

BRUNSWICK COUNTY
INVITATION TO BID

**Landfill Equipment -
Bulldozer, Track Excavator, and
Horizontal Grinder
(FEMA Funding)**

ISSUE DATE: **February 24, 2026**

DUE DATE: **March 24, 2026**



[BRUNSWICKCOUNTYNC.GOV/BID](https://www.brunswickcountync.gov/bid)

1. OVERVIEW

Pursuant to N.C.G.S. § 143-129 and 2 C.F.R. § 200.320(b)(1), Brunswick County is soliciting sealed bids for one (1) bulldozer, one (1) track excavator, and one (1) horizontal grinder, as more particularly set forth herein.

Any changes to the specifications herein will be made in the form of an Addendum to this Invitation to Bid and will be supplied to all known prospective bidders and posted on the Brunswick County website. Notwithstanding the foregoing, bidders will be responsible for ensuring that they have all addenda. Brunswick County may negotiate and refine final specifications with the selected bidder.

Bidders interested in being considered for a contract may submit a bid on any single piece of equipment or on all pieces of equipment. Brunswick County reserves the right to award one or more contracts to one or more bidders, based on the lowest bid received for each piece of equipment.

2. PROJECT FUNDING AND REQUIREMENTS

The equipment covered by this Invitation to Bid was destroyed by Potential Tropical Cyclone #8 (“PTC #8”), which significantly impacted Brunswick County in mid-September 2024. Brunswick County anticipates receiving funding from the Federal Emergency Management Agency (“FEMA”) as reimbursement to replace the equipment that was destroyed. The County expects to receive \$837,718.70 from FEMA to replace the aforementioned equipment. Said funding is expected to be a 100% reimbursement of the replacement costs of the equipment, based on a cost or price analysis performed by the County, less insurance proceeds in the amount of \$1,001,552.30 received by the County. In using such FEMA funds, the County must comply with FEMA’s terms and conditions governing the expenditure of the funds. The County must also comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, and other such provisions as FEMA has determined or may determine are applicable, including, without limitation, those contained in the FEMA Contract Provisions Guide.

In accordance with the foregoing requirements, bidders interested in being considered for this project must agree to strictly adhere to all terms and conditions contained herein, including the Goods and Services Agreement, and all FEMA terms and conditions, as may be amended from time to time by FEMA. Bidders not agreeing to all terms and conditions are expressly prohibited from submitting a bid for consideration.

3. MINIMUM SPECIFICATIONS

The bulldozer must meet or exceed the following minimum specifications:

- Minimum 160 HP
- One set of Operator and Maintenance manuals (English)

- Operating Weight – 40,000 lbs. minimum
- Fuel Capacity – 80 gallons minimum
- Track Shoe Width – 24 inches minimum
- Blade Capacity – 4 cubic yards minimum
- Closed cabin with air conditioning and heat
- AM/FM/Bluetooth radio
- Transmission – 3 speeds minimum
- Backup camera
- LED exterior lighting
- Real time slope indicator
- Delivery to the County must be within thirty (30) days of date of order

Include: Shipping/Freight FOB Destination and One (1) Year Minimum Unlimited Warranty

The track excavator must meet or exceed the following minimum specifications:

- Machine Size – 200 series +
- Cab Type – closed cab
- Cab Options – air conditioning and heat, AM/FM clock radio
- Engine – 125 + horsepower
- Bucket Size – 46 inch minimum with side cutters
- Maximum Boom Reach – no less than 16 feet
- Maximum Digging Depth – no less than 25 feet
- Operating Weight – no less than 40,000lbs.
- Attachments – hydraulic thumb
- Rear view camera
- Exterior LED lights
- Exterior mirrors
- Drink/cup holder
- Digital display showing machine information
- Rear window emergency exit
- Delivery to the County must be within thirty (30) days of date of order

Include: Shipping/Freight, FOB Destination and One (1) Year Minimum Unlimited Warranty

The horizontal grinder must meet or exceed the following minimum specifications:

- Minimum 1050 HP Diesel Engine
- One set of Operator and Maintenance manuals (English)
- Remote Control
- Minimum 500mm tracks

- Low level fluid alarms
- Hydraulic clutch, 2-way brake release with Hydraulic torque limiter
- Vibration Detection System with auto reversing
- Horizontal discharge
- Variable speed infeed system
- Minimum 60” x 60” infeed opening
- Magnetized pulley for discharge conveyor.
- Delivery to the County must be within one hundred twenty (120) days of date of order

Include: Shipping/Freight FOB Destination, and One (1) Year Minimum Unlimited Warranty

4. BID DEADLINE AND SUBMISSION REQUIREMENTS

4.1 All sealed bids must be received by Brunswick County no later than March 24, 2026, at 10:00 AM ET, at which time they will be opened publicly and read aloud as set forth herein.

4.2 All bids must include the following:

- The bid title and due date and time.
- A cover letter/letter of intent on bidder’s letterhead, signed by an authorized representative of bidder, expressly agreeing to Brunswick County’s terms and conditions contained in this Invitation to Bid and its attachments.
- The bidder’s name or company name, address, and telephone number.
- The name, address, and telephone number of company representatives with the authority to answer questions or provide clarification regarding the bid’s contents.
- A detailed Bid Proposal Form in substantially the form attached hereto and incorporated herein by reference.
- Any assistance requirements from Brunswick County.
- The name and telephone number of a contact person for at least three (3) references.
- Certificate of Insurance as evidence that bidder meets the County’s Minimum Insurance Requirements attached hereto.
- Proof of active SAM.gov registration.

Bidders shall provide documentation sufficient to clearly demonstrate that their company meets or exceeds the requirements set forth in this Invitation to Bid. Failure to provide such documentation may result in the bid being deemed non-responsive.

In addition to the foregoing, Brunswick County reserves the right to request financial information for any bidder, in order to support the viability of the bidder.

Those interested should submit one (1) hard copy of the bid. Sealed bids may only be mailed or hand delivered to the following:

Mail: Brunswick County Operation Services
P.O. Box 249
Bolivia, NC 28422
Attn: Jeff Gaskill

Hand Delivery: Brunswick County Operation Services
179 March 9, 1764 Drive
Bolivia, NC 28422
Attn: Jeff Gaskill

Sealed bids must be received no later than March 24, 2026, at 10:00 AM ET, at which time they will be opened and publicly read aloud within the Department of Operation Services, located at 179 March 9, 1764 Drive, Bolivia, NC 28422. Sealed bids must be clearly marked on the outside “SEALED BID, DO NOT OPEN. ITB – LANDFILL EQUIPMENT.” Brunswick County will not be responsible for the failure of any mail or delivery service to deliver a bid prior to the stated date and time. Regardless of the manner of submission, any bid received after the stated date and time will not be considered. Incomplete bids or bids inconsistent with the required format may be disqualified from consideration.

5. EXPENSES

Brunswick County will not be responsible for any costs or expenses incurred by the bidder in submitting a bid or for any other activities associated with this procurement. Further, Brunswick County reserves the right to cancel the procurement described herein prior to issuance and acceptance of any contractual agreement even if the Board of Commissioners has formally accepted the recommendation.

6. RIGHT TO SUBMITTED BIDS AND SUPPORTING DOCUMENTS

All written correspondence, bids and supporting documents received by Brunswick County in connection with this Invitation to Bid will become the property of Brunswick County. Brunswick County reserves the right to use any ideas in a bid or supporting documents regardless of whether the bid is selected.

7. QUESTIONS/ADDENDA

Questions or requests for further information regarding this Invitation to Bid shall be submitted in writing to the attention of donna.donahue@brunswickcountync.gov no later than March 10, 2026, at 10:00 AM ET. A copy of all questions, further clarifications and answers will be made in the form of an Addendum to this Invitation to Bid and will be provided to all known bidders and posted on the County’s website. Notwithstanding the foregoing, bidders will be responsible for ensuring that they have all addenda.

Bidders are expressly prohibited from contacting any Brunswick County official or employee regarding this Invitation to Bid, except in the manner noted in this section. A violation of this provision is grounds for the immediate disqualification of the bidder.

8. FORM OF AGREEMENT

In addition to the terms and conditions contained in this Invitation to Bid, by submitting a bid, bidder, if selected, agrees to enter into and be bound by the provisions of a Goods and Services Agreement (Federal with FEMA clauses) in substantially the form attached hereto and incorporated herein by reference. To the extent that any of the terms of this Invitation to Bid and the terms of the Goods and Services (Federal with FEMA clauses) conflict, the terms of the Goods and Services Agreement (Federal with FEMA clauses) shall prevail. No agreement will be valid and no work may commence until the agreement has been fully executed by the parties.

9. INSURANCE

To the extent applicable, bidder must procure and maintain in full force and effect during the term of any agreement with Brunswick County, or the renewal of any agreement with Brunswick County, the insurance coverage set forth in the Minimum Insurance Requirements attached hereto and incorporated herein by reference.

In the event bidder fails to maintain any required insurance as outlined herein, Brunswick County may, at its option, obtain the required insurance at the expense of the bidder.

10. BID CONDITIONS

10.1 Submission of a bid indicates explicit acceptance by the bidder of the terms and conditions contained in this Invitation to Bid and any attachments hereto. Brunswick County reserves the right to reject, without prejudice or explanation, any or all bids. Brunswick County reserves the right to waive informalities or to amend the specifications of this Invitation to Bid and request new bids at any time prior to the award of a contract. All decisions of Brunswick County shall be final and binding.

10.2 The bidder shall supply a single point of contact through bid acceptance. Brunswick County will communicate solely through this contact regarding all issues relating to the bid through acceptance.

11. CONSIDERATION OF WITHDRAWAL AND/OR REJECTION OF BID

11.1 Withdrawal

After submission, no bid may be withdrawn by the bidder for a period of ninety (90) days following the opening date. Until that time, the bid will remain firm and irrevocable.

11.2 Rejection

A bid may be rejected if the bidder fails to:

- Submit the bid in the format specified.
- Supply the minimum information requested.
- Submit all addenda, addenda responses and templates.
- Submit the bid by the date and time required.
- Submit a cost bid with unbundled, detailed, and itemized pricing.
- Provide truthful and accurate information in the bid.

12. **AWARD**

Brunswick County reserves the right to award a contract, based on initial bids received from bidders, without discussion and without conducting further negotiations. Brunswick County reserves the right to award one or more contracts to one or more bidders based on the lowest responsive, responsible bid for each piece of equipment. Brunswick County may also, in its sole discretion, initiate further discussions with bidders that it deems to fall within a competitive range. Award shall be made to the lowest responsive, responsible bidder unless otherwise specified. The awarded contract will be on a firm fixed-price basis. Brunswick County shall not be deemed to have finally selected a bidder until a contract has been successfully negotiated and signed by both parties.

13. **NON-DISCLOSURE OF INFORMATION**

Bidder and its agents shall treat all data and information associated with this Invitation to Bid, including, without limitation, the Invitation to Bid and specifications as confidential. Bidder and its agents shall not disclose or communicate any information to a third party or use such information in advertising, propaganda and/or in another job or jobs, unless prior written consent is obtained from Brunswick County.

14. **NORTH CAROLINA PUBLIC RECORDS**

All bids received by Brunswick County shall be considered public information subject to lawful disclosure under North Carolina Public Records Law. Any bid material deemed by the bidder to constitute either proprietary or trade secret material shall be designated as such, and each page or section of a page containing such material shall be so marked by the bidder. In addition, it shall be the sole responsibility of the bidder to demonstrate to a court of competent jurisdiction that their designation is proper. Brunswick County shall not make public any material determined by a court of competent jurisdiction to be proprietary or trade secret. Bidder hereby agrees to indemnify and hold Brunswick County harmless from any and all claims, suits, damages, penalties, or expenses arising out of bidder's proprietary or trade secret designation.

15. AMENDMENTS/CHANGE ORDERS

After a contract is awarded to a bidder and the parties enter into a formal agreement, a written amendment or change order will be required for any changes to the scope of the project.

16. DISCLAIMER OF FEDERAL GOVERNMENT OBLIGATIONS OR LIABILITY

If applicable, the bidder, and any subcontractors, acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of a contract in connection with this Invitation to Bid, absent the express written consent by the federal government, the federal government is not a party to this solicitation or any subsequent agreement and shall not be subject to any obligations or liabilities to the bidder, or any other party (whether or not a party to this solicitation or subsequent agreement) pertaining to any matter resulting from the solicitation or subsequent agreement. It is further agreed that this clause shall be included in each subcontract, if applicable, and shall not be modified, except to identify the subcontractor who will be subject to its provision.

17. COMPLIANCE WITH FEDERAL LAWS, REGULATIONS, AND EXECUTIVE ORDERS

Bidder hereby acknowledges that federal financial assistance may be used to fund all or a portion of this procurement. As such, bidder will comply with all applicable federal laws, regulations, executive orders, federal government policies, procedures, directives, and the terms and conditions of the funding award. Bidder further acknowledges that funding is contingent upon compliance with the foregoing.

18. FEDERAL UNIFORM GUIDANCE

If funding for this procurement is from a federal source, whether in whole or in part, the following provisions also apply pursuant 2 C.F.R. Part 200, Appendix II (as applicable). These provisions are incorporated by reference to the extent permitted by applicable statute. They may also be set forth in more detail in the attached Form of Agreement. Additional provisions may also be set forth in more detail in the attached Form of Agreement, as may be required by the federal grantor agency, on a case-by-case basis. Contractors must also agree to enter into and be bound by the provisions of the Form of Agreement in substantially the form provided.

- Equal Employment Opportunity (41 C.F.R. Part 60)
- Davis-Bacon Act (40 U.S.C. 3141-3148; 29 C.F.R. Part 5)
- Copeland “Anti-Kickback” Act (40 U.S.C. 3145; 29 C.F.R. Part 3)
- Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708; 29 C.F.R. Part 5)
- Clean Air Act (42 U.S.C. 7401 *et seq.*)
- Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*)

- Debarment and Suspension (2 C.F.R. § 200.214; 2 C.F.R. Part 3000; Executive Orders 12549 and 12689)
- Byrd Anti-Lobbying Amendment (31 U.S.C. 1352 *et seq.*)
- Domestic Preference for Procurements (2 C.F.R. § 200.322)
- Build America, Buy America Act (2 C.F.R. Part 184; Pub. L. 117-58 §§ 70901-52)
- Procurement of Recovered Materials (2 C.F.R. § 200.323)
- Record Retention Requirements (2 C.F.R. § 200.334; 2 C.F.R. § 200.337)
- Prohibition on Contracting for Covered Telecommunications Equipment or Services (2 C.F.R. § 200.216)
- No Obligation by Federal Government (2 C.F.R. § 200.318(k))
- Program Fraud and False or Fraudulent Statements or Related Acts (31 U.S.C. §§ 3729-3733)
- Socioeconomic Contracting (2 C.F.R. § 200.321)
- Providing Good, Safe Jobs to Workers (FEMA Information Bulletin No. 520)
- Buy Clean (Inflation Reduction Act)
- Copyrights (2 C.F.R. § 200.315)
- Title VI of the Civil Rights Act of 1964
- Section 504 of the Rehabilitation Act of 1973
- The Age Discrimination Act of 1975

19. SAM.GOV REGISTRATION

Interested bidders must have an active registration in the federal System for Award Management (SAM.gov). Interested bidders must provide proof of such registration with the submitted bid.

20. UTILIZATION OF SMALL BUSINESS CONCERNS

Pursuant to 48 C.F.R. § 52.219-8:

- “(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime bidders establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.
- (b) The Bidder hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Bidder further agrees to cooperate in any studies or surveys as may be conducted by the United States

Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Bidder's compliance with this clause.

(c) *Definitions.* As used in this contract –

HUBZone small business concern means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

Service-disabled veteran-owned small business concern –

- (1) Means a small business concern -
 - (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
 - (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.
- (2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

Small business concern means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

Small disadvantaged business concern means a small business concern that represents, as part of its offer that—

- (1)
 - (i) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, subpart B;
 - (ii) No material change in disadvantaged ownership and control has occurred since its certification;
 - (iii) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
 - (iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the CCR Dynamic Small Business Search database maintained by the Small Business Administration, or
- (2) It represents in writing that it qualifies as a small disadvantaged business (SDB) for any Federal subcontracting program, and believes in good faith that it is owned and controlled by one or more socially and economically

disadvantaged individuals and meets the SDB eligibility criteria of 13 CFR 124.1002.

Veteran-owned small business concern means a small business concern –

- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
- (2) The management and daily business operations of which are controlled by one or more veterans.

Women-owned small business concern means a small business concern –

- (1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- (2) Whose management and daily business operations are controlled by one or more women.

(d)

- (1) Bidders acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a small disadvantaged business concern, or a women-owned small business concern.
- (2) The bidder shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the System for Award Management database or by contacting the SBA. Options for contacting the SBA include –
 - (i) HUBZone small business database search application Web page at http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm or <http://www.sba.gov/hubzone>;
 - (ii) In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC 20416; or
 - (iii) The SBA HUBZone Help Desk at hubzone@sba.gov.”

21. ENERGY CONSERVATION REQUIREMENTS

Pursuant to 42 U.S.C. 6321 et seq., the bidder agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

22. AMERICANS WITH DISABILITIES ACT (ADA)

The bidder agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC § 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; 49 USC § 5301(d); and any implementing requirements of the federal government. These regulations provide that no handicapped individual, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this bid.

23. PRIVACY ACT

The bidder agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. The bidder agrees to obtain the express consent of the federal government before the bidder or its employees operate a system of records on behalf of the federal government. The bidder understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

The bidder also agrees to include these requirements in each subcontract, if applicable, to administer any system of records on behalf of the federal government financed, in whole or in part, with federal assistance.

24. DRUG-FREE WORK PLACE

The bidder shall adhere to the federal Drug Free Workplace requirements as outlined in 2 C.F.R. § 182. Bidder shall make good faith efforts to maintain a drug-free workplace, publish a workplace statement and establish drug-free awareness programs for employees. Bidder should take action concerning employees who are convicted of violating drug statutes in the workplace. Bidder shall contact Brunswick County if bidder cannot adhere to the requirements of the federal regulations noted above. Failure to comply with said provisions shall be considered a breach of contract.

25. CERTIFICATION

Bidder hereby certifies that it has carefully examined this Invitation to Bid and all attachments hereto, including, without limitation, the Form of Agreement. Bidder certifies that it understands and accepts all terms and conditions contained in the Invitation to Bid, including, without limitation, the Form of Agreement, and that it has knowledge and expertise to fulfill the obligations of the Invitation to Bid. By submitting a bid, bidder certifies that its bid is fair in all respects and without collusion or fraud.

FORM OF AGREEMENT

NORTH CAROLINA

GOODS AND SERVICES AGREEMENT

BRUNSWICK COUNTY

[Federal with FEMA clauses]

THIS GOODS AND SERVICES AGREEMENT (hereinafter referred to as the “Agreement”) is made and entered into by and between Brunswick County, a body politic and corporate of the State of North Carolina, (hereinafter referred to as the “County”), party of the first part and {Vendor Name}, (hereinafter referred to as the “Provider”), party of the second part.

WITNESSETH:

1. GOODS AND SERVICES; FEES

The goods to be purchased and the services to be performed under this Agreement (hereinafter referred to collectively as the “Project”) and the agreed upon fees for the Project are set forth on Exhibit “A” attached hereto.

Any exhibits or attachments referenced herein are hereby incorporated by reference and made a part of this Agreement. Any conflict between the language in an exhibit or attachment and the main body of this Agreement shall be resolved in favor of the main body of this Agreement.

2. TERM OF AGREEMENT; TERMINATION

- (1) *Term.* The term of this Agreement begins on {Effective Date} (the “Effective Date”) and continues in effect until {Expiration Date}, unless sooner terminated as provided herein. **No work may commence under this Agreement until the Agreement has been fully executed by both parties.**

- (2) *Termination.* The County may terminate this Agreement at any time without cause by giving sixty (60) days’ written notice to the Provider. As soon as practicable after receipt of a written notice of termination without cause, the Provider shall submit a statement to the County showing in detail the work performed under this Agreement through the effective date of termination. The County may terminate this Agreement for cause by giving written notice of a breach of the Agreement. The Provider shall have fifteen (15) days to cure the breach following receipt of the notification. Failure to cure the breach within the fifteen (15) days shall result in the immediate termination of the Agreement. Notwithstanding the foregoing, the County may terminate this Agreement immediately and without notice to the Provider if the Provider becomes insolvent, makes or has made an assignment for the benefit of creditors, is the subject of proceedings in voluntary or involuntary bankruptcy instituted on behalf of or against the Provider, or has a receiver or trustee appointed for substantially all of its property, or if the Provider allows any final judgment to stand against it unsatisfied for a period of forty-eight (48) hours.

3. NONAPPROPRIATION

If the Board of County Commissioners does not appropriate the funding needed by the County to make payments under this Agreement for a given fiscal year, the County will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the County will promptly notify the Provider 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 the County which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.

4. COMPENSATION

The County agrees to pay costs as specified in Exhibit "A" or as set out above for the satisfactory completion of the Project. Unless otherwise specified, the Provider shall submit monthly invoices to the County and include detail of all products delivered or work performed under the terms of this Agreement. The County shall pay all undisputed and properly completed invoices within thirty (30) days of receipt. Notwithstanding the foregoing, the County will not pay late fees on any charges under this Agreement. If the County disputes any portion of the charges on any invoice received from the Provider, the County shall inform the Provider in writing of the disputed charges. Once the dispute has been resolved, the Provider shall re-invoice the County for the previously disputed charges, and, per any resolution between the County and the Provider, the County shall pay those charges in full at that time. No advance payment shall be made for the work to be performed by the Provider under this Agreement.

5. INDEPENDENT CONTRACTOR

Both the County and the Provider agree that the Provider shall act as an independent contractor and shall not represent itself as an agent or employee of the County for any purpose in the performance of its duties under this Agreement. The Provider represents that it has or will secure, at its own expense, all personnel required in performing the work under this Agreement. Accordingly, the Provider shall be responsible for payment of all federal, state, and local taxes arising out of its activities in accordance with this Agreement, including, without limitation, federal and state income tax, social security tax, unemployment insurance taxes and any other taxes or business license fees as required. The Provider shall not be entitled to participate in any plans, arrangements, or distributions by the County pertaining to or in connection with any pension, stock, bonus, profit sharing or other benefit extended to County employees.

In the event the Internal Revenue Service should determine that the Provider is, according to Internal Revenue Service guidelines, an employee subject to withholding and social security contributions, then the Provider hereby acknowledges that all payments hereunder are gross payments, and the Provider is responsible for all income taxes and social security payments thereon.

6. PROVIDER REPRESENTATIONS

- (1) The Provider is a duly organized entity or corporation qualified to do business and in good standing under the laws of the State of North Carolina;
- (2) The Provider has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
- (3) No approval, authorization, or consent of any governmental or regulatory authority is required to be obtained or made by it in order for the Provider to enter into and perform its obligations under this Agreement;
- (4) In connection with the Provider's obligations under this Agreement, it shall comply with all applicable federal, state, and local laws and regulations and shall obtain all applicable permits and licenses;
- (5) The Provider shall not violate any agreement with any third party by entering into or performing the work under this Agreement;
- (6) The Provider will provide all goods and perform all work in conformity with the specifications and requirements of this Agreement;
- (7) The goods and services provided by the Provider under this Agreement will not violate, infringe, or misappropriate any patent, copyright, trademark, or trade secret rights of any third party, or any other third-party rights (including, without limitation, non-compete agreements);
- (8) The Provider shall exercise reasonable care and diligence when performing the work hereunder and will ensure that it adheres to the highest generally accepted standards in the industry when performing said work;
- (9) The Provider acknowledges that if any specific licenses, certifications, or related credentials are required in its performance of the work, it will ensure that such credentials remain current and active and not in a state of suspension or revocation; and
- (10) The Provider shall ensure that whenever its employees or agents are on County property, they will strictly abide by all instructions and directions issued by the County with respect to rules, regulations, policies, and security procedures applicable to work on County's premises. Such rules, regulations, policies, and security procedures shall include, but not be limited to: (i) not possessing any controlled substances; (ii) smoking only in designated smoking areas, if any; and (iii) not possessing weapons, except for weapons possessed by law enforcement officials.

7. COMPLIANCE WITH FEDERAL LAWS, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgment that FEMA financial assistance will be used to fund all or a portion of this Agreement. The Provider will comply with all applicable federal laws, regulations, executive orders, FEMA policies, procedures, and directives.

8. WARRANTIES

Without limiting the Provider's obligation to provide warranty or maintenance services, and in addition to any other warranties available, the Provider hereby assigns to the County all of the Provider's warranties covering any third-party goods purchased under this Agreement. The Provider will provide copies of all said warranties to the County upon delivery of the goods.

9. DAMAGE TO EQUIPMENT, FACILITIES, PROPERTY OR DATA

The Provider shall be solely responsible for any damage to or loss of the County's equipment, facilities, property, and/or data arising out of the negligent or willful act or omission of the Provider or its subcontractors. In the event that the Provider causes damage to the County's equipment or facilities, the Provider shall, at its own expense, promptly repair or replace such damaged items to restore them to the same level of functionality that they possessed prior to such damage.

10. NON-ENDORSEMENT AND PUBLICITY

The County is not endorsing the Provider or the goods or services covered under this Agreement, and the Provider is not permitted to reference this Agreement or the County in any manner without the prior written consent of the County. Notwithstanding the foregoing, the parties agree that the Provider may list the County as a reference in response to requests for proposals and may identify the County as a customer in presentations to potential customers.

11. NON-EXCLUSIVITY

The Provider acknowledges that the County is not obligated to contract solely with the Provider for the goods or services covered under this Agreement.

12. DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL

The Provider hereby certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. § 147-86.80 *et seq.*

13. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (AS AMENDED)

Providers who apply or bid for an award of more than \$100,000 shall file a required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an

employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

14. PROCUREMENT OF RECOVERED MATERIALS

- (1) The provisions of this section shall apply if: (1) this Agreement involves the purchase of an item designated by the Environmental Protection Agency (“EPA”) in 40 C.F.R. Part 247 that exceeds \$10,000, or (2) the total value of such designated items acquired during the County’s preceding fiscal year exceeded \$10,000.
- (2) In the performance of this Agreement, the Provider shall make maximum use of products containing recovered materials that are EPA-designated items, as set forth in 40 C.F.R. Part 247, that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, unless the product cannot be acquired –
 - (i) Competitively within a timeframe providing for compliance with the Agreement performance schedule;
 - (ii) Meeting Agreement performance requirements; or
 - (iii) At a reasonable price.
- (3) The Provider shall establish an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. Information about this requirement, along with the list of EPA-designated items, is available on EPA’s website and in 40 C.F.R. Part 247.
- (4) The Provider also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6962). This shall include, without limitation, procuring solid waste management services in a manner that maximizes energy and resource recovery.
- (5) The Provider should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products. See Executive Order 14057, section 101, Policy.

15. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES

(1) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause –

(2) *Prohibitions.*

- i. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after August 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
- ii. Unless an exception in paragraph (3) of this clause applies, the Provider and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
 - a. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - b. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - c. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
 - d. Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(3) *Exceptions.*

- i. This clause does not prohibit contractors from providing –
 - a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

- b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- ii. By necessary implication and regulation, the prohibitions also do not apply to:
 - a. Covered telecommunications equipment or services that:
 - 1. *Are not used* as a substantial or essential component of any system;
and
 - 2. *Are not used* as critical technology of any system.
 - b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(4) *Reporting requirement.*

- i. In the event the Provider identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Provider is notified of such by a subcontractor at any tier or by any other source, the Provider shall report the information in paragraph (4)ii. of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
- ii. The Provider shall report the following information pursuant to paragraph (4)i. of this clause:
 - a. Within one (1) business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
 - b. Within ten (10) business days of submitting the information in paragraph (4)ii.a. of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Provider shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(5) *Subcontracts.* The Provider shall insert the substance of this clause, including this paragraph (5), in all subcontracts and other contractual instruments.

16. DOMESTIC PREFERENCE FOR PROCUREMENTS

As appropriate, and to the extent consistent with law, the Provider should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

17. BUILD AMERICA, BUY AMERICA ACT

To the extent applicable, if the Provider applies or bids for an award for an infrastructure project subject to the domestic preference requirement in the Build America, Buy America Act (“BABAA”), the Provider shall file a required certification to the County with each bid or offer for an infrastructure project, unless a domestic preference requirement is waived by FEMA. The Provider and its subcontractors certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. BABAA, Pub. L. No. 117-58, §§ 70901-52. The Provider and its subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that does not ensure compliance with BABAA domestic preference requirements. Such disclosures shall be forwarded to the County who, in turn, will forward the disclosures to FEMA or other federal agency. Subrecipients will forward disclosures to the pass-through entity, who will, in turn, forward the disclosures to FEMA.

18. ACCESS TO RECORDS

The following access to records requirements apply to this Agreement:

- (1) The Provider agrees to provide the County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Provider which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The Provider agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

- (3) The Provider agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the Agreement.
- (4) In compliance with Section 1225 of the Disaster Recovery Act of 2018, the County and the Provider acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

19. DHS SEAL, LOGO, AND FLAGS

The Provider shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. The Provider shall include this provision in any subcontracts.

20. LICENSE AND DELIVERY OF WORKS SUBJECT TO COPYRIGHT

If the Provider or its subcontractors produce copyrightable subject matter for the County under this Agreement, the Provider and its subcontractors shall comply with the obligations set forth in 2 C.F.R. § 200.315(b) and (d). If applicable, the Provider grants to the County a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this Agreement to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the Agreement but not first produced in the performance of this Agreement, the Provider will identify such data and grant to the County, or acquire on its behalf, a license of the same scope as for data first produced in the performance of this Agreement. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the termination or expiration of this Agreement, the Provider will deliver to the County data first produced in the performance of this Agreement and data required by the Agreement but not first produced in the performance of this Agreement in formats acceptable to the County.

21. SUSPENSION AND DEBARMENT

- (1) This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Provider is required to verify that none of the Provider's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The Provider must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

- (3) This certification is a material representation of fact relied upon by the County. If it is later determined that the Provider did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to FEMA and the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The Provider agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Provider further agrees to include a provision requiring such compliance in its lower tier covered transactions.

22. INDEMNIFICATION

The Provider shall defend, indemnify and hold harmless the County, its officers, officials, agents and employees from and against all actions, liability, claims, suits, damages, costs or expenses of any kind which may be brought or made against the County or which the County must pay and incur arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind in connection with or arising out of this Agreement and/or the performance hereof that are due in part or in the entirety of the Provider, its employees or agents. The Provider further agrees to investigate, handle, respond to, defend and dispose of same at its sole cost and expense. The Provider shall be fully responsible to the County for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by it. This Section shall survive any expiration or termination of this Agreement.

23. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

The Provider acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Provider's actions pertaining to this Agreement.

24. NO OBLIGATION BY FEDERAL GOVERNMENT

The federal government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-federal entity, the Provider, or any other party pertaining to any matter resulting from the Agreement.

25. SOCIOECONOMIC CONTRACTING

The Provider is encouraged to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms are considered when possible.

26. INSURANCE

The Provider shall procure and maintain in full force and effect at all times and at its sole cost and expense Commercial General Liability, Commercial Automobile Liability, Professional Liability and Workers' Compensation insurance, if applicable, and any additional insurance as

may be required by the County with limits acceptable to the County. All insurance policies (with the exception of Workers' Compensation, if applicable, and Professional Liability) shall be endorsed, specifically or generally, to include the County as an additional insured and as a certificate holder. The Provider shall furnish a Certificate of Insurance from a licensed insurance agent in North Carolina with a rating of A-VII or better by A.M. Best verifying the existence of any insurance coverage required by the County. The Certificate will provide for thirty (30) days' advance notice in the event of termination or cancellation of coverage. The Provider shall have no right of recovery or subrogation against the County (including its officers, agents, and employees), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the aforementioned insurance.

27. WORKERS' COMPENSATION

To the extent required by law, the Provider shall comply with the North Carolina Workers' Compensation Act and shall provide for the payment of workers' compensation to its employees in the manner and to the extent required by such Act. In the event the Provider is excluded from the requirements of such Act and does not voluntarily carry workers' compensation coverage, the Provider shall carry or cause its employees to carry adequate medical/accident insurance to cover any injuries sustained by its employees or agents while fulfilling the Provider's obligations under this Agreement.

The Provider agrees to furnish the County proof of compliance with said Act or adequate medical/accident insurance coverage upon request.

28. REMEDIES

- (1) *Right to Cover.* If the Provider fails to meet any completion date or resolution time set forth, due to no fault of the County, the County may take any of the following actions with or without terminating this Agreement, and in addition to, and without limiting, any other remedies it may have:
 - i. Employ such means as it may deem advisable and appropriate to perform itself or obtain the goods and/or services from a third party until the matter is resolved and the Provider is again able to resume performance under this Agreement; and
 - ii. Deduct any and all expenses incurred by the County in obtaining the goods and/or performing the services from any money then due or to become due the Provider and, should the County's cost of obtaining the goods and/or performing the services exceed the amount due the Provider, collect the amount due from the Provider.

- (2) *Right to Withhold Payment.* The County reserves the right to withhold any portion, or all, of a scheduled payment if the Provider fails to perform under this Agreement until such breach has been fully cured.

- (3) *Setoff*. Each party shall be entitled to set off and deduct from any amounts owed to the other party pursuant to this Agreement all damages and expenses incurred or reasonably anticipated as a result of the other party's breach of this Agreement.
- (4) *Other Remedies*. Upon breach of this Agreement, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently in addition to any other available remedy.
- (5) *No Suspension*. In the event that the County disputes in good faith an allegation of breach by the Provider, notwithstanding anything to the contrary in this Agreement, the Provider agrees that it will not terminate this Agreement or suspend or limit any services or warranties, unless: (i) the parties agree in writing; or (ii) an order of a court of competent jurisdiction determines otherwise; provided, however, this dispute period shall be limited to ninety (90) days.

29. TAXES

The Provider shall be responsible for paying all taxes, fees, assessments, and premiums of any kind payable on its employees and operations. The Provider shall substantiate, on demand by the County, that all taxes and other charges are being properly paid.

30. HEALTH AND SAFETY

The Provider shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with completing the Project. The Provider shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to all employees in connection with completing the Project and other persons who may be affected thereby.

31. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Agreement, the Provider agrees as follows:

- (1) The Provider will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Provider will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Provider agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) The Provider will, in all solicitations or advertisements for employees placed by or on behalf of the Provider, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The Provider will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Provider's legal duty to furnish information.
- (4) The Provider will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Provider's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The Provider will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The Provider will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the Provider's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Provider may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The Provider will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Provider will take such action with respect to any subcontract or purchase order as the administering

agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event the Provider becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Provider may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

32. COMPLIANCE WITH THE COPELAND "ANTI-KICKBACK" ACT

- (1) *Provider*. If applicable, the Provider shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this Agreement.
- (2) *Subcontracts*. If applicable, the Provider or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these

clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

- (3) *Breach.* A breach of the Agreement clauses above may be grounds for termination of the Agreement, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

33. COMPLIANCE WITH THE DAVIS-BACON ACT

- (1) If applicable, all transactions regarding this Agreement shall be done in compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) and the requirements of 29 C.F.R. Part 5, as may be applicable. The Provider shall comply with 40 U.S.C. §§ 3141-3144 and 3146-3148 and the requirements of 29 C.F.R. Part 5, as applicable.
- (2) Providers are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- (3) Additionally, Providers are required to pay wages not less than once a week.

34. CLEAN AIR ACT

- (1) The Provider agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The Provider agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the County, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The Provider agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

35. FEDERAL WATER POLLUTION CONTROL ACT

- (1) The Provider agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The Provider agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the County, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The Provider agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

36. BUY CLEAN

The County encourages the use of environmentally friendly construction practices in the performance of this Agreement. In particular, the County encourages that the performance of this Agreement include considering the use of low-carbon materials which have substantially lower levels of embodied greenhouse-gas emissions associated with all relevant stages of production, use, and disposal, as compared to estimated industry averages of similar materials or products as demonstrated by their environmental product declaration.

37. COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Compliance with the Contract Work Hours and Safety Standards Act:

- (1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.
- (2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (1) of this section the Provider and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Provider and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$32 or the current amount statutorily required by 29 C.F.R. § 5.5(b)(2) as may be amended from time to time, for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) *Withholding for unpaid wages and liquidated damages.*
 - (i) *Withholding Process.* The recipient or subrecipient may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Provider so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section, any other federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2 thereof). The

necessary funds may be withheld from the Provider under this Agreement, any other federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the Provider liability for which the funds were withheld.

- (ii) *Priority to withheld funds.* The Department of Labor has priority to funds withheld or to be withheld in accordance with this section, over claims to those funds by:
 - (A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
 - (B) A contracting agency for its procurement costs;
 - (C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
 - (D) A contractor's assignee(s);
 - (E) A contractor's successor(s); or
 - (F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.
- (4) *Subcontracts.* The Provider or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section. In the event of any violations of these clauses, the prime contractor, and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.
- (5) *Anti-retaliation.* It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:
 - (i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;
 - (ii) Filing any complaint, initiating, or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

- (iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or
- (iv) Informing any other person about their rights under CWHSSA or this part.

Further Compliance with the Contract Work Hours and Safety Standards Act, as applicable:

- (1) The Provider or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
- (2) Records to be maintained under this provision shall be made available by the Provider or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the Provider or subcontractor will permit such representatives to interview employees during working hours on the job.

38. CREATING GOOD JOBS

Pursuant to FEMA Information Bulletin No. 520, the Provider will comply with all applicable federal labor and employment laws. To maximize cost efficiency and quality of work, the Provider commits to strong labor standards and protections for the project workforce by creating an effective plan for ensuring high-quality jobs and complying with federal labor and employment laws. The Provider acknowledges applicable minimum wage, overtime, prevailing wage, and health and safety requirements, and will incorporate Good Jobs Principles wherever appropriate and to the greatest extent practicable.

39. COMPLIANCE WITH E-VERIFY PROGRAM

Pursuant to N.C.G.S. § 143-133.3, the Provider understands that it is a requirement of this Agreement that the Provider and its subcontractors must comply with the provisions of Article 2 of Chapter 64 of the North Carolina General Statutes. In doing so, the Provider agrees that, unless it is exempt by law, it shall verify the work authorization of its employees utilizing the federal E-Verify program and standards as promulgated and operated by the United States Department of Homeland Security, and the Provider shall require its subcontractors to do the same. Upon request, the Provider agrees to provide the County with an affidavit of compliance or exemption.

40. CONFIDENTIAL INFORMATION

For purposes of this Agreement, the party disclosing Confidential Information is the “Discloser,” and the party receiving Confidential Information is the “Recipient.” “Confidential Information” shall mean any nonpublic information concerning the parties’ respective businesses

including, but not limited to, all tangible, intangible, visual, electronic, present or future information such as: (a) trade secrets; (b) financial information, including pricing; (c) technical information, including research, development, procedures, algorithms, data, designs and know-how; (d) business information, including operations, planning, marketing interests and products; and (e) the terms of any agreement between the parties and the discussions, negotiations and proposals related thereto. Confidential Information disclosed to the other party must be clearly identified. Written Confidential Information must be clearly marked in a conspicuous place with an appropriate legend identifying the information as “Confidential.” Confidential Information that is not written must be identified as confidential at the time of disclosure and confirmed in writing delivered to Recipient within fifteen (15) days of disclosure.

The restrictions regarding the use and disclosure of Confidential Information do not apply to information that is:

- a. in the public domain through no fault of the Recipient;
- b. within the legitimate possession of the Recipient, with no confidentiality obligations to a third party;
- c. lawfully received from a third party having rights in the information without restriction, and without notice of any restriction against its further disclosure;
- d. independently developed by the Recipient without breaching this Agreement or by parties who have not had, either directly or indirectly, access to or knowledge of the Confidential Information;
- e. disclosed with the prior written consent of the Discloser; or
- f. required to be disclosed by law, regulation or court or governmental order, specifically including requests pursuant to the Public Records Laws of North Carolina contained in Chapter 132 of the North Carolina General Statutes. In the event Recipient receives such a request, it shall notify Discloser and Discloser shall have the opportunity to defend against production of such records at Discloser’s sole expense.

41. OWNERSHIP OF WORK PRODUCT

Should the Provider’s performance under this Agreement generate documents or other work product that are specific to the Project hereunder, such documents or work product shall become the property of the County and may be used by the County on other projects without additional compensation to the Provider.

42. NO ASSIGNMENT WITHOUT CONSENT

Neither party shall assign this Agreement (or assign any right or delegate any obligation contained herein whether such assignment is of service, of payment or otherwise) without the prior written consent of the other party hereto. Any such assignment without the prior written consent of the other party hereto shall be void. An assignee shall acquire no rights, and the County shall not recognize any assignment in violation of this provision.

43. GOVERNING LAW AND VENUE

This Agreement shall be governed by applicable federal law and by the laws of the State of North Carolina without regard for its choice of law provisions. All actions relating in any way to this Agreement shall be brought in the General Court of Justice of the State of North Carolina in Brunswick County or in the Federal District Court for the Eastern District of North Carolina, Wilmington division.

44. DISPUTE RESOLUTION

Should a dispute arise as to the terms of this Agreement, both parties agree that neither may initiate binding arbitration. The parties may agree to non-binding mediation of any dispute prior to the bringing of any suit or action.

45. GOVERNMENTAL IMMUNITY

The County, to the extent applicable, does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

46. NON-WAIVER

Failure by the County at any time to require the performance by the Provider of any of the provisions of this Agreement shall in no way affect the County's right hereunder to enforce the same, nor shall any waiver by the County of any breach be held to be a waiver of any succeeding breach or a waiver of this Section.

47. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties with respect to the subject matter herein. There are no other representations, understandings, or agreements between the parties with respect to such subject matter. This Agreement supersedes all prior agreements, negotiations, representations, and proposals, written or oral.

48. HEADINGS

The headings in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

49. SEVERABILITY

The invalidity of one or more of the phrases, sentences, clauses, or sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of this Agreement can be determined and effectuated. If a provision of this Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this

Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

50. AMENDMENTS

No amendments or changes to this Agreement, or additional Proposals or Statements of Work, shall be valid unless in writing and signed by authorized agents of both the Provider and the County.

51. NOTICES

- (1) *Delivery of Notices.* Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by facsimile to the intended recipient at the address set forth below.
- (2) *Effective Date of Notices.* Any notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by facsimile or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier.
- (3) *Notice Address.* Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment, or waiver of any provision of this Agreement shall be sent to:
 - i. For the County: Brunswick County Manager
P.O. Box 249
Bolivia, NC 28422
Fax: 910-253-2022
 - ii. For the Provider: {Vendor Name}
{Vendor Address}
{Vendor City}, {Vendor State or Territory} {Vendor Zip}

52. SIGNATURES

This Agreement, together with any amendments or modifications, may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be considered one and the same agreement. This Agreement may also be executed electronically. By signing electronically, the parties indicate their intent to comply with the Electronic Commerce in Government Act (N.C.G.S § 66-58.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S § 66-311 et seq.). Delivery of an executed counterpart of this Agreement by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

ATTEST:

BRUNSWICK COUNTY

Clerk to the Board /
Deputy Clerk to the Board

By: _____
Chairman, Board of Commissioners

Date: _____

[SEAL]

{VENDOR NAME}

By: _____

Printed Name: _____

Title: _____

Date: _____

“This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.”

Aaron C. Smith, Finance Director
Brunswick County, North Carolina

Date: _____

APPROVED AS TO FORM

Bryan W. Batton, County Attorney /
Ryan S. King, Assistant County Attorney

Date: _____

EXHIBIT "A"
GOODS AND SERVICES/FEES AND COSTS

BRUNSWICK COUNTY MINIMUM INSURANCE COVERAGE REQUIREMENTS

At contractor's expense, contractor shall procure and maintain the following recommended lines of insurance according to the scope of work. The County may choose to elect higher or lower coverage according to the work performed. Contractors must be insured by a licensed agent in North Carolina and rated A-VII or better by A.M. Best.

- A. **COMMERCIAL GENERAL LIABILITY**
Covering all operations involved in this Agreement.
\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations Aggregate
\$1,000,000 Each Occurrence
\$1,000,000 Personal and Advertising Injury Limit
\$ 5,000 Medical Expense Limit

- B. **WORKERS' COMPENSATION**
Statutory limits covering all employees, including Employer's Liability with limits of:
\$500,000 Each Accident
\$500,000 Disease - Each Employee
\$500,000 Disease - Policy Limit

- C. **COMMERCIAL AUTOMOBILE LIABILITY**
\$1,000,000 Combined Single Limit – Any Auto

- D. **PROFESSIONAL LIABILITY**
\$1,000,000 Per Occurrence

- E. **POLLUTION LIABILITY INSURANCE**
\$1,000,000 Per Occurrence

When a contractor is required to bind pollution/environmental coverage, the contractor must provide evidence of continuation or renewal of liability insurance for a period of three (3) years following termination of the agreement.

ADDITIONAL INSURANCE AND INDEMNIFICATION REQUIREMENTS

- A. Contractor agrees to defend, indemnify, and hold harmless Brunswick County, its officers, employees, and agents from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees, or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind in connection with or arising out of this Agreement and/or the performance hereof that are due in part or in the entirety of Contractor, its employees or agents. Contractor further agrees to investigate, handle, respond to, defend and dispose of same at its sole expense and agrees to bear all other costs and expenses related thereto. The Contractor's General Liability policy shall be endorsed, specifically or generally, to include the following as Additional Insured:

BRUNSWICK COUNTY, ITS OFFICERS, AGENTS AND EMPLOYEES ARE INCLUDED AS ADDITIONAL INSURED UNDER CONTRACTOR'S GENERAL LIABILITY INSURANCE.

- B. Before commencement of any work or event, Contractor shall provide a Certificate of Insurance in satisfactory form as evidence of the insurances required above.
- C. Contractor shall have no right of recovery or subrogation against Brunswick County (including its officers, agents and employees), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.
- D. Brunswick County shall have no liability with respect to Contractor's personal property whether insured or not insured. Any deductible or self-insured retention is the sole responsibility of Contractor.
- E. All certificates of insurance must provide that the policy or policies shall not be changed or cancelled without at least thirty (30) days prior written notice.
- F. The Certificate of Insurance should note in the Description of Operations the following:
Department: _____
Contract #: _____
- G. Insurance procured by Contractor shall not reduce nor limit Contractor's contractual obligation to indemnify, hold harmless and defend Brunswick County for claims made or suits brought which result from or are in connection with the performance of this Agreement.
- H. In the event Contractor receives Notice of Cancellation of Insurance required pursuant to this Agreement, Contractor shall immediately cease performance of all services and shall provide Notice to Brunswick County's Legal/Risk Management personnel within twenty-four (24) hours.
- I. Certificate Holder shall be listed as follows:
ATTENTION: Brunswick County Risk Manager
30 Government Center Dr. NE
P.O. Box 249
Bolivia, NC 28422
- J. If Contractor is authorized to assign or subcontract any of its rights or duties hereunder and in fact does so, Contractor shall ensure that the assignee or subcontractor satisfies all requirements of this Agreement, including, but not limited to, maintenance of the required insurances coverage and provision of certificate(s) of insurance and additional insured endorsement(s), in proper form prior to commencement of services.

BID PROPOSAL FORM – LANDFILL BULLDOZER

Note to bidders: The awarded contract will be on a firm fixed-price basis. Pricing herein is to be inclusive of all expenses and incidentals, including, without limitation, labor, materials, equipment, warranty, freight, general overhead, field overhead, travel, per diem, food, water, and restroom and lodging facilities, as necessary to fulfill the obligations of this Invitation to Bid.

Item Description

Total Bid Price

Bulldozer	\$
Freight	\$
One (1) Year Minimum Unlimited Warranty	\$
Lead/Delivery Time	
GRAND TOTAL	\$

BID PROPOSAL FORM – LANDFILL TRACK EXCAVATOR

Note to bidders: The awarded contract will be on a firm fixed-price basis. Pricing herein is to be inclusive of all expenses and incidentals, including, without limitation, labor, materials, equipment, warranty, freight, general overhead, field overhead, travel, per diem, food, water, and restroom and lodging facilities, as necessary to fulfill the obligations of this Invitation to Bid.

Item Description

Total Bid Price

Track Excavator	\$
Freight	\$
One (1) Year Minimum Unlimited Warranty	\$
Lead/Delivery Time	
GRAND TOTAL	\$

BID PROPOSAL FORM – LANDFILL HORIZONTAL GRINDER

Note to bidders: The awarded contract will be on a firm fixed-price basis. Pricing herein is to be inclusive of all expenses and incidentals, including, without limitation, labor, materials, equipment, warranty, freight, general overhead, field overhead, travel, per diem, food, water, and restroom and lodging facilities, as necessary to fulfill the obligations of this Invitation to Bid.

Item Description

Total Bid Price

Horizontal Grinder	\$
Freight	\$
One (1) Year Minimum Unlimited Warranty	\$
Lead/Delivery Time	
GRAND TOTAL	\$

BIDDER INFORMATION

Name of Company _____

Address _____

Phone No. _____ **Fax No.** _____

E-Mail Address _____

Federal I.D. No. _____

SDBE, Minority or Woman Owned Business Enterprise _____ **Yes** _____ **No**

Bid Submitted By: _____

(Printed Name)

(Signature)

Title: _____

Date: _____