

NEW HANOVER COUNTY
REQUEST FOR BIDS
PORTABLE GENERATOR RENTAL AND SERVICE
RFB # 19-0423



COUNTY COMMISSIONERS

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CHRIS COUDRIET, COUNTY MANAGER

Section 1 – Advertisement

NEW HANOVER COUNTY
REQUEST FOR BIDS
PORTABLE GENERATOR RENTAL AND SERVICE
RFB # 19-0423

Sealed bids addressed to Ricky Thomas, Trades Supervisor, 200 Division Drive, Wilmington, NC 28401 and marked “**RFB# 19-0423 PORTABLE GENERATOR RENTAL AND SERVICE**” will be accepted until **2:00 P.M. EST, Thursday, November 8, 2018.**

New Hanover County (NHC) is accepting bids for the rental of a portable generator at the NHC Emergency Operations Center located at 230 Government Center Drive, Wilmington, NC 28403.

Site visits will be available from **October 30-November 1, 2018**, by appointment only and can be arranged by contacting Ricky Thomas, Trades Supervisor by emailing rthomas@nhcgov.com.

Instructions for submitting bids and complete requirements and information may be obtained by visiting the County’s website at <https://www.nhcgov.com/business-nhc/bids> or by contacting Ricky Thomas at rthomas@nhcgov.com.

New Hanover County reserves the right to accept or reject any or all Bids and to make the Award which will be in the best interest of the County.

Released: Monday, October 29, 20182018

Section 2 – Instructions and General Conditions

2.1 – Schedule

Date	Action
Monday, October 29, 2018	RFB issued.
October 30-November 1, 2018	Site visits by appointment (contact rthomas@nhcgov.com).
Friday, November 2, 2018 2:00 p.m.	Deadline for questions. All questions must be submitted in writing to Ricky Thomas, Trades Supervisor (rthomas@nhcgov.com).
Monday, November 5, 2018	Questions will be answered via written addendum.
Thursday, November 8, 2018, 2:00 p.m.	Deadline for receipt of SEALED bids.

2.2 – Preparation of Bid

2.2.1 Bidders are instructed to submit one (1) original, (1) copy, and one (1) electronic copy on CD or USB in a sealed envelope. Bids should be clearly marked “**RFB # 19-0423– PORTABLE GENERATOR RENTAL AND SERVICE.**”

2.2.2 The bid shall be submitted by **2:00 PM Thursday, November 8, 2018** and addressed to:

New Hanover County
Property Management
Attn: Ricky Thomas, Trades Supervisor
200 Division Drive
Wilmington, NC 28401

2.2.3 **Completion of Bid Form (Price Sheet):** Bidders are expected to examine the specifications herein, the schedule and all instructions. Failure to do so will be at the bidder’s risk. Each bidder shall furnish the information required on the price sheet. Bids **must** be submitted on the price sheet contained in this bid package. Bids submitted that are not on the attached price sheet will be rejected. **BIDS NOT SIGNED WILL BE DEEMED NONRESPONSIVE AND REJECTED.**

All prices and notations shall be written in ink or typed. Discrepancies between words and numerals will be resolved in favor of words.

Changes or corrections made in the bid must be initialed by the individual signing the bid. No corrections will be permitted once bids have been opened.

2.2.4 No telephone, electronic or facsimile bids will be considered. Bids received after the time and date for closing will not be considered.

2.3 – Site Visit

Bidders may request a site visit by emailing rthomas@nhcgov.com. Site visits will be available by appointment only from **October 30-November 1, 2018**. Site visits are not mandatory but highly recommended.

2.4 – Questions

Questions concerning the specifications in this Request for Bids (RFB) should be directed to the Ricky Thomas, Trades Supervisor at rthomas@nhcgov.com. Questions will be received until **Friday, November 2, 2018 at 2:00 pm**. An addendum summarizing all questions and answers will be posted to the County's website. Bidders who have notified the County of their intent to submit a bid along with the email address will be sent the addendum upon posting.

2.5 – Communication

Bidders may not have communications, verbal or otherwise, concerning this RFB with any personnel or boards from New Hanover County, other than the person listed in this section which is Ricky Thomas, Trades Supervisor email rthomas@nhcgov.com. If any vendor attempts any unauthorized communication, the bid may be rejected.

2.6 – Intent to Submit

All Bidders who intend to submit a bid on this project should send an email to rthomas@nhcgov.com including pertinent contact information. This will ensure that you receive any addenda issued for this RFB; if applicable.

2.7 - Cost of Preparation of Response

Costs incurred by prospective Bidders in the preparation of the response to this Request for Bids are the responsibility of the Bidder and will not be reimbursed by The County.

2.8 – Bid Opening

The public bid opening will be **Thursday, November 8, 2018 at 2:00 p.m.** in the conference room of the New Hanover County Property Management, 200 Division Drive, Wilmington, NC 28401.

2.9 – Award

Award “shall be made to the lowest responsive responsible bidder taking into consideration quality, performance, and the time specified in the bid for the performance of the contract.”

The County may also consider other factors such as past performance, financial stability, and availability of equipment in the consideration of award.

2.10 - Execution of Agreement

The successful Bidder will be required to enter into a formal agreement that is consistent with the bid requirements outlined within. The successful Bidder to whom the Contract is awarded by the County shall within 15 days after notice of award and receipt of Agreement from the County, sign and deliver to the County all required copies of said Agreement.

2.11 – Ownership of Documents

All bids and accompanying documentation will become the property of New Hanover County at the time the bids are opened and as such will not be returned to the bidder.

2.12 - Trade Secret Confidentiality

Upon receipt of your bid by New Hanover County, your bid is considered a public record except for material which qualifies as "trade secret" under N.C. General Statute 132-1.2. After opening, your bid will be provided to County staff and others who participate in the evaluation process, and to members of the general public who submit public records requests.

To properly designate material as trade secret under these circumstances, each Bidder must take the following precautions: (a) any trade secrets submitted by a Bidder must be submitted in a separate, sealed envelope marked "Trade Secret - Confidential and Proprietary Information - Do Not Disclose Except for the Purpose of Evaluating This Bid," and (b) the same trade secret/confidentiality designation must be stamped on each page of the trade secret materials contained in the envelope.

Do not attempt to designate your entire Bid as a trade secret, and do not attempt to designate pricing information as a trade secret. Doing so will result in your Bid being disqualified.

In submitting a Bid, each Bidder agrees that the County may reveal any trade secret materials contained in such response to all County staff and County officials involved in the selection process, and to any outside consultant or other third parties who assist the County in the selection process. Furthermore, each Bidder agrees to indemnify and hold harmless the County and each of its officers, employees, and agents from all costs, damages, and expenses incurred in connection with refusing to disclose any material, which the Bidder has designated as a trade secret.

2.13 - Withdrawal of Bids

Bidders may withdraw or withdraw and resubmit their bid at any time prior to the closing time for receipt of bids. NO bid may be withdrawn after the scheduled closing time for receipt of bids for a period of ninety (90) days.

2.14 - Equal Opportunity

The non-discrimination clause contained in Section 202 (Federal) Executive Order 11246, as amended by Executive Order 11375, relative to Equal Employment Opportunity for all persons without regard to race, color, religion, sex or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor, are incorporated herein.

The Bidder agrees not to discriminate against any employees or applicant for employment because of physical or mental handicap in regard to any position for which the employees or

applicant is qualified. The Bidder agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices.

Pursuant to GS 143-48, New Hanover County encourages small, minority, physically handicapped, and women firms to submit bids in response to this RFB.

2.15- Indemnity

The successful Bidder shall indemnify and hold the County, its agents and employees, harmless against any and all claims, demands, causes of action, or other liability, including attorney fees, on account of personal injuries or death or on account of property damages arising out of or relating to the work to be performed by the Successful Bidder hereunder, resulting from the negligence of or the willful act or omission of the Bidder, his agents, employees and subcontractors.

2.16 – E-Verify

Pursuant to Session Law 2013-418, Contractor shall fully comply with the U.S. Department of Homeland Security employee legal status E-Verify requirements for itself and all its subcontractors. County requires an affidavit attesting to Contractor's compliance. Violation of the provision, unless timely cured, shall constitute a breach of contract.

2.17 - Insurance

Before commencing any work, the Bidder shall procure insurance in the Bidder's name and maintain all insurance policies for the duration of the contract of the types and in the amounts listed in this Agreement. The insurance shall provide coverage against claims for injuries to persons or damages to property which may arise from operations or in connection with the performance of the work hereunder by the Bidder, his agents, representatives, employees, or subcontractors, whether such operations are done by himself/herself or anyone directly or indirectly employed by him/her.

Limits of insurance required are detailed in the attached Draft Contract.

2.18 - Addendum

The bid package constitutes the entire set of instructions to the bidder. The County shall not be responsible for any other instructions, verbal or written, made by anyone. Any changes to the specifications will be in the form of an Addendum which will be sent to all known Bidders who are listed with the Finance Office and posted on the County's website.

You may visit our website at <http://www.nhcgov.com/Finance/Pages/CurrentBids.aspx>, or email rthomas@nhcgov.com to check for the issuance of any addenda before submitting your bid.

2.19 - Compliance with Bid Requirements

Failure to comply with these provisions or any other provisions of the General Statutes of North Carolina will result in rejection of bid/bid.

2.20- Successful Bidder

The Bidder who is not currently set up as a vendor in The County's vendor file will be required to submit a completed Vendor Application, W-9 and EFT form in order to be entered into the County's vendor database.

2.21 – Federal Uniform Guidance

If the source of funds for this contract is federal funds, the following federal provisions apply pursuant to 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II (as applicable): Equal Employment Opportunity (41 C.F.R. Part 60); Davis-Bacon Act (40 U.S.C. 3141-3148); Copeland "Anti-Kickback" Act (40 U.S.C. 3145); Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708); Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387); Debarment and Suspension (Executive Orders 12549 and 12689); Byrd Anti-Lobbying Amendment (31 U.S.C. 1352); Procurement of Recovered Materials (2 C.F.R. § 200.322); and Record Retention Requirements (2CFR § 200.324). **Refer to the Attached Draft Contract for complete Details.**

2.22 - Right to Reject Bids

New Hanover County reserves the right to accept or reject any or all bids and to make the award which will be most advantageous to the County.

2.23 – Draft Contract

A draft contract is attached for review by the Bidder.

Section 3 – Scope of Services

1.0 GENERAL

- 1.01 The BIDDER shall comply with all applicable Federal, State and Local codes, ordinances and requirements of all agencies having jurisdiction. The BIDDER will be responsible for obtaining all necessary licenses to complete the scope of work.
- 1.02 Performance: The quality of workmanship concerning the services provided for Portable Generator Rental and Service must reflect professional work and conduct.

2.0 SCOPE OF SERVICES

Portable Generator Rental and Service

Scope of Services

- Provide one (1) 300kw portable generator with fuel tank to be sized for full load and run time of twenty-four hours. Maintain the equipment in good repair, appearance and condition including up to two (2) quarterly preventative maintenance services by certified technicians at the New Hanover County Emergency Operations Center.
- Supply all parts and labor necessary to maintain equipment in good repair, appearance and condition to include a minimum of two (2) quarterly preventative maintenance services. Quarterly visits mean substantially spaced visits that are spaced three (3) months apart and defined in the checklist. Quarterly preventative maintenance service shall include, but not be limited to, items identified on Attachment B (checklist) and as recommended by manufacturer. All work will be scheduled through New Hanover County Property Management.
- Bids shall be based on \$/month (equipment rental) and \$/quarterly (labor) as we do not know ultimate project time span. The length of time the rental and work will be required is unknown, but bidders should plan for a minimum of seven (7) months of generator rental and two (2) quarterly preventative maintenance services and possibly more, depending upon need. The Property Management Director will determine the need as the process proceeds.
- Work hours will be 8:00 am – 5:00 pm M-F. Work performed beyond those hours will be at the contractor's expense.
- Invoices are to be submitted monthly and must include documentation of labor and equipment time expended.

- All Local, state and federal laws, including OSHA safety compliance, must be adhered to.

3.0 PRICE SCHEDULE

3.1 The contract will be for payment on a per month basis. Monthly prices proposed by the bidder shall include anything necessary to complete the work including mobilization, insurance, labor, equipment, fuel, overhead, profit, and applicable taxes, if any. No minimum or maximum quantity is implied or inferred by this contract.

3.2 All bids must be submitted using the attached Price Sheet/Bid Form.

4.0 BIDDER SAFETY REQUIREMENTS

4.1 BIDDER shall comply with all local, state and federal safety rules and regulations.

4.2 The BIDDER shall be solely responsible for maintaining safety at all work sites. The BIDDER shall take all reasonable steps to insure safety for both workers and visitors to include traffic control.

5.0 OTHER LAWS AND REGULATIONS

BIDDER will comply with any and all applicable federal, state and local standards, regulations, laws, OSHA and all health and safety regulations.

Section 4 – Bid Sheet

**NEW HANOVER COUNTY
PORTABLE GENERATOR RENTAL AND SERVICE
Price Sheet/Bid Form
RFB # 19-0423**

TO: Ricky Thomas, Trades Supervisor
New Hanover County
Property Management
200 Division Drive
Wilmington, NC 28401

DATE: _____ CONTRACTOR: _____

OFFICE PHONE: _____ CELL PHONE: _____

ADDRESS: _____

EMAIL ADDRESS: _____

UNIT PRICE BID: The undersigned, having carefully examined the Instructions to Bidders, New Hanover County RFB # 19-0423– Portable Generator Rental and Service, and draft contract dated October 26, 2018, including the following addenda;

ADDENDUM # _____ DATED: _____

As well as the premises and conditions affecting the work, proposes to furnish all services, labor, materials and equipment called for to complete the project in accordance with the contract documents for the following unit price amounts.

Unit Price per portable generator rental \$_____/month

Unit Price per equipment delivery \$_____

Unit Price per equipment pick-up \$_____

Unit Price per quarterly preventative maintenance service \$_____/quarterly

Signature

Title

State of Incorporation

Section 5 – Statement of Assurances and Compliance

NEW HANOVER COUNTY

PORTABLE GENERATOR RENTAL AND SERVICE

STATEMENT OF ASSURANCES AND COMPLIANCE

The undersigned, as bidder certifies that the General Conditions and Instructions to Bidders, the Draft Contract, the Scope of Work and the Price Sheet/Bid Form found in the bidding documents have been read and understood.

The bidder hereby provides assurance that the firm represented in this bid, as indicated below:

- 1) Will comply with all requirements, stipulations, terms, and conditions as stated in the bid document:
- 2) Currently complies with all applicable State and Federal Laws:
- 3) Is not guilty of collusion with the vendors possibly interested in this bid or in determining prices to be submitted: and
- 4) Such agent as indicated below is officially authorized to represent the firm in whose name this bid is submitted.

_____	_____
Name of Firm	Name of Firm Representative
_____	_____
	Title

Address of Firm	

Telephone Number	

Date	

State of Incorporation	

NORTH CAROLINA

AGREEMENT

NEW HANOVER COUNTY

THIS CONTRACT made and entered into this _____ day of _____ 2018 by and between **NEW HANOVER COUNTY**, a political subdivision of the State of North Carolina, hereinafter referred to as "County"; and _____, hereinafter referred to as "Contractor";

WITNESSETH:

That the Contractor, for the consideration hereinafter fully set out, hereby agrees with the County as follows:

1. Scope of Services. Contractor shall provide labor, equipment, and materials for portable generator rental and service as more fully described in Exhibit A, attached hereto and incorporated herein by reference.

2. Time of Performance. The term of this Agreement shall begin from receipt of Notice to Proceed and all work is estimated to be completed by June, 30 2019.

3. Payment. County hereby agrees to pay for the cost of this Contract not to exceed a sum of _____ (\$_____) Dollars. Payment is contingent upon a final County inspection and acceptance of work or services.

4. Extra Work. County and Contractor shall negotiate and agree upon the value of any extra work or services prior to the issuance of a County Change Order or Renewal/Amendment (CRA) form covering said extra work or services. Such Change Order or CRA shall set forth the corresponding adjustment, if any, to the Contract Price and Contract Time.

5. Indemnity. Contractor shall indemnify and hold County, its officers, officials, agents, and employees, harmless against any and all claims, demands, causes of action, or other liability, including attorney fees, for any property damages, personal injuries or death arising out of, relating to, or resulting from the negligence, willful act, or omission of Contractor, its agents, employees and subcontractors in the performance of work or services.

6. Insurance. Before commencing any work or services, Contractor shall procure insurance in Contractor's name and maintain all insurance policies for the duration of the Contract of the types and in the amounts listed in this Contract. The insurance shall provide coverage against claims for injuries to persons or damages to property which may arise from operations or in connection with the performance of the work hereunder by Contractor, its agents, representatives, employees, or subcontractors, whether such operations by itself or anyone directly or indirectly employed by it.

7. Minimum Scope and Limits of Insurance

7.1. Commercial General Liability

7.1.1 Contractor shall maintain Commercial General Liability (CGL) and if necessary, Commercial Umbrella Liability (CUL) insurance with a total limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location or the general aggregate shall be twice the required limit.

7.1.2 CGL insurance shall be written on Insurance Services Office (ISO) "occurrence" form CG 00 01 covering CGL or its equivalent and shall cover the liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract, including the tort liability of another assumed in a business contract.

7.1.3 County, its officers, officials, agents, and employees are to be covered as additional insureds under the CGL by endorsement CG 20 10 and CG 20 37 or an endorsement providing equivalent coverage as respects to liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, leased or used by Contractor; and under the CUL, if any. The coverage shall contain no special limitations on the scope of protection afforded to County, its officers, officials, agents, and employees

7.1.4 Contractor's CGL insurance shall be primary as respects County, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by County, its officers, officials, agents, and employees shall be in excess of and shall not contribute to Contractor's insurance.

7.2. Worker's Compensation and Employer's Liability

7.2.1 Contractor shall maintain Worker's Compensation as required by the General Statutes of the State of North Carolina and Employer's Liability Insurance.

7.2.2 The Employer's Liability, and if necessary, CUL insurance shall not be less than \$1,000,000 each accident for bodily injury by accident, \$1,000,000 each employee for bodily injury by disease, and \$1,000,000 policy limit.

7.2.3 The insurer shall agree to waive all rights of subrogation against County, its officers, officials, agents, and employees for losses arising from services performed by Contractor for County.

7.3. Business Auto Liability

7.3.1. Contractor shall maintain applicable Business or Personal Auto Liability and, if necessary, CUL insurance with a limit of not less than \$1,000,000 each accident. Personal auto insurance may be accepted in lieu of Business Auto Insurance.

7.3.2. Such insurance shall cover liability arising out of any auto, including owned, hired, and non-owned autos used in the performance of work or services.

7.3.3. Business Auto coverage shall be written on ISO form CA 00 01, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide Contractual liability coverage equivalent to that provided in ISO form CA 00 01.

7.3.4. Contractor's Business Auto Liability insurance shall be primary as respects County, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by County, its officers, officials, agents, and employees shall be in excess of and shall not contribute to Contractor's insurance.

7.4. Deductibles and Self-Insured Retentions

7.4.1. Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects County, its officers, officials, agents, or employees; Contractor shall procure a bond guaranteeing payment of deductibles or self-insured retentions.

7.4.2. Contractor shall be solely responsible for the payment of all deductibles to which all policies are subject, regardless of whether County is an insured under the policy.

7.5. Miscellaneous Insurance Provisions.

7.5.1. Any failure to comply with reporting provisions of the policies listed in this Contract shall not affect coverage provided to County, its officers, officials, agents, and employees.

7.5.2. Each insurance policy required by this Contract shall be endorsed to state that coverage shall not be canceled by either party except after thirty (30) days prior written notice has been given to County, 230 Government Center Drive, Ste. #125, Wilmington, NC 28403.

7.5.3. If Contractor's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

7.6. Acceptability of Insurers. Insurance is to be placed with insurers licensed to do business in the State of North Carolina with an A.M. Best's rating of no less than A VII unless County has granted a specific exemption.

7.7. Evidence of Insurance

7.7.1. Contractor shall furnish County with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements prior to commencing the work or services, and thereafter upon renewal or replacement of each certified coverage until all operations under this Contract are deemed complete.

7.7.2. Evidence of additional insured status shall be noted on the certificate of insurance as per requirements in this Contract.

7.7.3. With respect to insurance maintained after final payment in compliance with requirements, an additional certificate(s) evidencing such coverage shall be provided to County with final application for payment and thereafter upon renewal or replacement of such insurance until the expiration of the period for which such insurance must be maintained.

7.8. Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein. CGL coverage shall include independent contractors' coverage, and Contractor shall be responsible for assuring that all subcontractors are properly insured.

7.9. Conditions

7.9.1. County may, at its discretion and with approval of Risk Management and the Finance Department, accept letters of credit or custodial accounts in lieu of specific insurance requirements.

7.9.2. Contractor shall warrant that the insurance contributing to the satisfaction of insurance requirements in this Contract and shall not be canceled, terminated, or modified by Contractor without prior written approval of County.

7.9.3. Contractor shall promptly notify New Hanover County Property Management and New Hanover County Risk Management at (910) 798-7497 of any accidents arising in the course of operations under the Contract causing bodily injury or property damage.

7.9.4. County reserves the right to obtain complete, certified copies of all required insurance policies.

7.9.5. Failure of County to demand a certificate of insurance or other evidence of full compliance with these insurance requirements or failure of County to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

7.9.6. County does not represent that coverage and limits will be adequate to protect Contractor and such coverage and limits shall not be deemed as a limitation of Contractor's liability under the indemnities granted to County in this Contract.

7.9.7. If Contractor fails to maintain the insurance as set forth herein, County shall have the right to purchase said insurance at Contractor's expense. Contractor agrees to reimburse County for all expenses incurred for such purchase.

7.9.8. Contractor or its agent may apply to County for approval of higher deductibles based on financial capacity and quality of the carrier affording coverage.

7.9.9. County shall have the right to prohibit Contractor or any subcontractor from performing work or services and may withhold payment until required certificates has been received and approved by County.

8. Independent Contractor. The parties mutually agree that the Contractor is an independent contractor and not an agent of the County, and as such, the Contractor shall not be entitled to any County employment benefits, such as, but not limited to, vacation, sick leave, insurance, workmen's compensation, or pension and retirement benefits.

9. Default and Termination. If Contractor fails to prosecute the work or services with such diligence as will insure its completion within the Contract time, or if Contractor breaches any of the terms or conditions contained in this Contract and fails to cure said breach within two (2) days of County's mailing of Notice of Default, or otherwise fails to perform the work or services hereunder to the County's reasonable satisfaction, County may terminate this Contract forthwith. Upon termination, County may, without prejudice to an action for damages or any other remedy, take the prosecution of the work or services out of the hands of Contractor. County may enter into another Contract for the completion of the Contract, or use such other methods as may be required for the completion of the Contract. County may deduct all costs of completing the Contract from any monies due or which may become due to Contractor. In the event this Contract is terminated prior to completion of the services by the Contractor, the Contractor shall be paid for work or services performed to the date of termination. In no event will the amount due Contractor in the event of termination exceed that amount set forth in this Contract. Nothing contained herein shall prevent the County from pursuing any other remedy, which it may have against Contractor, including claims for damages.

10. Termination for Convenience. County may terminate this Contract for convenience at any time and without cause. Upon receipt of notice, Contractor shall immediately discontinue providing the work or service and, if applicable, the placing any

orders for any materials, facilities, and supplies in connection with the performance of the work or services of this Contract.

11. Non-appropriation. All funds for payment by County under this Contract are subject to the availability of an annual appropriation of Commissioners for the services provided under the Contract, County will terminate the Contract, without termination charge or liability, on the last day of the then-current fiscal year or when the appropriation made for then-current year for the services/items covered by this Contract is spent, whichever occurs first. If at any time funds are not appropriated for the continuance of this Contract, cancellation shall be accepted by the Contractor on ten (10) business days' prior written notice, but failure to give such notice shall be of no effect and County shall not be obligated under this Contract beyond the date of termination.

12. Non-waiver of Rights. The parties mutually agree that either party's failure to insist upon the strict performance of any provision of this Contract or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this Contract.

13. Conflict of Interest. No paid employee of the County shall have a personal or financial interest, direct or indirect, as a contracting party or otherwise, in the performance of this Contract.

14. Subcontracts. The Contractor shall utilize no subcontractors for performing the work or services to be performed under this Contract without the prior written approval of the County.

15. Entire Contract. This Contract constitutes the entire understanding of the parties.

16. Binding Effect. This Contract shall be binding upon the parties hereto, and their heirs, successors, executors, administrators and assigns.

17. Severability. If any provision of this Contract is held unenforceable, all remaining provisions of this Contract shall remain in full force and effect.

18. Inclusive Terms. Use of the masculine herein shall include the feminine and neuter, and the singular shall include the plural.

19. Governing Law. All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina.

20. E-Verify Compliance. Pursuant to N.C.G.S. 143-133.3, Contractor shall fully comply with the U.S. Department of Homeland Security employee legal status E-Verify requirements for itself and all its subcontractors. Violation of the provision, unless timely cured, shall constitute a breach of Contract.

21. Compliance with Federal Law. If applicable, all federally funded projects, loans, grants, and sub grants whether funded in part or wholly, must be procured in a manner that conforms with all applicable Federal laws, policies, and standards, including those under the Uniform Guidance (2 C.F.R. Part 200).

22. Equal Opportunity.

22.1 During the performance of this contract, Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Contractor 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, 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. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

22.2 Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

22.3 Contractor 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 contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

22.4 Contractor 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.

22.5 Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

22.6 In the event of Contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and Contractor may be declared ineligible for further Government 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.

22.7 Contractor will include the provisions of this section 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. Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

23. Contractor shall comply with the following additional federal provisions:

23.1. Davis Bacon Act and Copeland Anti-Kickback Act.

23.1.1 Contractor and its subcontractors agree to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874; 40 U.S.C. § 3145) as supplemented in

Department of Labor regulations (29 C.F.R. Part 3). The Copeland Anti-Kickback Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA.

23.1.2 Contractor shall comply with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction)). See 2 C.F.R. Part 200, Appendix II, ¶ D. In accordance with the statute, Contractor must be 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. In addition, Contractor must be pay wages not less than once a week.

23.1.3 A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

23.2. Contract Work Hours and Safety Standards Act

23.2.1 Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of forty hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of forty hours in the work week.

23.2.2 Overtime: No contractor or subcontractors contracting for any part of the work under this Agreement which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week 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 hours in such work week.

23.2.3 Violation: liability for unpaid wages; liquidated damages: In the event of any violation of the provisions of this section, Contractor and

any subcontractors responsible therefore shall be liable to any affected employee for his unpaid wages. In additions, such Contractor and subcontractors shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of this Agreement in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of his standard work week of forty hours without payment of the overtime wages required by this Agreement.

23.2.4 Withholding for unpaid wages and liquidated damages:

County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or its subcontractors under any such contract or 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, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractors for unpaid wages and liquidated damages as provided in the clause set for in this Agreement.

23.2.5 Subcontracts: Contractor or its subcontractors 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 Agreement.

23.3. Patent Rights: If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, County and Contractor agree to take actions necessary to provide immediate notice and a detailed report to FEMA. Unless the Government later makes a contrary determination in writing, irrespective of Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), County and Contractor agree to take the necessary actions to provide, through FEMA, those

rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR, Part 401. Contractor agrees to include the above two paragraphs in each third party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FEMA.

23.4. Clean Water Act and Federal Water Pollution Control Act:

23.4.1 Contractor 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.

23.4.2 Contractor 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 Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

23.4.3 Contractor 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.

23.4.4 Contractor 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 Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

23.4.5 Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

23.4.6 Contractor 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. and shall report each violation to County and understands and agrees that County will, in turn, report each violation as required to assure notification to an appropriate Federal Emergency Management Agency, and an appropriate Environmental Protection Agency Regional Office.

23.4.7 Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.”

23.5. Suspension and Debarment.

23.5.1 This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such Contractor is required to verify that none of Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

23.5.2 Contractor 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.

23.5.3 This certification is a material representation of fact relied upon by County. If it is later determined that Contractor 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 County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

23.5.4 Contractor 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 bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

23.6. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in

connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

23.7. Procurement of Recovered Materials.

23.7.1 A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). See 2 C.F.R. Part 200, Appendix II, ¶ J; 2 C.F.R. § 200.322; PDAT Supplement, Chapter V, ¶ 7.

23.7.2 The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

23.7.3 In the performance of this contract, Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

- i. Competitively within a timeframe providing for compliance with the contract performance schedule;
- ii. Meeting contract performance requirements; or
- iii. At a reasonable price.

Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

23.8. Access to Records. The following access to records requirements apply to this contract:

23.8.1 Contractor agrees to provide 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 Contractor

which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

23.8.2 Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

23.8.3 Contractor agrees to provide the FEMA Administrator or his authorized representative(s) access to construction or other work sites pertaining to the work being completed under this Agreement.

23.9 Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

23.10. Contractor will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

23.11. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

23.12. Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Contractor's actions pertaining to this contract.

24. Notices. All notices required hereunder to be sent to either party shall be sent to the following designated addresses, or to such other address or addresses as may hereafter be designated by either party by mailing of written notice of such change of address, by Certified Mail, Return Receipt Requested:

To County:
New Hanover County Property Management
Attn: Scott Gordon
200 Division Drive
Wilmington, NC 28401

To Contractor:

25. Assignability. The parties hereto agree that this Contract is not transferable and shall not be assigned by either party without the written consent of the other party to this Contract.

26. Contract Under Seal. The parties hereto expressly agree to create a Contract under seal.

IN WITNESS WHEREOF, the parties have hereunto affixed their hands and seals, the day and year first above written and by authority duly given.

[SEAL] NEW HANOVER COUNTY

County Manager

ATTEST:

Clerk to the Board

[SEAL] CONTRACTOR

President (SEAL)

ATTEST:

Secretary

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

Approved as to form:

County Finance Officer

County Attorney

STATE OF NORTH CAROLINA

NEW HANOVER COUNTY

I, _____, a Notary Public of the State and County aforesaid, certify that Kymberleigh G. Crowell acknowledged that she is Clerk to the Board of Commissioners of New Hanover County, and that by authority duly given and as the act of the Board, the foregoing instrument was signed in its name by its _____ County Manager, sealed with its corporate seal and attested by herself as its Clerk.

WITNESS my hand and official seal, this _____ day of _____, 2018.

Notary Public

My commission expires: _____

STATE OF _____

_____ COUNTY

I, _____, a Notary Public of the State and County aforesaid, certify that _____ came before me this day and acknowledged that (s)he is President of _____ corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed and sealed in its name by its President.

WITNESS my hand and official seal, this _____ day of _____, 2018.

Notary Public

My commission expires: _____