rejected by the CFPUA. The CFPUA reserves the right to review data deliverables and reject any analytical result. Rejection will be based on sound technical review of the data deliverables by the CFPUA or its representatives. The CFPUA also reserves the right to reject any analytical result if contractual requirements are not adhered to. Replacement samples will be analyzed by the laboratory at no additional cost to the CFPUA. On occasion CFPUA may request that a sample be retested to confirm an unexpected or questionable result. If the result of the reanalyzed sample is significantly different from the original value reported, the laboratory will be expected to retest the sample at least one additional time to determine the most accurate value for reporting purposes and there will be no additional cost to the CFPUA for these re-analyzed samples. In some cases CFPUA may request that all values obtained from re-analyses be reported.

19) **Residual Samples:** Residual samples are to be held for thirty days at the lab after the results are submitted to CFPUA, unless disposal is authorized by CFPUA.

20) **Cost Proposal for Analytical & Reporting Services:** The laboratory shall submit cost proposals on the Cost Proposal Form provided. The quantities are estimates for one year. The laboratory shall submit the unit cost for each test as noted. The laboratory will confirm it can meet the required reporting limits listed on the cost proposal form. The unit cost shall prevail. The number of samples is only an estimate. Invoicing shall be based on the unit costs provided. In addition, there may be tests needed that are not listed on the cost proposal sheet due to unforeseen circumstances. Please provide a comprehensive list of all testing the lab is certified and capable of performing not listed on the cost proposal sheet. Please include pricing for this testing. This pricing will be

used if one of these tests is needed. The lab with the lowest costs that is under contract will be contacted to conduct the testing.

21) Proposal Submittal Requirements

A Proposal form/Checklist is included on pages P-1 thru P-3. This form shall be submitted with the bid along with the bid form and shall be signed indicating compliance with the bid.

- a. References from at least three (3) utility or government clients for whom the laboratory has performed laboratory testing services. The laboratory shall provide contact names and phone numbers for each reference submitted with a general description of types of analytical services provided for each reference.
- b. Documentation of NC drinking water and/or wastewater certifications.
- c. A completed bid sheet with unit costs. (Excel Spreadsheet sent with bid doc)
- d. A statement explaining how samples and containers will be picked-up, delivered or shipped.
- e. A comprehensive list of all testing the lab is certified and capable of performing not listed on the cost proposal sheet. Please include pricing for this testing. It is anticipated that additional testing will be needed that is not known at this time.
- f. Charge for reporting additional quality control associated with an analysis.
- g. Discount for testing multiple samples for the same constituents. This is for information purposes only.
- h. Multiplier charged for quicker turnaround times. This is for information purposes only.
- i. The laboratory's last NC DW and/or GW/WW Laboratory Certification Audit report. Please include both if bidding on both drinking water and groundwater/wastewater parameters.

22) **Low Bidder Submittals:** Within 10 business days following notification of being a primary or secondary low bidder for a group the laboratory shall provide the following. If the primary low bidder fails to provide the documents within 10 days or is deemed not to be responsible/responsive, the secondary low bidder will become the primary and a new secondary will be chosen.

- a. Laboratory contact information for responding to analytical questions or problems, for sample submission coordination issues, for invoicing and payment issues.
- b. A list of each constituent, reporting limit, and method to be used.
- c. A list of equipment to be used for testing.
- d. Documentation of most recent NC drinking water and/or wastewater audits.
- e. Documentation of most recent drinking water and wastewater proficiency testing studies.



### 23. Projected Timetable

March 15, 2021	RFP Issued
April 15, 2021 at 2:00pm	Due Date for Proposal
April 30, 2021	Staff selects proposal for recommendation
June 2, 2021	Finance Committee reviews vendor(s) for bid award
June 9, 2021	Recommended vendor(s) accepted by Authority Board and contract details finalized

### 24. Terms and Conditions

- a) Submission of a proposal indicates acceptance by the agency of the conditions contained in this request for proposal unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the Authority and the agency selected.
- b) The Authority 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 Authority and information included therein or attached thereto, shall become public record upon their delivery to the Authority. Any information deemed by the bidding agency to be protected as a trade secret shall be submitted separately in a sealed envelope along with a statement supporting this assertion.
- d) Any and all costs associated with the preparation of a response to this request are the responsibility of the proposer, and are not to be passed on to the Authority.
- e) Any information, data, instruments, documents, studies or reports given to or prepared or assembled for the lab under this agreement shall be kept confidential and not divulged, made available, sold, or used for advertisement to any individual, organization, or company without prior written approval of the Authority.
- f) By submitting an executed proposal the signer certifies that this proposal is submitted competitively and without collusion, that none of the officers, directors, or owners of an unincorporated business entity has been convicted of any

violations of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934.

- g) This RFP can only be changed by written addendums. Any oral comments by anyone shall have no effect on these instructions and specifications. If a bidder knows of or should have known of an error in the RFP, but fails to notify the Authority of the error, the bidder shall bid at its own risk and if awarded the contract, shall not be entitled to additional compensation or time by reason of the error or its later correction.
  - h) Lab understands and acknowledges that the Authority is a political subdivision of the State of North Carolina. The Authority prohibits any of its officials or employees from accepting any personal gift, favor, or thing of value that may tend to influence that employee in the discharge of duties. With this understanding, Lab agrees not to take any action which creates a situation, which would or which could appear, to result in a conflict of interest and violation of Article V, Section 3 of the Client Personnel Resolution by any Authority official or employee.
  - i) Please see draft service agreement for additional Terms & Conditions
25. **Inquiries.** All questions and requests for clarification concerning this RFP shall be made to Julia Faircloth, Procurement Manager, at [Julia.Faircloth@cfpua.org](mailto:Julia.Faircloth@cfpua.org). until April 8, 2021 at 12:00 p.m.

**REQUEST FOR PROPOSAL  
LAB TESTING SERVICES  
PROPOSAL SHEET & CHECKLIST**

**Section 1 References**

Please provide 3 Utility or Government clients for whom the laboratory has performed laboratory testing services. The laboratory shall provide contact names and phone numbers for each reference submitted with a general description of types of analytical services provided for each reference.

1. Company Name \_\_\_\_\_

Contact Name and Title \_\_\_\_\_

Phone Number \_\_\_\_\_ Email Address \_\_\_\_\_

Brief Description of Services:

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

2. Company Name \_\_\_\_\_

Contact Name and Title \_\_\_\_\_

Phone Number \_\_\_\_\_ Email Address \_\_\_\_\_

Brief Description of Services:

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

3. Company Name \_\_\_\_\_

Contact Name and Title \_\_\_\_\_

Phone Number \_\_\_\_\_ Email Address \_\_\_\_\_

Brief Description of Services:

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

**Section 2 Required Forms**

The following documents are attached to bid submittal Yes No

1. Documentation of NC drinking water and/or wastewater certification
2. A completed Bid Tab with unit cost (Excel Spreadsheet sent with bid doc)
3. A comprehensive list of all testing the lab is certified and capable of performing not listed on the cost proposal sheet. Please include pricing for this testing. It is anticipated that additional testing will be needed that is not known at this time.
4. The laboratory's last NC DW and/or GW/WW Laboratory Certification Audit report. Please include both if bidding on both drinking water and groundwater/wastewater parameters.

**Section 3 Additional Questions**

- i. Please explain how samples and containers will be picked-up, delivered or shipped.

---

---

---

---

---

---

---

---

- ii. Please detail the charge for reporting additional quality control associated with an analysis.

---

---

---

---

---

---

---

---

- iii. Discount for testing multiple samples for the same constituents. This is for information purposes only.

---

---

iv. Multiplier charged for quicker turnaround times. This is for information purposes only.

---

v. Will Laboratory be subcontracting testing services? Yes No  
If Yes please provide the Laboratory name, location and sections of the bid form the subcontracted laboratory will be providing testing services for.

---

---

---

vi. Please list any sample disposal fees below:

---

---

---

vii. Please list any exceptions to the bid below:

---

---

---

viii. Can the laboratory meet the turnaround times as detailed in item 17 of the Technical Specification? Yes No

ix. Can the laboratory provide the data deliverables as detailed in item 16 of the Technical Specification? Yes No

x. Can the laboratory meet all reporting limits for items included in the laboratory's bid as detailed on the cost proposal form? Yes No

**Section 4 Bidder Signature**

By Signing below I Certify that I have carefully read and fully understand the information contained in this Request for Bid; and that I have the capability to successfully undertake and complete the responsibilities and obligations of the Bid being submitted and have the authority to sign bids on behalf of my organization.

BY(Signed): \_\_\_\_\_

BY (Printed): \_\_\_\_\_

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

COMPANY: \_\_\_\_\_

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

\_\_\_\_\_

TELEPHONE: \_\_\_\_\_

EMAIL: \_\_\_\_\_

WHAT STATE IS CORPORATION INCORPORATED IN? \_\_\_\_\_

NORTH CAROLINA  
COUNTY OF NEW HANOVER

CONTRACT NO: 21-S0802

AGREEMENT BETWEEN  
THE CAPE FEAR PUBLIC UTILITY AUTHORITY  
AND

---

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

WITNESSETH:

1. Purpose:

Laboratory testing and reporting will be performed for the Cape Fear Public Utility Authority (CFPUA), Wilmington, NC.

2. Scope of Services

The scope of services shall be as described in the Request for Proposals.

3. **Contract Period:**

4. The term of the agreement shall be for Three (3) Years. Prices are to held firm for the three year period. This agreement may be renewed for up to one (1) additional twelve (12) month periods at the same prices, terms and conditions, if all contracting parties so agree and services provided by the vendor have been satisfactory. The contract period runs from July 1, 2021 through June 30, 2024 with the option for one additional 12-month period through June 30, 2025.

5. Costs & Payment Terms

Costs – will be added after selection. A not to exceed amount shall be established each year of the contract. There is no guarantee the full amount of the contract will be utilized.

Payments shall be made from AUTHORITY to LABORATORY within 30 days of receipt of invoice.

LABORATORY shall be paid by Electronic Fund Transfer (EFT).

6. Other Terms & Conditions

A. Release and Indemnity

To the fullest extent permitted by Laws and Regulations, LABORATORY shall hold harmless and indemnify the Authority, its officers, directors, members, partners, employees, of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of the obligations herein undertaken or resulting from the operations conducted, to the extent caused by any negligent act or omission of LABORATORY, any sub-consultant of LABORATORY, or any individual or entity employed by any of them to perform any of the Services or anyone for whose acts any of them may be liable.

B. Personnel

It is mutually agreed that LABORATORY is an independent contractor and not an agent or employee of the Authority nor does this create any type of joint employment relationship with any of the employees of the LABORATORY. As such the LABORATORY, or any employees thereof, or sub-contractors, or any employees thereof, shall not be entitled to any Authority employment benefits, such as, but not limited to, wages or salary, vacation, sick leave, insurance, workers' compensation, or pension and retirement benefits.

C. Conflict of Interest

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

D. Non-Waiver of Rights



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

E. Suspension or Termination of Agreement

1. In the event that review of the LABORATORY'S performance shows non-conformance to the work required by this contract, the Scope of Services or other terms or conditions contained herein as a result of the LABORATORY'S negligent errors, omissions or acts, the LABORATORY shall be in breach of this agreement and the AUTHORITY may take corrective action as it deems necessary including, but not limited to, termination, withholding or reduction of payment.
2. The AUTHORITY shall also have the right to suspend this agreement upon written notice to the LABORATORY. Such written notice shall state the reasons for suspension and allow for a review period of ten (10) days during which the LABORATORY shall be provided with an opportunity to respond with an explanation or justification, and/or shall undertake any reasonable remedial action required by the AUTHORITY. If, in the opinion of the AUTHORITY the LABORATORY remains in violation of this agreement at the completion of the ten (10) day suspension period, the AUTHORITY shall have the right to terminate this agreement whereupon all obligations of the AUTHORITY to the LABORATORY shall cease.
3. In the event this project is terminated prior to completion of the services by the LABORATORY, the LABORATORY shall be paid for services performed to the date of termination. (In no event will the amount due LABORATORY in the event of termination exceed that amount set forth in paragraph IV of this agreement. LABORATORY shall be paid for all reimbursable, as defined herein, which are due him.)
4. This agreement may be terminated without cause by the AUTHORITY with thirty (30) days written notice to LABORATORY.
5. Nothing contained herein shall prevent the AUTHORITY from pursuing any other remedy which it may have against LABORATORY including claims for damages.

F. Assignment of Agreement

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

**G. Insurance Requirements**

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

Certificates and Notice of Cancellation. Before commencing work under this contract, LABORATORY 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, and shall contain the following statement:

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 LABORATORY'S performance of professional services under this contract. The LABORATORY shall be responsible for any liability directly or indirectly arising out of professional services performed under this contract by a subcontractor which liability is not covered by the subcontractor's insurance.

**1. Commercial General Liability**

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

**2. Workers' Compensation and Employer's Liability**

The LABORATORY shall maintain during the life of this contract WORKERS' COMPENSATION and EMPLOYER'S LIABILITY INSURANCE covering all of the LABORATORY'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.

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

### **3. Business Auto Liability**

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

### **4. Professional Liability Insurance**

LABORATORY shall maintain in force 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.

If any of the policies provide claims-made coverage:

1. The Retroactive Date must be shown and must be before the date of this contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work.
3. 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,

Company must purchase “extended reporting” coverage for a minimum of five (5) years after completion of work.

The LABORATORY 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 LABORATORY, a copy thereof shall be inserted in each copy of the contract documents and upon insertion shall 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 any cancellation or non-renewal of these coverages.

H. Findings Confidential

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

I. Subcontracts

The LABORATORY shall utilize no subcontracts for carrying out the services to be performed under this agreement.

J. Entire Agreement

This agreement constitutes the entire understanding of the parties.

K. Binding Effect

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

L. Continuing Obligation

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

M. Reference

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

N. 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.

P. Immunity Not Waived

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

Q. Saving Clause

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

R. Other Laws and Regulations

LABORATORY will comply with any and all applicable federal, state and local standards, regulations, laws, statutes and ordinances regarding toxic, hazardous and solid wastes and any other pollutants; public and private nuisances; health or safety; and zoning, subdivision or other land use controls. LABORATORY 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.

S. Amendments

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

T. Non-Discrimination

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

U. NON-APPROPRIATION OF FUNDS.

If the governing board does not appropriate the funding needed by CFPUA to make payments under this Agreement for a given fiscal year, CFPUA will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, CFPUA will promptly notify the LABORATORY of the non-appropriation and this Agreement will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by CFPUA, which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.

V. E-VERIFY

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

W. ADVERTISING

No advertising, sales promotion, or other materials of the firm will identify or reference this contract, or the Cape Fear Public Utility Authority's name without the written consent of the 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.”

#### X. Iran Divestment Act

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

#### Y. Environmental Policy

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

#### Z. LABORATORY's Acknowledgments

The CONTRACTOR acknowledges, represents, and warrants the following:

- A. LABORATORY has examined and carefully studied the Contract Documents and other related data identified in the Bidding Documents.
- C. LABORATORY is familiar with and is satisfied as to all Federal, State, and Local laws and regulations that may affect cost, progress, and performance of Work.
- F. LABORATORY has given written notice to the AUTHORITY of all conflicts, errors, ambiguities, or discrepancies that the LABORATORY has discovered in the Contract Documents and the written resolution thereof by AUTHORITY is acceptable to LABORATORY.
- G. The Bid, for which this Agreement is based, is genuine and not made in the interest of or on the behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation. Also, LABORATORY has not sought by collusion any advantage over any other Bidder or over OWNER.

#### V. Contract Documents as Part Of This Agreement

The following are included in the Contract Documents as part of this Agreement:

- A. This Agreement
- B. The Proposal Document including the bid tab
- C. Total project addenda distributed before Bid Opening:



**Cape Fear Public Utility Authority Contract # 21-S0802**

**IN WITNESS WHEREOF**, the OWNER has caused this Agreement to be duly executed in its name and behalf and the LABORATORY 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 \_\_\_\_.

**LABORATORY**

SEAL:

\_\_\_\_\_

ADDRESS:

\_\_\_\_\_

\_\_\_\_\_

ATTEST:

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

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

PRINTED: \_\_\_\_\_

PRINTED: \_\_\_\_\_

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

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

I, \_\_\_\_\_, a Notary Public, certify that the corporation's Secretary, Assistant Secretary, or Trust Officer, Mr./Mrs./Ms. \_\_\_\_\_ personally came before me this day and acknowledged that s/he is the \_\_\_\_\_ of \_\_\_\_\_, a corporation, and that by authority duly given and as act of the corporation, the foregoing instrument was signed in its name by its President, Vice President, or Assistant Vice President, Mr./Mrs./Ms. \_\_\_\_\_, sealed with its Corporate Seal, and attested by him/herself as its Secretary or Assistant Secretary.

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

\_\_\_\_\_

Notary Public

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

**Cape Fear Public Utility Authority Contract # 21-S0802**

**OWNER**

CAPE FEAR PUBLIC UTILITY AUTHORITY SEAL:

235 Government Center Drive  
Wilmington, North Carolina 28403

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

James R Flechtner  
*Executive Director*

ATTEST: \_\_\_\_\_

Donna S. Pope  
*Clerk to the Board*

NORTH CAROLINA  
NEW HANOVER COUNTY

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

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

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

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

**AUTHORITY ATTORNEY'S CERTIFICATION**

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

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

**AUTHORITY ACCOUNTANT'S CERTIFICATION**

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

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