COUNTY OF BRUNSWICK
REQUEST FOR PROPOSALS
WHITE GOODS/SCRAP METAL COLLECTION

Brunswick County is requesting proposals (RFP) for processing and transportation services of white goods and scrap metal collected at the Brunswick County Landfill in Bolivia, NC.

A copy of the complete RFP may be obtained from Micki Bozeman, Brunswick County Operation Services, 179 March 9th 1764 Dr., (Post Office Box 249), Bolivia, North Carolina 28422, 910-253-2524 or from our website at www.brunswickcountync.gov.

All proposals are to be faxed, emailed, hand delivered or received by mail no later than July 30, 2020 by 4:00 p.m. Each should be clearly marked **Proposal Response – White Goods/Scrap Metal. Brunswick County will not be responsible for the failure of any mail or delivery service to deliver a proposal prior to the stated date and time. Regardless of the manner of submission, any proposal received after the stated date and time will not be considered. Incomplete proposals or proposals inconsistent with the required format may be disqualified from consideration.**

These materials should be delivered to:

Mail: Micki Bozeman, Solid Waste & Recycling Coordinator
Brunswick County Operation Services
P. O. Box 249
Bolivia, NC 28422

Hand Delivered: Micki Bozeman, Solid Waste & Recycling Coordinator
Brunswick County Operation Services
Building L
179 March 9th, 1764 Drive, NE
Bolivia, NC 28422

Email: **Micki.bozeman@brunswickcountync.gov**

Questions may be directed to Micki Bozeman at (910) 253-2524 or micki.bozeman@brunswickcountync.gov.

County of Brunswick

Request for Proposals

White Goods and Scrap Metal Processing and Transportation Services

The County of Brunswick requests proposals from firms and businesses to provide processing and transportation services for white goods and other scrap metal collected and stockpiled at the site of the Brunswick County landfill facility located at 172 Landfill Road NE, Bolivia, North Carolina 28422.

I. General Information

North Carolina Senate Bill 111 and House Bill 1109, ratified in 1989 and 1991, respectively, prohibit the disposal of "white goods", defined in G.S. 130A-290 as "refrigerators, ranges, water heaters, freezers, unit air conditioners, washing machines, dishwashers, clothes dryers, and other similar domestic and commercial large appliances," in municipal solid waste landfills. Additionally, under Section 608 of the Clean Air Act, as amended in 1990, and 58 CFR 28660, chlorofluorocarbons ("CFCs") and hydro-chlorofluorocarbons ("HCFCs") must be recovered and recycled during the servicing and disposal of air conditioning and refrigeration equipment. The County received approximately 1,361.59 tons of white goods and other scrap metal and 8.91 tons of automotive batteries at the County's landfill facility during FY 19-20. The County desires proposals from firms and businesses to: 1) recover and/or recycle CFCs and HCFCs from white goods collected and stockpiled at the County landfill facility, and 2) transport all processed white goods and other scrap metal from the landfill facility to a legitimate scrap metal dealer.

II. Scope of Work

A. The contractor shall provide all equipment, materials, and labor necessary to process and transport white goods, scrap metal and automotive batteries at the County landfill facility and shall be responsible for all costs associated with lawfully performing the services. The contractor shall remove, recover and/or recycle refrigerants, compressors, capacitors, and oil for each white good unit requiring such processing prior to sale to a scrap metal dealer. The contractor may elect to process white good units, scrap metal and automotive batteries at the landfill facility or transport them to an alternative processing facility operated by the contactor. All loading and transportation of processed units and units not requiring processing from the landfill facility and/or alternative facility shall be performed by the contractor. The contractor shall transport all required equipment, materials, and personnel to the landfill facility within 30 days of contact by the County, with the exception of Sundays and nationally recognized holidays. The landfill facility shall be available to the contractor Monday through

Saturday, 8:00 am to 4:00 pm, except in the event of closure due to causes beyond County's control to include, without limitation, natural disasters, including earthquakes, hurricanes or tornadoes; government shutdown; epidemics or pandemics; or other catastrophic natural event or act of God.

B. Following the removal, recovery and/or recycling of all refrigerants, compressors, capacitors, and oil, the contractor will haul the units to a scrap metal dealer. The contractor shall agree to meet any additional requirements regarding the preparation of the units imposed by the scrap metal dealer at contractor's sole cost and expense.

C. The contractor shall retain all revenues generated from the sale of the scrap metal. Any revenues received in excess of those projected for a given period shall be considered and may affect the price negotiations for the next contract term, if applicable.

D. The contractor shall maintain records and submit monthly reports of all contractual activities undertaken each month, or fraction thereof. The reports will be furnished to the County on the 10th day of the next consecutive month following the month for which the report was prepared. A final report, summarizing information for the length of the entire contract period shall be submitted by the 10th day of the first month following the conclusion of the contract period. The reports shall include:

1. The total tonnage of white goods and other scrap metal (including automotive batteries) processed at the landfill facility.

2. The total tonnage of white goods and scrap metal (including automotive batteries) transported to scrap metal dealer(s).

3. Copies of scrap dealer receipts and/or invoices indicating tonnage of white goods and scrap metal sold, and the revenues paid to the contractor.

4. The total revenue received by the contractor for the total amount sold.

5. The total volume of CFCs and HCFCs recovered and/or recycled from the white goods.

6. Copies of certifications or other verification that all CFCs and HCFCs were recovered and/or recycled in compliance with all federal and state laws, for each of the white good units requiring such processing, prior to being transported to market.

Any changes to the Scope of Work will be made in the form of an Addendum to this Request for Proposals and will be supplied to all prospective contractors.

Brunswick County reserves the right to negotiate additional services with contractor at any time after the initial contract award.

III. Contract Requirements

A. Equipment Requirements

1. The contractor must provide documentation that equipment to be used in the recovery and/or recycling of CFCs and HCFCs has been certified by an EPA-approved testing organization or has otherwise been exempted from the certification requirement.

2. All equipment and vehicles must be properly registered and insured in accordance with the Motor Vehicle Laws of the State of North Carolina.

3. Equipment shall conform to all federal, state, and local safety regulations.

4. The contractor shall maintain all equipment.

5. Alternate equipment, meeting the above requirements, must be available to ensure the timely fulfillment of the contract.

B. Insurance Requirements

Contractor must comply with the Minimum Insurance Requirements as set forth in Appendix B attached hereto and incorporated herein by reference and must provide County with Certificates of Insurance as evidence that it meets such minimum requirements.

IV. Price and Type of Bid

The bid price proposed by the contractor shall include: 1) a percentage of the market value and a minimum price per ton to be received by the County to recover and/or recycle the CFCs and HCFCs, remove and properly dispose of compressors, capacitors, and oil, and haul all units at the landfill facility to a legitimate scrap metal dealer. The market value shall be based on the AMM index market price of Number 2 bundles-Philadelphia. The County does not guarantee a minimum tonnage of white goods, scrap metal and automotive batteries to be received at the landfill facility. All proposals shall be valid for the initial term of the contract, if awarded. Throughout the term of any contract, if awarded, if AMM removes the current price index the contractor shall use the price index of the nearest region.

V. Proposal Content

The package shall include an original and two (2) copies with the following information:

1. The company name, address, and telephone number.

2. The name, address, and telephone number of a company representative with the authority to answer questions or provide clarification regarding the proposal's contents.

3. The scope of service to be provided with a detailed description of how the work will be performed; the plans for ultimate disposal and/or recycling of all recovered CFCs, HCFCs, and oil; and the equipment and personnel to be used to insure work finalization.

4. Any assistance or requirements from the County.

5. List of key personnel to be assigned to perform the service and their qualifications.

6. A detailed company history.

7. Reference list of completed or current contracts, including the name and telephone number of a contact person for each reference listed.

8. A projection of anticipated revenues from sale of the scrap metal.

9. A bid price proposal following guidelines from section IV of this document on the Proposal Form attached hereto as Appendix A and incorporated herein by reference.

VI. Time of Performance; Option to Extend

The initial contract term shall be for one (1) year from the date the contract is signed. County has the option, upon mutual agreement with the contractor, to extend the contract term for up to two (2) additional one (1) year extensions.

VII. Right to Reject

The County reserves the unqualified right to reject any or all proposals when such rejection is deemed to be in the best interest of the County.

VIII. Cost to Prepare Proposals

Any cost incurred by a contractor in preparing or submitting a proposal is the sole responsibility of the contractor and will not be eligible for reimbursement by the County.

IX. Right to Submitted Proposals and Supporting Documents

All written correspondence, proposals, and supporting documents received by the County regarding the Request for Proposals will become property of the County.

X. Proposal Deadline

All proposals must be received by 4:00 pm on July 30, 2020 at the Brunswick County Operation Services Department, P.O. Box 249, Building L, 179 March 9th, 1764 Drive, NE, Bolivia, NC 28422 or by email at Micki.bozeman@brunswickcountync.gov. **Brunswick County will not be responsible for the failure of any mail or delivery service to deliver a proposal prior to the stated date and time. Regardless of the manner of submission, any proposal received after the stated date and time will not be considered. Incomplete proposals or proposals inconsistent with the required format may be disqualified from consideration.**

XI. Miscellaneous

Brunswick County reserves the right to request financial information for any contractor, in order to support the viability of the contractor.

Brunswick County reserves the right to cancel the work described herein prior to the issuance and acceptance of any contractual agreement even if the Board of Commissioners has formally accepted the recommendation.

In addition to the terms and conditions contained in this Request for Proposals, by submitting a proposal, contractor, if selected, agrees to enter into and be bound by the provisions of a Services Agreement in substantially the form attached hereto as Appendix C and incorporated herein by reference. To the extent that any of the terms of this Request for Proposals and the terms of the Services Agreement conflict, the terms of the Services Agreement shall prevail. No work shall commence until an agreement has been fully executed by the parties. Unless otherwise approved by Brunswick County, the contractor must begin performing services within thirty (30) days after an agreement is signed.

Submission of a proposal indicates explicit acceptance by the contractor of the terms and conditions contained in this Request for Proposals and any attachments hereto. Brunswick County reserves the right to reject, without prejudice or explanation, any or all proposals. Brunswick County reserves the right to waive informalities or technical defects in proposals or to amend the specifications of this Request for Proposals and request new proposals at any time prior to the award of a contract. All decisions of Brunswick County shall be final and binding.

Brunswick County reserves the right to award a contract, based on initial proposals received from contractors, without discussion and without conducting further negotiations. Brunswick County may also, in its sole discretion, initiate further discussions with contractors that it deems to fall within a competitive range. Award shall be made to the lowest responsive, responsible bidder unless otherwise specified. Brunswick County shall not be deemed to have finally selected a contractor until a contract has been successfully negotiated and signed by both parties.

XII. Inquiries

All inquiries concerning this Request for Proposals may be directed to Micki Bozeman, Brunswick County Solid Waste & Recycling at (910) 253-2524 or micki.bozeman@brunswickcountync.gov.

Brunswick County
Operation Services Department
Stephanie Lewis, Director

Construction & Grounds
Building & Park Maintenance
Custodial Services

PO Box 249
Bolivia, NC 28422
(910) 253-2515
www.brunswickcountync.gov

Solid Waste & Recycling
Mosquito & Water Management
Service Center

APPENDIX A

White Goods Proposal Form

This form is to be completed and included with the proposal package.

Company Name: _____

Contact Person: _____

(name & title) _____

Address: _____

_____

Phone Number: _____

Fax Number: _____

Percentage of market value of Number 2 Bundles – Philadelphia Market: _____ %

Minimum price per ton $ _____

_____ _____ _____

Name, Title (Print) Signature Date

APPENDIX B

BRUNSWICK COUNTY MINIMUM INSURANCE COVERAGE REQUIREMENTS

At contractor's expense, contractor shall procure and maintain the following recommended lines of insurance according the scope of work. The County may choose to elect higher or lower coverages according to the work performed. Contractors must be insurered 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.

A. Before commencement of any work or event, Contractor shall provide a Certificate of Insurance in satisfactory form as evidence of the insurances required above.

B. 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.

C. 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.

D. 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.

E. The Certificate of Insurance should note in the Description of Operations the following:
Department: _____
Contract #: _____

F. 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.

G. 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.

H. Certificate Holder shall be listed as follows;
ATTENTION: Brunswick County Risk Manager
30 Government Center Dr. NE
P.O. Box 249
Bolivia, NC 28422

I. 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.

APPENDIX "C"

FORM OF AGREEMENT

NORTH CAROLINA

SERVICES AGREEMENT

BRUNSWICK COUNTY

THIS 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 "County"), party of the first part, and {Vendor Name}, (hereinafter referred to as "Provider"), party of the second part.

WITNESSETH:

1. SERVICES; FEES

The services to be performed under this Agreement (hereinafter referred to collectively as the "Services") are set forth in the Request for Proposals entitled "County of Brunswick Request for Proposals for White Goods and Scrap Metal Processing and Transportation Services" as published on [_____]. The Scope of Services and the fees for said Services are more fully 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 AND TERMINATION

The term of this Agreement begins on {Effective Date} (the "Effective Date") and continues in effect for an initial term of one (1) year, unless sooner terminated as provided herein. The initial term shall be followed by two (2) successive options to renew for one (1) year each. Each renewal option is to be exercised by mutual written agreement of the parties at least thirty (30) days prior to the end of the then current term. The County may terminate this Agreement at any time without cause by giving sixty (60) days' written notice to Provider. As soon as practicable after receipt of a written notice of termination without cause, Provider shall submit a statement to County showing in detail the work performed under this Agreement through the effective date of termination. County may terminate this Agreement for cause by giving written notice of a breach of the Agreement. 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, County may terminate this Agreement immediately and without notice to Provider if 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 Provider, or has a receiver or trustee appointed for substantially all of its property, or if 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 fees as specified in Exhibit "A" or as set out above for the Services satisfactorily performed in accordance with this Agreement. Unless otherwise specified, Provider shall submit monthly invoices to County and include detail of all Services delivered or performed under the terms of this Agreement. County shall pay all undisputed and properly completed invoices within thirty (30) days of receipt. Notwithstanding the foregoing, County will not pay late fees on any charges under this Agreement. If County disputes any portion of the charges on any invoice received from Provider, the County shall inform Provider in writing of the disputed charges. Once the dispute has been resolved, Provider shall re-invoice County for the previously disputed charges, and, per any resolution between County and Provider, the County shall pay those charges in full at that time. No advance payment shall be made for the Services to be performed by Provider under this Agreement.

5. INDEPENDENT CONTRACTOR

Both County and Provider agree that 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. Provider represents that it has or will secure, at its own expense, all personnel required in performing the Services under this Agreement. Accordingly, 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. 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 Provider is, according to Internal Revenue Service guidelines, an employee subject to withholding and social security contributions, then 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

a. 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;

b. Provider has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;

c. No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for Provider to enter into and perform its obligations under this Agreement;

d. In connection with 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;

e. Provider shall not violate any agreement with any third party by entering into or performing the Services under this Agreement;

f. Provider will perform all Services in conformity with the specifications and requirements of this Agreement;

g. The Services provided by 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);

h. Provider shall exercise reasonable care and diligence when performing the Services hereunder and will ensure that it adheres to the highest generally accepted standards in the industry when performing said Services;

i. Provider acknowledges that if any specific licenses, certifications or related credentials are required in its performance of the Services, it will ensure that such credentials remain current and active and not in a state of suspension or revocation; and

j. 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 the 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. DAMAGE TO EQUIPMENT, FACILITIES, PROPERTY OR DATA

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 Provider or its subcontractors. In the event that Provider causes damage to the County's equipment or facilities, 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.

8. NON-ENDORSEMENT AND PUBLICITY

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

9. NON-EXCLUSIVITY

Provider acknowledges that County is not obligated to contract solely with Provider for the Services covered under this Agreement.

10. DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL

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. § 147-86.81.

11. DEBARMENT

Provider hereby certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this Agreement by any governmental department or agency. Provider must notify County within thirty (30) days if debarred by any governmental entity during this Agreement.

12. INDEMNIFICATION

Provider shall defend, indemnify and hold harmless 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 County or which 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 Provider, its employees or agents. Provider further agrees to investigate, handle, respond to, defend and dispose of same at its sole cost and expense. Provider shall be fully responsible to 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.

13. INSURANCE

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 County with limits acceptable to County. All insurance policies (with the exception of Workers' Compensation, if applicable, and Professional Liability) shall be endorsed, specifically or generally, to include County as an additional insured and as a certificate holder. 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 County. The Certificate will provide for thirty (30) days' advance notice in the event of termination or cancellation of coverage. Provider shall have no right of recovery or subrogation against 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.

14. WORKERS' COMPENSATION

To the extent required by law, 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 Provider is excluded from the requirements of such Act and does not voluntarily carry workers' compensation coverage, 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 Provider's obligations under this Agreement.

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

15. REMEDIES

a. **RIGHT TO COVER.** If Provider fails to meet any completion date or resolution time set forth, due to no fault of 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 Services from a third party until the matter is resolved

and Provider is again able to resume performance under this Agreement; and

ii. Deduct any and all expenses incurred by County in obtaining or performing the Services from any money then due or to become due Provider and, should the County's cost of obtaining or performing the Services exceed the amount due Provider, collect the amount due from Provider.

b. **RIGHT TO WITHHOLD PAYMENT.** County reserves the right to withhold any portion, or all, of a scheduled payment if Provider fails to perform under this Agreement until such breach has been fully cured.

c. **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.

d. **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.

e. **NO SUSPENSION.** In the event that County disputes in good faith an allegation of breach by Provider, notwithstanding anything to the contrary in this Agreement, 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.

16. TAXES

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

17. HEALTH AND SAFETY

Provider shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with performing the Services. 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 performing the Services and other persons who may be affected thereby.

18. NON-DISCRIMINATION IN EMPLOYMENT

Provider shall not discriminate against any employee or applicant for employment because of race, ethnicity, gender, gender identity, sexual orientation, age, religion, national origin, disability, color, ancestry, citizenship, genetic information, political affiliation or military/veteran status, or any other status protected by federal, state or local law or other unlawful form of discrimination. Provider shall take affirmative action to ensure that applicants are employed and that employees are treated fairly during employment. In the event Provider is determined by the final order of an appropriate agency or court of competent jurisdiction to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Agreement may be cancelled, terminated or suspended in whole or in part by County, and Provider may be declared ineligible for further County agreements.

19. COMPLIANCE WITH E-VERIFY PROGRAM

Pursuant to N.C.G.S. § 143-133.3, Provider understands that it is a requirement of this Agreement that Provider and its subcontractors must comply with the provisions of Article 2 of Chapter 64 of the North Carolina General Statutes. In doing so, 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 Provider shall require its subcontractors to do the same. Upon request, Provider agrees to provide County with an affidavit of compliance or exemption.

20. 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.

21. OWNERSHIP OF WORK PRODUCT

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

22. 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 County shall not recognize any assignment in violation of this provision.

23. 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.

24. 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.

25. GOVERNMENTAL IMMUNITY

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.

26. NON-WAIVER

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

27. 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.

28. 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.

29. 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.

30. 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 Provider and County.

31. NOTICES

a. **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.

b. **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.

c. **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}

[SIGNATURES APPEAR ON FOLLOWING PAGE]

32. 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 § 66-358.1 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.

BRUNSWICK COUNTY

By: _____

Printed Name: Randell K. Woodruff

Title: County Manager

Date: _____

{Vendor Name}

By: _____

Printed Name: {Vendor Signatory Name}

Title: {Vendor Signatory Title}

Date: _____

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

_____
Julie A. Miller, Finance Director
Brunswick County, North Carolina

APPROVED AS TO FORM

_____
Robert V. Shaver, Jr., County Attorney /
Bryan W. Batton, Assistant County Attorney

EXHIBIT "A"
PROPOSAL/STATEMENT OF WORK/SCOPE OF SERVICES