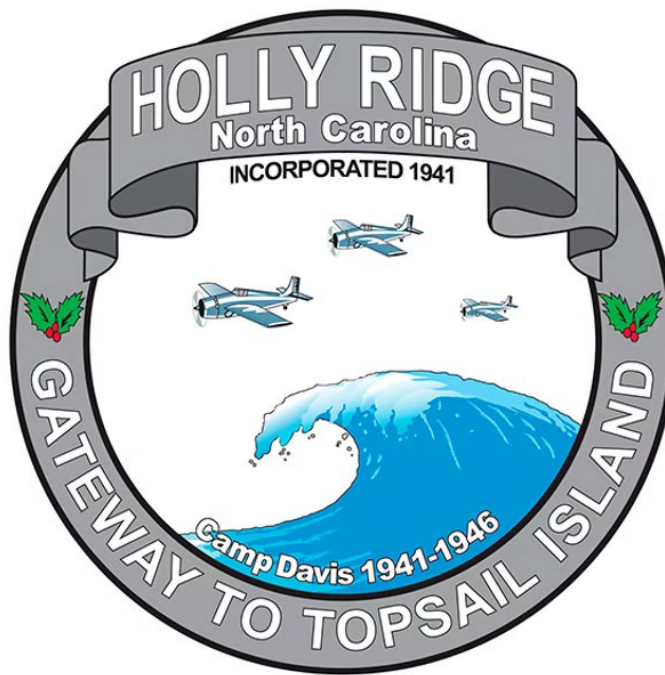


REQUEST FOR PROPOSALS (RFP)

for

CONSTRUCTION SERVICES

CAMP DAVIS INDUSTRIAL PARK, PHASE II



Town of Holly Ridge, NC

August 9, 2021 (2<sup>nd</sup> Request)

## Request for Proposals for Construction Services

### **PURPOSE AND INTRODUCTION:**

The purpose of this Request for Proposals (RFP) is for the Town of Holly Ridge, NC (hereinafter referred to as the Town) to receive bids from qualified individuals, firms, and organizations capable of providing the Town with construction services for the development of Camp Davis Industrial Park, Phase II.

### **PROJECT DESCRIPTION:**

Phase II of Camp Davis Industrial Park Phase II will consist of the development of 60 +/- acres and will yield eight light industrial lots. The construction is fully permitted and the site shovel ready. The construction entails: demolition and removal of existing structures and materials; grading; stormwater structures; water system; sanitary sewer system; road construction; and other items as depicted and described on the contract drawings (Appendix A) and Scope of Services (Appendix B.) Proposers are invited to bid on any or all of the bid components listed on the attached Pricing Sheet (Appendix E.)

### **PROJECT DETAILS ARE FOUND IN APPENDIX A.**

### **OPTIONAL SITE TOUR:**

For potential and interested candidates, an optional site tour and Questions and Answer session will be held on the following:

DATE: August 16<sup>th</sup>, 2021 @ 2:00 p.m.

PLACE: 212 N. Dyson Street, Holly Ridge, NC  
28445

## **CONTACT PERSON:**

Direct any all-technical inquiries concerning this Request for Proposals in writing to the Town Manager. Questions must be submitted by 2:00 P.M. on August 17<sup>th</sup>, 2021.

Heather Reynolds, Town Manager  
PO BOX 145, Holly Ridge, NC 28445  
Manager@hollyridgenc.org

## **CALENDAR OF EVENTS:**

1. August 9<sup>th</sup>, 2021 Request for Proposals Release Date
2. August 16<sup>th</sup>, 2021 Optional Site Tour
3. August 17<sup>th</sup>, 2021 Request for Clarifications Deadline 2:00 P.M.
4. August 18<sup>th</sup>, 2021 Solicitation Protest Deadline 2:00 P.M.
5. August 23<sup>rd</sup>, 2021 RFP Submittal Deadline, No Later Than 4:00 P.M.
6. August 24<sup>th</sup> – September 3<sup>rd</sup>, 2021:
  - Evaluation Committee Application Review
  - Evaluation Committee Recommendation (Short List)
  - Onsite Short List Interviews
7. September 6<sup>th</sup>, 2021 Notice of Intent to Award Contract
8. September 13<sup>th</sup>, 2021 Selection Protest Deadline 2:00 P.M.
9. September 14<sup>th</sup>, 2021 Contract Execution Date

## **PROPOSALS:**

The responding individual, firm or organization shall present their Proposals as outlined in the RESPONSE FORMAT/SUBMITTAL REQUIREMENTS section of this document. Proposers must have adequate organization, facilities, equipment, and personnel to ensure prompt and efficient service to the Town. The Town reserves the right to inspect the facilities and organization or to take any other action necessary to determine ability to perform in accordance with the terms and conditions of the Contract. In the event the proposals do not meet the Town's requirements, alternative delivery methods may be pursued. The Town reserves the right, at its sole discretion, to accept or reject any or all proposals and maintains no obligation to select any proposal. Scope of services is listed in Appendix B: Scope of Services for Camp Davis Industrial Park, Phase II.

## **DELIVERY METHOD:**

The Town is seeking a General Contractor to coordinate and manage any or all components of the project.

## **SELECTION CRITERIA:**

The follow criteria will be used in selecting the Project Manager:

1. Relevant experience, capabilities and technical competence, which the candidate may demonstrate with the candidate's proposed approach and methodology to meet the project requirements;
2. Resources committed to perform the work and the proportion of the time that the candidate's staff and subcontractors would spend on the project.
3. Records from previous projects, quality of work, ability to meet schedules, cost control and contract administration;
4. Ownership status and employment practices regarding minority, women, emerging small businesses, historically underutilized businesses;
5. Availability and familiarity to the project locale and the Town's policy and employment practices regarding local contractors;
6. Proposed project management techniques and typical fee schedule; and
7. Answer to the following question: "Why are you and your firm qualified to assist Holly Ridge with this project?"

## **SUBMITTAL PROCEDURES:**

Proposers shall submit five (5) original paper submittals and one electronic copy (via email, or on thumb drive in .PDF format.) Proposals must be submitted by the date and time indicated below. Proposals not submitted by that time will be returned unopened. Proposals shall not be valid unless sealed in a single envelope or box marked:

"CONSTRUCTION MANAGEMENT SERVICES FOR THE TOWN OF HOLLY RIDGE" and received by:

Town of Holly Ridge

Attn:

Heather Reynolds,

Town Manager

Proposals will be received until 4:00 PM on August 23<sup>rd</sup>, 2021, hand delivered at Town Hall, 212 N. Dyson Street, Holly Ridge, NC 28445 or by mail PO BOX 145, Holly Ridge, NC 28445. Facsimile submissions will not be considered. Any proposals submitted in an improper format shall be deemed nonresponsive and shall be summarily rejected by the Town.

## **RESPONSE FORMAT / SUBMITTAL REQUIREMENTS:**

The proposal must be organized according to the following format. Information should be concise and specific to address each request. Include a table of contents and tabs to organize the material in the following order.

1. Letter of Interest: To be no more than two (2) pages long. The letter of interest may contain any information not shown elsewhere in the submittals and should answer the specific question of the Selection Criteria, item 7, page 4.
2. Qualifications of the Firm: To be no more than one (1) page. Provide a brief description of the history and capabilities of the firm. Describe the types of projects or services the firm performs and the dollar value of each.
3. Presentation of the Project Manager: To be no more than one (1) page. Describe the proposed Project Manager and all persons being proposed for the project. Provide the qualifications of the individuals who have been identified. Include length of time they have been with the firm, a description of the experience they have completed and any other information the selection committee might find useful in evaluating the qualifications of the team.
4. Specific Project Experience: To be no more than one (1) page. List recent construction projects your firm has completed in the region that are specifically relevant to the proposed scope of the project.
5. Quality Control: To be no more than one (1) page. Provide a summary of your firm's approach to quality control during construction and pre-construction services.
6. Claims / disputes / litigation: Identify all unresolved and ongoing claims and disputes against your firm more than \$100,000. Include any claims against the principals of your firm or any claims your company may have against a third party. Provide a history of such litigation, including the outcomes, for the past five years.
7. Fee. Complete and submit the Appendix E pricing sheet.
8. Signed Proposer Representations and Certifications Form (Appendix D)

## **COST OF RESPONDING:**

All costs incurred by the Proposer in preparation of responses to this RFP, including presentations to the Town and/or for participation in an interview shall be borne in solely by the Proposer; the Town shall not be liable for any of these costs. At no time will the Town provide reimbursement for submission of a response.

## **EVALUATION AND SELECTION OF CONTRACTOR:**

A review team comprised of the Town's Council Members and employees will evaluate each firm's submission based upon the criteria stated in this Request for Proposals and the ability to execute the services. The top application or applications will be invited to make oral presentations of their proposal to the review team. Following the evaluation process, the team will then select the firm that the Town considers most qualified. The successful Proposer will be requested to enter a contract substantially similar to the Services Contract attached as Appendix C. The Town reserves the right to negotiate modifications to Statements of Proposals and subsequent Town Services Contract that it deems acceptable. The Town reserves the right to terminate negotiations

in the event it deems the progress towards a contract to be insufficient. Firms will be evaluated in accordance with the criteria listed below. All criteria will be graded on a point scale as listed below, with 8 being the lowest score possible score.

<u>Category</u>	<u>Rating</u>
1. Specialized Experience	1 - 10
2. Resources Available	1 - 10
3. Past Record and References	1 - 10
4. Ownership Status and Employment Practices	1 - 10
5. Availability and Familiarity with Onslow County	1 - 20
6. Techniques and Fee Schedule	1 - 10
7. Statement of Reasoning	1 - 20
8. Met ALL Proposal Requirements in RFP	<u>1 - 10</u>
 TOTAL SCALE SCORE	 8 - 100

#### **RESERVATIONS:**

The Town reserves the right to reject any and all submittals, or any part of any submittal, to waive any irregularities or informalities in any submittal, and to accept that submittal which is deemed to be in the best interest of the Town. The Town reserves the right to establish additional contracts that may be similar in nature to any contract resulting for this RFP as best serves the needs of the Town. The Town may cancel the procurement or reject any or all proposals in accordance with existing laws.

#### **DESIGNATED CONTACT:**

The awarded firm shall appoint a person to act as a primary contact with the Town. This person or back-up shall be readily available during normal working hours by phone or in person and shall be knowledgeable of the terms of the Contract.

#### **INSURANCE REQUIREMENTS:**

Include Proof of Insurance furnished by the applicant's carrier to guarantee the applicant is insured. The awarded applicant must file with the Town, certificates of insurance prior to commencement of work evidencing the Town as a certificate holder as additionally insured with the following minimum coverage:

Liability Insurance: The party submitting an RFP, if selected, shall furnish, pay for, and maintain during the life of any contract entered into with the Town against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Proposer, his agents, representatives, employees or subcontractors.

Comprehensive General Liability: \$1,000,000 **per occurrence** for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit, \$2,000,000. Comprehensive general liability will be on an occurrence basis including products and completed operations.

Professional Liability: A combined single limit of not less than \$1,000,000 each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000. This is to cover damages caused by error, omission, or negligent acts related to professional services provided under this Contract. The policy must provide extended reporting period coverage for claims made within two years after The Contract is completed.

Automobile Liability: \$1,000,000 **per accident** for bodily injury and property damage.

Workers' Compensation: A Certificate of Insurance in the amount of no less than \$500,000 will be maintained for the life of this contract.

All policies and endorsements must be approved by the Town of Holly Ridge and its agent of record.

#### **INDEMNIFICATION:**

The Proposer shall defend, indemnify, save, and hold the Town harmless from any and all claims, suits, judgments and liability for death, personal injury, bodily injury, or property damage arising directly or indirectly from any performance under this RFP, or a subsequent purchase order or contract entered into by Town and Proposer, its employees, subcontractors, or assigns, including legal fees, court costs, or other legal expenses. Proposer acknowledges that it is solely responsible for complying with the terms of this RFP or a purchase order or contract arising out of this RFP. In addition, the Proposer shall, at its expense, secure and provide to the Town, prior to beginning performance under a contract, all insurance coverage as required in this RFP.

Subcontractors: Proposer shall require and verify all subcontractors maintain insurance, including workers' compensation insurance, subject to all the requirements stated herein prior to beginning work.

#### **ASSURANCES:**

The Proposer shall provide a statement of assurance (Appendix D) that the firm is not presently in violations of any statutes or regulatory rules that might have an impact on the firm's operations. All applicable laws and regulations of the State of North Carolina and ordinances and regulations of the Town and Onslow County will apply.

## **DEVIATIONS FROM SPECIFICATIONS:**

Proposers shall clearly indicate, as applicable, all areas in which the items/services he/she proposes do not fully comply with the requirements of this submittal. The decision as to whether an item fully complies with the stated requirements rests solely with the Town.

## **NO COLLUSION:**

By offering a submission to this RFP, the Proposer certifies that no attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not to submit a submission for the purpose of restricting competition. The only person(s) or principal(s) interested in this submission are named therein and that no person other than those therein mentioned has/have any interest in this submission or in agreement to be entered. Any prospective firm should make an affirmative statement in its proposals to the effect that, to its knowledge, its retention would not result in a conflict of interest with any party.

## **SUBMITTAL WITHDRAWAL:**

After submittals are opened, corrections or modifications to submittals are not permitted, but a Proposer may be permitted to withdraw an erroneous submittal prior to the award by the Town, if the following is established:

1. That the Proposer acted in good faith in submitting the submittal;
2. That in preparing the submittal there was an error of such magnitude that enforcement of the submittal would create severe hardship upon the Proposer;
3. That the error was not the result of gross negligence or willful inattention on the part of the Proposer;
4. That the error was discovered and communicated to the Town within twenty –four (24) hours of submittal opening, along with a request for permission to withdraw the submittal;
5. The Proposer submits documentation and an explanation of how the error was made.



## **PROTEST PROCEDURE:**

1. All proposals will become part of the public record for this Project, without obligation to the Town. The Town reserves the right to reject any or all proposals received as a result of this RFP and, if doing so would be in the public interest, cancel this solicitation. The Town reserves the right to consider a response or proposals in whole or in part, and to determine the responsiveness of a submittal by reference to the response taken as a whole. Contractors will be held to the terms submitted in their proposals.
2. Requests for changes or clarifications of the Request for Proposals shall be delivered in writing by 2:00 p.m. on August 17<sup>th</sup>, 2021.
3. Protests of the requirements, evaluation criteria, or contractual provisions in this Request for Proposals, shall be delivered in writing by 2:00 p.m. on August 18<sup>th</sup>, 2021, as stated in the Calendar of Events and to the Contact Person. Protests of, and requests for, changes to technical or contractual requirements, specifications or provisions shall include the reason for the protest and any proposed changes to the requirements. No such protests or requests shall be considered if received after the deadline. No oral, telegraphic, telephone, facsimile, or email protests or requests will be accepted. The Town will consider all protests and requested changes and, if appropriate, amend the RFP. Only amendments issued in writing by the Town will change the requirements, specifications, or provisions of this RFP.
4. Any Proposer responding to the RFP claiming to have been adversely affected or aggrieved by the selection of a competing proposal, shall submit a written selection protest to the Contact Person. Written notification must be received by 2:00 p.m. on September 13<sup>th</sup>, 2021, as stated in the Schedule set forth in the Calendar of Events. No oral telegraphic, telephone, facsimile, or email protests will be accepted. No protest shall be considered if received after the established protest deadline.
5. In order to be considered, a protest shall be in writing and shall include:
  - a. The name and address of the aggrieved person;
  - b. The contract title under which the protest is submitted;
  - c. A detailed description of the specific grounds for protest and any supporting documentation;
  - d. The specific ruling or relief requested. In addition, in the event the protesting party asserts its responsibility as a ground for protest, it must address in detail each of the matters in its written protest;
  - e. The written protest shall be mailed or delivered to Heather Reynolds, Town Manager; and include
  - f. The label "Protest".
6. Upon receipt of a written protest, the Town shall promptly consider the protest. The Town may give notice of the protest and its basis to other persons, including Consultants involved in or affected by the protest; such other persons may be given an opportunity to submit their views and relevant information. If the protest is not resolved by mutual agreement of the aggrieved person and the Town, the Town will promptly issue a decision in writing stating the reasons for the action taken. A copy of the decision shall be mailed by certified mail, return receipt requested, or

otherwise promptly furnished to the aggrieved person and any other interested parties.

7. Strict compliance with the protest procedures set forth herein is essential in furtherance of the public interest. Any aggrieved party that fails to comply strictly with these protest procedures is deemed, by such failure, to have waived and relinquished forever any right or claim with respect to alleged irregularities in connection with the solicitation or award. No person or party may pursue any action in court challenging the solicitation or award of this contract without first exhausting the administrative procedures specified herein and receiving the Town's final decision.

8. The Town shall retain this RFP and one copy of each original response received from all responding Proposers, together with copies of all documents pertaining to the selection of qualified Contractors, and award of a contract. These documents will be made a part of a file or record, which shall be open to public inspection, after proposer selection and award, is announced. If a response contains any information that is considered a trade secret, Proposers must mark each sheet of such information with the following legend: "This information constitutes a trade secret, and shall not be disclosed except in accordance with North Carolina Law."

**TOWN OF HOLLY RIDGE**

**REQUEST FOR PROPOSALS**

**APPENDIX A: Summary of Projects for Camp Davis Industrial Park, Phase II**

Demolition and construction of project components in accordance with construction drawings and specifications as provided by the Town and depicted on the following sealed plan:

- Camp Davis Industrial Park Phase II, September, 2018, Holly Ridge, North Carolina
- Port City Consulting Engineers, PLLC, 6216 Stonebridge Road, Wilmington, NC
- Mark Hargrave, PE, License No. P-1032

## **TOWN OF HOLLY RIDGE**

### **REQUEST FOR PROPOSALS**

#### **APPENDIX B: Scope of Services for Camp Davis Industrial Park, Phase II**

Throughout the Scope of Work, Contractor shall meet the highest standards prevalent in the construction industry.

##### PRE-CONSTRUCTION PHASE: Potential start date of October 15, 2021

1. Develop a program schedule to identify the duration for each component of the project, for which Contractor is bidding, during the pre-construction, construction and post-construction phases of the work.
2. Prepare a complete plan review of the working drawings and specifications and recommend alternative solutions whenever necessary.
3. If required assist the Town in selecting and retaining professional services of a surveyor, special consultants and testing laboratories; and coordinate these services.
4. Assist the Town in negotiations with the utility companies as well as city, state, federal and other entities during the pre-construction phase to ensure proper compliance with entity requirements.
5. Assist the Town in Value Engineering efforts.

##### POST-CONSTRUCTION PHASE: Substantial Completion Date, October 15, 2022

1. Check each item on the punch list as it is corrected after substantial completion.
2. Insure that all project close-out items (i.e. bonds, warranties, as-built drawings, jurisdictional final inspection reports, certificate of substantial completion etc.) have been completed.
3. Document any possibilities of damages by others to work completed prior to occupancy by the Town.

**TOWN OF HOLLY RIDGE  
REQUEST FOR PROPOSALS  
APPENDIX C: Proposed Contract Terms and Conditions**

**TOWN OF HOLLY RIDGE SERVICES CONTRACT**

This Contract is made and entered into by and between the Town of Holly Ridge, North Carolina, hereinafter "Town", and \_\_\_\_\_, hereinafter referred to as "Contractor".

IT IS HEREBY AGREED by and between the parties above mentioned, for and in consideration of the mutual promises hereinafter stated as follows:

1. **Effective Date.** This Contract is effective upon execution by all parties and will continue to be in effect until \_\_\_\_\_, unless extended by mutual written agreement of the parties.

2. **Scope of Work.** Contractor shall perform all services described in Exhibit 1, attached and incorporated herein.

3. **Consideration.** Town shall pay Contractor as follows: \_\_\_\_\_. The maximum payment under this Contract, including expenses is \_\_\_\_\_. Contractor shall submit an invoice to Town attn: \_\_\_\_\_ within 30 days after the work is completed. Town shall pay invoice within 30 days of receipt for all work completed and accepted by Town.

Notwithstanding any other provision of this Contract, in the event that Contractor fails to submit any required reports when due, or fails to perform or document the performance of contracted services, the Town may withhold payments under this Contract. Such withholding of payment for cause shall continue until the Contractor submits required reports, performs the required services or establishes, to the Town's satisfaction, that such failure arose out of causes beyond the control and without the fault or negligence of the Contractor.

4. **Authorized Representatives.** The parties designate the following individuals to be their respective authorized representative for all matter with respect to the Work to be performed under this Contract:

Holly Ridge

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

Contractor

name  
phone  
fax  
email

5. **Independent Contractor Status.** Contractor shall be an independent contractor for all purposes and shall be entitled only to the compensation provided for in this Contract. Under no circumstances shall Contractor be considered an employee of the Town. Contractor will provide all tools or equipment necessary to carry out this Contract and will exercise complete control in achieving the results specified in the Scope of Work. Contractor is solely responsible for its performance under this Contract; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Contract. Contractor shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to Town.

**6 Ownership of Work Product.** For purposes of this Contract, “Work Product” means all services Contractor delivers or is required to deliver to Town pursuant to this Contract. “Contractor Intellectual Property” means any intellectual property owned by Contractor and developed independently from services.

Town shall have no rights in any pre-existing Contractor Intellectual Property of Contractor provided to Town by Contractor in the performance of this contract except to copy, use and re-use any such Contractor Intellectual Property for Town use only. However, all Work Product created by the Contractor as part of Contractor’s performance of this Contract shall be the exclusive property of the Town. All Work Product authored by Contractor under this Contract shall be deemed “works made for hire” to the extent permitted by the United States Copyright Act. To the extent Town is not the owner of the intellectual property rights in such Work Product, Contractor hereby irrevocably assigns to Town any and all of its rights, title and interest in such Work Product. Upon Town’s reasonable request, Contractor shall execute such further documents and instruments reasonably necessary to fully vest such rights in Town. Contractor forever waives any and all rights relating to such Work Product created under this Contract, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

If intellectual property rights in the Work Product are Contractor Intellectual Property, Contractor hereby grants to Town an irrevocable, non-exclusive, perpetual, royalty-free license to use, make, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Contractor Intellectual Property, and to authorize others to do the same on Town’s behalf. If this Contract is terminated prior to completion, and the Town is not in default, Town, in addition to any other rights provided by this Contract, may require the Contractor to transfer and deliver all partially completed Work Product, reports or documentation that the Contractor has specifically developed or specifically acquired for the performance of this Contract.

**7. Representations and Warranties.** Contractor represents and warrants to Town that: (a) Contractor has the power and authority to enter into and perform the Contract; (b) the Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; and (c) Contractor’s performance under the Contract shall in accordance with professional standards applicable to the work. The professional standards applicable to this Work shall be defined as the care and skill generally expected of a similar firm, providing similar services on a similar project of similar complexity in the same geographical area.

**8. Records Maintenance.** Contractor shall retain, maintain and keep accessible all records relevant to this Contract (“Records”) for a minimum of six (6) years, following Contract termination or full performance or any longer period as may be required by applicable law, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever is later. Contractor shall maintain all financial Records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, Contractor shall permit the Town’s authorized representatives access to the Records at reasonable times and places for purposes of examination and copying.

**9. Compliance with Laws.** Contractor shall comply with all federal, state, and local laws applicable to the Work under this Contract, and all regulations and administrative rules established pursuant to those laws, including, without limitation, the following:

a. Contractor shall make payment promptly, as due, to all persons supplying to the Contractor labor or material for the prosecution of the Work provided for in this Contract; pay all contributions or amounts due the Workers Compensation Fund from the Contractor or subcontractor incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the state, county, Town, or subdivision thereof, on account of any labor or material furnished; and pay to the Department of Revenue all sums withheld from employees.

b. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as the claim becomes due, the Town may pay the claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this Contract. The payment of a claim in the manner authorized in this section shall not relieve the Contractor or the Contractor's surety from any obligation with respect to any unpaid claims.

c. Contractor shall promptly, as due, make payments to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of the Contractor, of all sums which the Contractor agrees to pay for the services and all moneys and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for the service.

d. Contractor shall maintain in effect all licenses, permits and certifications required by state law or County regulation for the performance of the Work. Contractor shall notify Town immediately if any license, permit, or certification required for performance of this Contract shall cease to be in effect for any reason.

10. **Indemnity.** Contractor shall defend, save, hold harmless, and indemnify Town and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including attorney's fees, resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under this Contract. Contractor shall have control of the defense and settlement of any claim that is subject to this section. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of Town or any department of Town, nor purport to act as legal representative of Town or any of its departments, without first receiving from Town authority to act as legal counsel for Town, nor shall Contractor settle any claim on behalf of Town without the approval of Town. Town may, at its election and expense, assume its own defense and settlement.

11. **Subcontracting.** Contractor shall include in any permitted subcontracts under this Contract a requirement that the subcontractor be bound by this Contract as if subcontractor were Contractor. Town's consent to any subcontract under this Contract shall not relieve Contractor of any of its duties or obligations under this Contract. Moreover, approval by the Town of a subcontract shall not result in any obligations or liabilities to the Town in addition to those set forth in this Contract, including, without limitation, the agreed rates of payment and total consideration. Contractor shall be solely responsible for any and all obligations owing to the subcontractors.

**12. Termination.** This Contract may be terminated as follows:

- a. Town and Contractor, by mutual written agreement, may terminate this Contract at any time.
- b. Town in its sole discretion may terminate this Contract for any reason on 30 days written notice to Contractor.
- c. Either Town or Contractor may terminate this Contract in the event of a material breach of the Contract by the other. Prior to such termination the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the material breach has not entirely cured the breach within 15 days of the date of the notice, (except as otherwise provided in this section 12(c)). developed an acceptable plan for the cure of the material breach within 15 days of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.
- d. Notwithstanding section 12(c), Town may terminate this Contract immediately by written notice to Contractor upon denial, suspension, revocation or non-renewal of any license, permit or certificate that Contractor must hold to provide services under this Contract.

**13. Payment on Early Termination.** Upon termination pursuant to section 5, payment shall be made as follows:

- a. If terminated under 12(a) or 12(b) for the convenience of the Town, the Town shall pay Contractor for Work performed prior to the termination date if such Work was performed in accordance with the Contract.

The Town shall not be liable for direct, indirect, or consequential damages. Termination shall not result in a waiver of any other claim Town may have against Contractor.

- b. If terminated under 12(c) by the Contractor due to a material breach by the Town, then the Town shall pay the Contractor for Work performed prior to the termination date if such Work was performed in accordance with the Contract.
- c. If terminated under 12(c) or 12(d) by the Town due to a material breach by the Contractor, then the Town shall pay the Contractor for Work performed prior to the termination date provided such Work was performed in accordance with the Contract less any setoff to which the Town is entitled.

**14. Remedies.** In the event of material breach of this Contract the Parties shall have the following remedies:

- a. If terminated under 12(c) by the Town due to a material breach by the Contractor, the Town may complete the Work either itself, by agreement with another Contractor, or by a combination thereof. If the cost of completing the Work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then the Contractor shall pay to the Town the amount of the reasonable excess.
- b. In addition to the remedies in sections 12 and 14 for a material breach by the Contractor, the Town also shall be entitled to any other equitable and legal remedies that are available.
- c. If the Town materially breaches this Contract, Contractor's remedy shall be limited to



termination of the Contract and receipt of Contract payments to which Contractor is entitled.

15. **Limitations of Liability.** Except for liability arising under or related to Section 12, neither party shall be liable for (i) any indirect, incidental, consequential or special damages under the contract or (ii) any damages of any sort arising solely from the termination of this contract in accordance with its terms.

16. **Insurance.** Contractor shall provide insurance in accordance with Exhibit 2.

17. **Debt Limitation and Non-Appropriation.** In the event that sufficient funds shall not be appropriated for the payment of consideration required to be paid under the Contract, Town's obligation to pay for such Work is subject to approval of future appropriations to fund this Contract by Town's Council.

18. **No Third Party Beneficiaries; Successors and Assigns.** The Town and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or to provide any benefit or right, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract. Nothing in this Contract is intended to require any party to do or undertake any activity which it is not authorized to do. This

Contract shall be binding upon and inure to the benefit of the Town, Contractor, and their respective successors and assigns, except that Contractor may not assign or transfer its rights or obligations hereunder or any interest herein without the prior consent in writing of the Town, which consent may be withheld for any reason.

19. **Severability.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Contract did not contain the particular term or provision held to be invalid.

20. **Entire Agreement; Waiver.** This Contract contains the entire understanding of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Contract. The failure of Town to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision. No waiver, consent, modification or change in the terms of this Contract shall bind either party unless in writing signed by both Parties. Any written waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given.

21. **Governing Law; Venue.** This Contract shall be governed by and construed in accordance with the laws of the State of North Carolina without regard to principles of conflicts of law.

22. **Attorney Fees.** In the event an action, suit or proceeding, including any and all appeals therefrom, is brought for failure to observe any of the terms of this Contract, each party shall be responsible for their own attorney fees, expenses, costs and disbursements incurred as a result of said action, suit, proceeding or appeal.

CONTRACTOR:

\_\_\_\_\_

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

TOWN OF HOLLY RIDGE:

\_\_\_\_\_

Town Manager

\_\_\_\_\_

Mayor

\_\_\_\_\_

Deputy Town Clerk

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

EXHIBIT 1

SCOPE OF WORK

**AS IDENTIFIED IN RFP (APPENDIX B)**

## EXHIBIT 2

### INSURANCE REQUIREMENTS

Contractor shall at all times maintain in force at Contractor's expense, each insurance noted below: \*\*

Workers Compensation insurance, which requires subject employers to provide workers' compensation coverage in accordance with applicable state laws and regulations for all subject workers. Contractor and all subcontractors of Contractor with one or more employees must have this insurance unless exempt state law. Employer's Liability Insurance with coverage limits of not less than \$500,000 must be included. THIS COVERAGE IS REQUIRED. Attach Certificate of Insurance or exemption certificate if exempt.

**Professional Liability** insurance with a combined single limit of not less than \$1,000,000 each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000. This is to cover damages caused by error, omission, or negligent acts related to professional services provided under this Contract. The policy must provide extended reporting period coverage for claims made within two years after this Contract is completed. ☐ If this box is checked, the limits shall be \$4,000,000 per occurrence and in annual aggregate.

☒ Required by Town ☐ Not required by Town

**Commercial General Liability** insurance, on an occurrence basis, with a combined single limit of not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, with an annual aggregate limit of \$2,000,000. ☐ If this box is checked the limits shall be \$4,000,000 per occurrence and in annual aggregate.

☒ Required by Town ☐ Not required by Town

**Commercial Automobile Liability** insurance with a combined single limit, or the equivalent of not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles. ☐ If this box is checked, the limits shall be \$4,000,000 per occurrence.

☒ Required by Town ☐ Not required by Town

**Additional Requirements.** Coverage must be provided by an insurance company authorized to do business in North Carolina or rated A- or better by Best's Insurance Rating. Contractor shall pay all deductibles and retentions. A cross-liability clause or separation of insured's condition must be included in all commercial general liability policies required by this Contract. Contractor's coverage will be primary in the event of loss. **The Town must be listed as an Additional Insured by Endorsement on to any General Liability Policy on a primary and non-contributory basis. Such coverage will specifically include products and completed operations coverage.**

**Certificate of Insurance Required.** Contractor shall furnish a current Certificate of Insurance to the Town. **The Contractor shall immediately notify the Town of any change in insurance coverage.** The Certificate shall also state the deductible or retention level. For general liability the Certificate shall also state the following: "Additional Insured Form (include form number) attached. This form is subject to policy terms, conditions and exclusions." A copy of the additional insured endorsement shall be attached to the certificate of insurance required by this contract. If requested, complete copies of insurance policies shall be provided to the Town.

**Where to send your Certificate of Insurance:** [manager@hollyridgenc.org](mailto:manager@hollyridgenc.org) Additional originals, hard copies, or faxes are not necessary.

**\*\*Note to Contract Originator:** For certain types of contracts additional insurance may be required.

# HOLLY RIDGE, NC

## REQUEST FOR PROPOSALS

### APPENDIX D: Proposer Representations and Certifications

#### FAILURE TO COMPLETE AND SIGN THIS FORM MAY RESULT IN REJECTION OF THE SUBMITTED OFFER

The undersigned, having full knowledge of the specifications for the goods or services specified herein, offers, and agrees that this offer shall be irrevocable for at least 30 calendar days after the date offers are due or as stated in the solicitation, and if accepted, to furnish any and/or all goods or services as described herein at the prices offered and within the time specified.

OFFEROR NAME: \_\_\_\_\_

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

City State Zip: \_\_\_\_\_

TELEPHONE NUMBER \_\_\_\_\_

FAX NUMBER \_\_\_\_\_

WEBSITE: \_\_\_\_\_

STATE OF INCORPORATION \_\_\_\_\_

DATE OF INCORPORATION \_\_\_\_\_

BUSINESS

☐ Corporation

☐ Sole Proprietor

☐ Partnership

DESIGNATION:

☐ S. Corporation

☐ Non-Profit

☐ Government

☐ Other: \_\_\_\_\_

MWESB CERTIFICATION NUMBER \_\_\_\_\_

☐ Minority Owned

☐ Woman Owned

☐ Emerging, Small

☐ N/A

#### ASSURANCES - The Offeror attests that:

1. The person signing this offer has the authority to submit an offer and to represent Offeror in all phases of this procurement process;
2. The information provided herein is true and accurate;
3. The Offeror is a resident proposer, of the State of \_\_\_\_\_, [insert State] and has not discriminated against any minority, women, or emerging small business enterprises in obtaining any required subcontracts;  
 "Resident bidder" means a bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid, has a business address in this state and has stated in the bid whether the bidder is a "resident bidder".
4. Any false statement may disqualify this offer from further consideration or because of contract termination.

#### CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS - The Offeror

certifies to the best of its knowledge and belief that neither it nor any of its principals:

1. Are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from submitting bids or proposals by any federal, state or local entity, department or agency;
2. Have within a five-year period preceding the date of this certification been convicted of fraud or any other criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are presently indicted for or otherwise criminally charged with commission of any of the offenses enumerated in paragraph 2. of this certification;
4. Have, within a five-year period preceding the date of this certification had a judgment entered against contractor or its principals arising out of the performance of a public or private contract;
5. Have pending in any state or federal court any litigation in which there is a claim against contractor or any of its principals arising out of the performance of a public or private contract; and
6. Have within a five-year period preceding the date of this certification had one or more public contracts (federal, state, or local) terminated for any reason related to contract performance.

**Where Offeror is unable to certify to any of the statements in this certification, Offeror shall attach an explanation to their offer. The inability to certify to all of the statements may not necessarily preclude Offeror from award of a contract under this procurement.**

#### SIGNATURE OF AUTHORIZED PERSON

\_\_\_\_\_

Print Name & Title: \_\_\_\_\_

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

**HOLLY RIDGE, NC**  
**REQUEST FOR PROPOSALS**  
**APPENDIX E: Pricing Sheet**

**Pricing Sheet**

CAMP DAVIS INDUSTRIAL PARK, PHASE II	
Description	Cost
Mobilization / Demobilization	
Erosion & Sediment Control	
Clearing, Grubbing, Demolition, Removal	
Site Grading	
Stormwater Structures	
Water System	
Sanitary Sewer System	
Road Construction	
TOTAL PROPOSED COST	