

**SPECIFICATIONS AND CONTRACT DOCUMENTS  
FOR  
NEW HANOVER COUNTY**

**SOIL PURCHASE AND HAULING FOR NEW HANOVER COUNTY LANDFILL**

**RFB # 14-0287**

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**COUNTY COMMISSIONERS**

**WOODY WHITE, CHAIRMAN  
BETH DAWSON, VICE-CHAIR  
JONATHAN BARFIELD, JR.  
BRIAN BERGER  
THOMAS WOLFE**

**CHRIS COUDRIET, COUNTY MANAGER**

**Section 1      Advertisement**

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**NEW HANOVER COUNTY**

**REQUEST FOR BID**

**SOIL PURCHASE AND HAULING FOR NEW HANOVER COUNTY LANDFILL**

Pursuant to Section 143-129 of the General Statutes of North Carolina, sealed bids addressed to Kim Roane, Business Officer, New Hanover County Environmental Management Department, 3002 U.S. Hwy 421 N., Wilmington, North Carolina 28401 and marked “**SOIL HAULING-RFB # 14-0287**” will be accepted until **2:00 P.M. EST, Tuesday, March 25, 2014.**

The bids will be publicly opened and read immediately following the latest time for receipt of bids in the New Hanover County Environmental Management Conference Room, 3002 U.S. Hwy 421 N., Wilmington, North Carolina.

Instructions for submitting bids and complete requirements and information may be obtained by visiting the County’s website at <http://www.nhcgov.com/Finance/Pages/CurrentBids.aspx>.

The Board of County Commissioners reserves the right to accept or reject any or all bids and to make the purchase which will be in the best interest of the County.

Kim Roane, Business Officer  
New Hanover County  
(910) 798-4002

## Section 2 Instructions and General Conditions

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### 2.1 Schedule

Release Date	<i>Tuesday, March 11, 2014</i>
Deadline for Questions. All questions must be submitted in writing to Kim Roane, Business Officer, ( <a href="mailto:kroane@nhcgov.com">kroane@nhcgov.com</a> ).	<i>Tuesday, March 18, 2014 at 2:00 PM</i>
Questions will be answered via written addendum.	<i>Thursday, March 20, 2014 by 7:00 PM</i>
Deadline for Receipt of Bids	<i>Tuesday, March 25, 2014 at 2:00 PM</i> New Hanover County Environmental Management 3002 U.S. Hwy 421 N. Wilmington, NC 28401 (Opening to be held in Conference Room)
Proposed Date of Award	<i>By Monday March 31, 2014</i>

### 2.2 Preparation of Bid Proposal

**2.2.1 Completion of Bid Form:** Bidders are directed to submit their bid on the bid proposal form contained in this bid package. Bidders are instructed to submit the original and two (2) hard copies, along with one (1) electronic copy on either a CD or a flash drive. All prices and notations shall be written in ink or typed. Discrepancies between words and numerals will be resolved in favor of words. Discrepancies between the multiplication of units of work and unit prices will be resolved in favor of the unit prices. Changes or corrections made on the Bid must be initialed by the individual signing the bid. No corrections will be permitted once bids have been received and opened. No telephone, electronic or facsimile proposals will be considered. Proposals received after the time and date for closing will not be considered. **BIDS NOT SIGNED WILL BE REJECTED.**

**2.2.2 Deviations:** New Hanover County reserves the right to allow or disallow minor deviations or technicalities should the County deem it to be to the best interest of the County. New Hanover County shall be the sole judge of what is to be considered a minor deviation or technicality.

**2.2.3 Warranties:** Bidder warrants that all goods furnished shall be free from all defects, and shall conform in all respects to the technical specifications established by the County.

If the County's specifications include a statement of the particular purpose for which the goods will be used, the goods offered by bidder shall be fit for this purpose.

**2.2.4** After the bid issue date, all communications between the County and prospective bidders regarding this bid request shall be in writing. Any inquiries, requests for interpretation, technical questions, clarification, or additional information shall be directed to Kim Roane, Business Officer, via email: [kroane@nhcgov.com](mailto:kroane@nhcgov.com). Questions and responses affecting the specifications of the bid will be provided by issuance of an Addendum. **All questions shall be received no later than 2:00 PM, EST, Tuesday, March 18, 2014.**

### **2.3 Submission of Bid Proposal**

Submit one (1) original and two (2) hard copies along with one (1) electronic copy of the bid on either a CD or flash drive in a sealed envelope properly marked “**COVER SOIL-RFB # 14-0287**” and addressed to:

New Hanover County Environmental Management  
Attn: Kim Roane, Business Officer  
3002 U. S. Hwy 421 N.  
Wilmington, NC 28401

### **2.4 Cost of Preparation of Response**

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

### **2.5 Term of Contract**

The initial term of this contract shall begin on the date of official award and end on June 30, 2015 with the option to extend for two (2) additional years. Extension for each

additional term shall be offered at the sole discretion of the County upon written notice to the Contractor(s). The total contract term, including the initial term and all subsequent extensions, shall not extend past June 30, 2017, unless an emergency exists and/or special circumstances require a partial term extension.

## **2.6 Unit Bid Items**

The preliminary opinion of quantities of work to be done as indicated by the unit bid items are approximate as shown in the Contract Documents, and are given as a basis for the comparison of bids. The County does not expressly, or by implication, agrees that the actual amount of work will correspond therewith, but reserves the right to increase or decrease the quantity of any item or portion of the work or to omit portions of the work at the unit or lump sum prices stated in the bid form. The Bidders shall not at any time after the submittal of their bids have any claim for damages as a result of the lowering of anticipated profits or the loss of profits because of any difference between the quantities of work actually done and those stated in the bidding sheets.

All work as set forth in the Contract Documents is to be accomplished. Bidder shall include in the bid item or items, of work, funds to allow for compensation for all work for which specific bid items are not provided.

## **2.7 Execution of Agreement**

The successful Bidder will be required to enter into a formal agreement that is consistent with the bid package outlined within. The Bidder to whom the Contract is awarded by County shall within 5 days after notice of award and receipt of Agreement forms from the County, sign and deliver to the County all required copies of said Agreement. (Sample of Agreement (Draft Contract) is attached in bid packet - specifics may change to comply with bid specifications)

## **2.8 Trade Secret Confidentiality**

All bid proposals received and recorded at the bid opening are considered public record and available for public inspection. According to General Statutes 132 - 1.2, trade secrets contained in a bid may be kept confidential if the bidder, at the time the bid is submitted, designates the secret and requests that it be kept confidential. This right of privacy will be construed as narrowly as possible to protect the interests of the BIDDER while attempting to maximize the availability of information to the public.

## **2.9 Time for Opening Bids**

Bids will be opened promptly and read at the time and date set forth in the advertisement. Bidders or their authorized agents are invited to be present. Any bids received after the scheduled closing time for the receipt of bids will not be accepted.

## **2.10 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 sixty (60) days.

## **2.11 Award of Contract**

The following elements, in addition to price, shall be given consideration in evaluating qualifications of and degree of responsibility to be credited to the Bidder:

- (1) the ability, capacity and skill of the Bidder to perform the contract;
- (2) the character, integrity, reputation, judgment, experience, and efficiency of the Bidder; and
- (3) whether the Bidder can perform the contract within the times specified.

## **2.12 Taxes**

New Hanover County is exempt from and will not pay Federal Excise Taxes or Transportation Taxes. If bidder is required to charge North Carolina sales tax on bidder's sales, bidder shall not include it as part of the bid price. County will pay North Carolina sales tax over and above bid prices when invoiced.

## **2.13 Responsibility of Compliance With Legal Requirements**

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

## **2.14 Indemnity**

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 Successful Bidder, his agents, employees and subcontractors.

## **2.15 Insurance**

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

### **2.15.1 Certificates and Notice of Cancellation.**

**2.15.1.1** Before commencing work under this contract, BIDDER shall furnish County with certificates of all insurance required below. Certificates shall indicate the type of insurance, amount, class of operations covered, effective date and expiration date of all policies, and shall contain the following statement:

"The insurance covered by this certificate will not be canceled or materially altered, except after thirty (30) days written notice has been received by County".

**2.15.1.2** The Certificate of Insurance, naming New Hanover County as an additional insured, shall be further evidenced by an actual endorsement furnished to the County from the insurer within thirty (30) days of the signing of the contract between the BIDDER and the County.

### **2.15.2 Workers Compensation and Employers Liability Insurance.**

Covering all of the Bidder's employees to be engaged in the work under this contract, providing the required statutory benefits under North Carolina Workers Compensation Law, and employer's liability insurance providing limits at least in the amount of \$500,000/500,000/500,000 applicable to claims due to bodily injury by accident or disease.

### **2.15.3 Commercial General Liability.**

Including coverage for independent contractor operations, contractual liability assumed under the provisions of this contract, products/completed operations liability and broad form property damage liability insurance coverage. Exclusions applicable to explosion, collapse and underground hazards are to be deleted when the work involves these exposures. The policy shall provide liability limits at least in the amount of \$1,000,000 per occurrence, \$2,000,000 aggregate, combined single limits, applicable to claims due to bodily injury, personal injury and/or property damage. New Hanover County shall be named as an additional insured under this policy.

#### **2.15.4 Automobile Liability Insurance**

Covering all owned, non-owned and hired vehicles, providing liability limits at least in the amount of \$1,000,000 per occurrence combined single limits applicable to claims due to bodily injury and/or property damage.

#### **2.16 Addendum**

The bid package constitutes the entire set of bid 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 mailed to all bidders who are listed with the Finance Office as having received the bid package.

#### **2.17 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.

#### **2.18 Successful Bidder**

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

#### **2.19 County Rights**

New Hanover County reserves the following rights, which may be exercised at its sole discretion:

- to reject any or all bids or any part thereof, or to accept any bid, or any part thereof;
- to supplement, amend, substitute or otherwise modify this bid at any time;
- to cancel this bid with or without the substitution of another bid;
- to take any action affecting this bid, this bid process, or the services or facilities subject to this bid that would be in the best interests of the County;
- to issue additional requests for information;
- to require one or more bidders to supplement, clarify or provide additional information in order for the County to evaluate the bids submitted;
- to conduct investigations with respect to the qualifications and experience of each bidder;
- to waive any defect or irregularity in any bid received;
- to reject any or all bids;

- to award all, none, or any part of the items that is in the best interest of the County, with one or more of the bidders responding, which may be done with or without re-solicitation;
- to enter into any agreement deemed by the County to be in the best interest of the County, with one or more of the bidders responding.

**2.20** The successful vendor is expected to enter into a contract with the County.

**2.21** Unless specifically stated to the contrary, any manufacturer's names, trade names, brand names or catalog numbers used in the specifications of the Request for Bid are for the purpose of describing and/or establishing the quality, design and performance required. Any such reference is not intended to limit or restrict an offer by any bidder and is included in order to advise the potential bidder of the requirements for the County. Any offer which proposes quality, design, or performance, will be considered.

**2.22** Any person, firm(s), corporation or association submitting a proposal shall be deemed to have read and understood all the terms, conditions and requirements in the specifications and/or scope of work.

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

**2.24** The County is exempt from and will not pay Federal Excise Taxes or Transportation Taxes.

**2.25** If the Vendor is required to charge North Carolina sales tax on bidder's sales, bidder shall not include it as part of the bid price. The County will pay North Carolina sales tax over and above bid prices when invoiced.

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

**2.27 E-Verify Requirements**

Pursuant to N.C.G.S 147-33.95(g), New Hanover County shall not enter into a contract unless the Bidder and each of its sub-contractors comply with the E-Verify requirements of N.C.G. S. Chapter 64, Article 2. Bidders are directed to review the foregoing laws. The successful Bidder must submit a certification of compliance with E-Verify to the County, and on a periodic basis thereafter as may be required by the County.

## **2.28 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 CONTRACTORS agree 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 CONTRACTOR 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.

## **2.29 Minority Participation**

Pursuant to N.C.G.S. 143-48, 143-128.4 and Executive Order #13, New Hanover County invites and encourages participation in this Request for Proposals by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. Additional information may be found at [www.doa.nc.gov/hub](http://www.doa.nc.gov/hub).

## **2.30 CONTRACTOR SAFETY REQUIREMENTS**

- 2.30.1** Contractor shall comply with all local, state and federal safety rules and regulations and shall sign and return NHC Environmental Management Contractor Compliance Requirements document (attached to the contract).
- 2.30.2** The Contractor shall be solely responsible for maintaining safety at all work sites. The Contractor shall take all reasonable steps to insure safety for both workers and visitors to include traffic control.
- 2.30.3** The Contractor shall comply with all NC Department of Transportation requirements including, but not limited to, placards and training.

## **2.31 Statement of Assurances and Compliance**

The attached Statement of Assurances and Compliance must be completed and attached to the bid documents.

## **Section 3      Specifications**

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### **3.1 GENERAL INFORMATION**

New Hanover County is requesting bids from qualified Contractors to sell and deliver topsoil and/or sand, as well as ABC rock, to the County's landfill located at 5210 HWY. 421 N, Wilmington, NC.

The landfill has a limited soil reserve and must import off-site topsoil for use as intermediate cover. The landfill may also, as needed, import sand from off-site for use as daily cover. Additionally, the landfill also imports ABC rock from Martin Marietta for roadway repairs and extensions. The successful Bidder will be required to secure, load and deliver a sufficient quantity of topsoil, sand, or ABC rock as directed by County staff on a daily basis for use as intermediate/daily cover or road repairs and extensions. The County does not commit to purchase a minimum quantity of topsoil, sand, or ABC rock. All topsoil, sand, and ABC rock delivered to the County landfill must meet the specifications identified in "Cover Material Specifications" identified in item 3.2 below.

The Contractor shall list all available sources of topsoil and sand and provide both hauling and material charges on the bid form for each site identified. The Contractor shall determine the availability of topsoil and sand at the different collection sites prior to delivery. County staff will use this information to determine which site to haul from during any event.

The County will verify all quantities delivered based on random weights of the soil or sand as measured across certified scales at the landfill or other mutually agreed upon method. The following conversion factors will be used to quantify the cubic yards of soil delivered:

- Sand: 1.4 tons/cubic yard
- Topsoil: 1.1 tons/cubic yard

### **3.2 COVER MATERIAL SPECIFICATIONS**

As directed by the County, the Contractor shall provide daily cover, intermediate cover, and roadway repair materials meeting the following specifications:

- For daily cover: coarse to fine grained sands, sandy loam (to be visually observed by and then authorized by County staff prior to hauling)
- For intermediate cover: topsoil or topsoil equivalent (to be visually observed by and then authorized by County staff prior to hauling)
- For roadway repair and extension: ABC rock purchased from Martin Marietta

All soil delivered shall conform to applicable County and State of North Carolina codes. Unsuitable material shall not be accepted by the County and shall be removed from the site at no cost to the County. Unsuitable material is defined as material the County determines to be one of the following:

1. Of such unstable nature as to be incapable of being compacted using ordinary methods
2. Too wet to be properly compacted
3. Include clay at a percentage determined by visual observation to negatively impact operations
3. Otherwise unsuitable for the planned use as daily or intermediate cover material.

### **3.3 TOPSOIL AND SAND SOURCES**

The Contractor is responsible to identify the location of all available sources of topsoil/sand and provide both hauling and material pricing from each site on the bid form attached. The Contractor shall complete a separate bid form for each source identified, being certain to identify the source in the space available on the form. The Contractor is responsible for making additional copies of the bid form for multiple sources identified.

### **3.4 QUANTITY AND FREQUENCY**

Quantities to be delivered will vary on a daily, weekly and monthly basis. The Contractor shall be prepared to deliver no material per day or as much as 750 cubic yards/day, five days/week.

#### **3.4.1 Topsoil**

County staff anticipates topsoil purchases periodically at approximately one month intervals. Each event in which topsoil is needed may last for several consecutive days. For example, the landfill may need 600 cubic yards of topsoil to be delivered each day for four consecutive days and then not need any more for about a month. The successful bidder shall be capable of providing topsoil at this rate for the duration of such events.

#### **3.4.2 Sand**

County staff anticipates sand purchases on an as needed basis, most likely only in the event of equipment breakdown that prevents hauling of on-site soils by County staff. In the case of equipment breakdown County staff projects the need for approximately 200 cubic yards of sand/day, five days/week. The successful bidder shall be capable of providing sand at this rate for the duration of such events.

#### **3.4.3 ABC Rock**

County staff purchases ABC rock for roadway repair and extension on an as needed basis. The successful bidder shall be capable of providing transportation of ABC rock to the landfill as needed in quantities up to 500 tons/day.

### **3.5 TOPSOIL AVAILABILITY**

At a minimum, the Contractor shall ensure the availability of 30,000 cubic yards of intermediate cover (topsoil) per year from the combination of sources listed on the bid form. This will ensure that material is readily available when needed.

### **3.6 MEASUREMENT AND PAYMENT**

- (A) Measurement of topsoil and sand will be conducted randomly across certified scales located at the landfill and converted to cubic yards based on the conversion factors listed in 3.1 above. On average, each load of topsoil or sand should contain a volume of approximately 15 cubic yards.
- (B) Payment for the various items in the proposal will be made at the unit price bid in the proposal and shall be compensation in full for furnishing all materials, labor, tools, equipment, and appurtenances necessary to complete the work in a satisfactory manner and as required in the specifications.
- (C) Total quantities indicated in the proposal are approximate and for bidding purposes only.

### **3.7 UNIT PRICE BID**

Bidders shall provide unit prices for topsoil and sand in \$/load. This price shall be based on a load of approximately 15 cubic yards. Bidders shall provide unit prices for the transportation of ABC rock in \$/ton.

### **3.8 FUEL SURCHARGE**

There will be no fuel surcharge allowed during the contract period. Prices quoted shall remain firm during the initial period that will end on June 30, 2015. If the contract is extended at the option of the County at any time, both parties will negotiate and agree to a new firm price based on current market conditions.

### **3.9 TERM OF CONTRACT**

The initial term of this contract shall begin on the date of official award and end on June 30, 2015 with the option to extend for two (2) additional years. Extension for each additional term shall be offered at the sole discretion of the County upon written notice to the Contractor(s). The total contract term, including the initial term and all subsequent extensions, shall not extend past June 30, 2017, unless an emergency exists and/or special circumstances require a partial term extension.

**Section 4 – Bid Form/Price Sheet**

**RFB # 14-0287**

**COVER SOIL PURCHASE FOR NEW HANOVER COUNTY LANDFILL**

**Deadline for Receipt of Bids: 2:00 p.m. EST, Tuesday, March 25, 2014**

I certify that this bid is made without prior understanding, agreement or connection with any corporation firm, or person submitting a bid for the same services and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards. I agree to abide by all conditions of this bid and certify that I am authorized to sign this bid for the bidder.

**SOURCE LOCATION:** \_\_\_\_\_

<b>Item</b>	<b>Description</b>	<b>Unit Price (Material) (\$/load)</b>	<b>Unit Price (Hauling) (\$/load or \$/ton)</b>	<b>Total Price (\$/load or \$/ton)</b>
1.	PER LOAD PRICE FOR SECURING, LOADING AND DELIVERING <b>DAILY COVER (SAND)</b> TO NEW HANOVER COUNTY LANDFILL. PRICE PER UNIT TO INCLUDE <b>ALL COSTS</b> ASSOCIATED WITH THE CONTRACT.			
2.	PER LOAD PRICE FOR SECURING, LOADING AND DELIVERING <b>INTERMEDIATE COVER (TOPSOIL)</b> TO NEW HANOVER COUNTY LANDFILL. PRICE PER UNIT TO INCLUDE <b>ALL COSTS</b> ASSOCIATED WITH THE CONTRACT.			
3.	PER TON PRICE FOR SECURING, LOADING AND DELIVERING <b>ABC ROCK</b> TO NEW HANOVER COUNTY LANDFILL. PRICE PER UNIT TO INCLUDE <b>ALL COSTS</b> ASSOCIATED WITH THE CONTRACT.			

**Attachments to Bid**

1. Exceptions to bid (if any)
2. Proof of Insurance (Attach certificate showing limits of coverage)

**NEW HANOVER COUNTY**  
**RFB #14-0287**  
**Cover Soil Purchase and Hauling for New Hanover County Landfill**

**STATEMENT OF ASSURANCES AND COMPLIANCE**

The undersigned, as bidder certifies that the General Conditions and Instructions to Bidders, 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.

**Notice to Proceed**

The undersigned, if awarded the bid, hereby agrees to execute a contract with New Hanover County in the form specified after the award and to begin the process of providing the **SOIL PURCHASE AND HAULING FOR NEW HANOVER COUNTY LANDFILL** as specified in this bid upon receipt of a Purchase Order issued by New Hanover County and the fully executed contract.

**Addendum**

Receipt of the following Addendum is acknowledged:

Addendum No. \_\_\_\_\_ Date \_\_\_\_\_, 2014

Addendum No. \_\_\_\_\_ Date \_\_\_\_\_, 2014

**Bidder Information**

Please check as appropriate and complete the items below.

The Bidder is:

An Individual

A Partnership between:  
\_\_\_\_\_

A Joint Venture consisting of:  
\_\_\_\_\_

A Corporation organized under the laws of the State of \_\_\_\_\_  
*(List name of state appearing on the corporate seal and affix seal below where indicated.)*

<b>Signature/Date:</b>	
<b>NAME/ TITLE:</b>	
<b>COMPANY:</b>	
<b>ADDRESS:</b>	
<b>TELEPHONE:</b>	
<b>FAX:</b>	

DRAFT CONTRACT

NORTH CAROLINA

AGREEMENT

NEW HANOVER COUNTY

THIS CONTRACT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2014 by and between **NEW HANOVER COUNTY**, a political subdivision of the State of North Carolina, hereinafter referred to as "County"; and \_\_\_\_\_, a \_\_\_\_\_, hereinafter referred to as "Contractor."

WITNESSETH:

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

1. Scope of Services. Contractor shall deliver landfill cover soil to the New Hanover County Landfill located at 3002 Hwy. 421N., Wilmington, NC as more fully described in the RFP, Contractor's Proposal, and New Hanover County Purchase Order, attached hereto as Exhibit "A" and fully incorporated herein by reference.

2. Time of Performance. The Contract shall being work on Notice to Proceed and shall continue until June 30, 2015. The parties may by written agreement renew this Agreement for two (2) additional one (1) year periods upon the same terms and conditions as set forth herein.

3. Payment. County hereby agrees to pay for the cost of this Contract as follows:

\$\_\_\_\_\_ per ton for daily cover (sand).

\$\_\_\_\_\_ per ton for immediate cover (topsoil).

\$\_\_\_\_\_ per ton for ABC Rock as identified in the RFP.

County shall make payment to Contractor within thirty (30) days of recipe of a correct and approved invoice.

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, on account of Contract or personal injuries or death or on account of property damages arising out of or relating to the work or services to be performed by Contractor hereunder, resulting from the negligence of or the willful act or omission of Contractor, its agents, employees and subcontractors.

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 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 work or services, 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 commercial umbrella, 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 excess of and not contribute with Contractor's insurance.

## 7.2 Workers' Compensation and Employer's Liability

7.2.1 Contractor shall maintain Workers' 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, Commercial Umbrella Liability insurance shall not be less than \$500,000 each accident for bodily injury by accident, \$500,000 each employee for bodily injury by disease, and \$500,000 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 work or services performed by Contractor for County.

## 7.3 Business Auto Liability

7.3.1 Contractor shall maintain Business or Personal Auto Liability and, if necessary, Commercial Umbrella Liability insurance with a limit of not less than \$1,000,000 each accident.

7.3.2 Such insurance shall cover liability arising out of any auto, including owned, hired, and non-owned autos.

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 excess of and not contribute with 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; or 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 such policies are subject, regardless of whether County is an insured under the policy.

7.5 Miscellaneous Insurance Provisions. The policies are to contain, or be endorsed to contain, the following 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 #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 specific approval.

**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 The insurance required for this Contract must be on forms acceptable to County.

7.9.2 Where circumstances warrant, County may, at its discretion subject to acceptance by the Risk Management and Finance Department accept letters of credit or custodial accounts in lieu of specific insurance requirements.

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

7.9.4 Contractor shall promptly notify the New Hanover Environmental 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.

7.9.5 County reserves the right to obtain complete, certified copies of all required insurance policies, at any time.

7.9.6 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.

7.9.7 By requiring insurance herein, County does not represent that coverage and limits will necessarily 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.

7.9.8 If Contractor fails to maintain the insurance as set forth herein, County shall have the right, but not the obligation, to purchase said insurance at Contractor's expense.

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

7.9.10 County shall have the right, but not the obligation of prohibiting Contractor or any subcontractor from entering the work or service area or withhold payment until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is 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, placing any orders for any materials, facilities, and supplies in connection with the performance of the work or services of this Contract.

11. 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.

12. 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.

13. Subcontracts. The Contractor shall utilize no subcontractors for

carrying out the services to be performed under this Contract without the written approval of the County.

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

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

16. Further Actions. The parties will make and execute all further instruments and documents required to carry out the purposes and intent of this Contract.

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

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

19. E-Verify Compliance. Pursuant to Session Law 2014-418, 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 shall be provided affidavits attesting to Contractor's compliance. Violation of the provision, unless timely cured, shall constitute a breach of Contract.

20. 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 Environmental Management  
Attn: Kim Roane, Business Officer  
3002 U.S. Hwy. 421. North  
Wilmington, NC 28401

**To Contractor:**

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

21. 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.

22. 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

CONTRACTOR

\_\_\_\_\_  
President

(Seal)

[CORPORATE 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 Director

\_\_\_\_\_  
County Attorney

NORTH CAROLINA

NEW HANOVER COUNTY

I, \_\_\_\_\_, a Notary Public of the State

and County aforesaid, certify that Sheila L. Schult 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 \_\_\_\_\_, 2014.

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

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

NORTH CAROLINA

NEW HANOVER COUNTY

I, \_\_\_\_\_, a Notary Public in and for the State and County aforesaid, certify \_\_\_\_\_, President of \_\_\_\_\_, personally came before me this day and the foregoing instrument was signed in its name as its name and sealed with its corporate seal.

WITNESS my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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

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

STATE OF NORTH CAROLINA

AFFIDAVIT

COUNTY OF \_\_\_\_\_

\*\*\*\*\*

I, \_\_\_\_\_ (hereinafter Affiant), being duly authorized by and on behalf of \_\_\_\_\_ (hereinafter "Employer") after first being duly sworn hereby swears or affirms as follows:

1. Employer understands that E-Verify is the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with NCGS §64-25(5).

2. Employer understands that Employers Must Use E-Verify. Each employer, after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS§64-26(a).

3. Employer is a person, business entity, or other organization that transacts business in this State and that employs 25 or more employees in this State. (mark Yes or No)

- a. YES \_\_\_\_\_, or
- b. NO \_\_\_\_\_

4. Employer's subcontractors must comply with E-Verify and Employer will ensure compliance with E-Verify by any subcontractors subsequently hired.

This \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Signature of Affiant

Print or Type Name: \_\_\_\_\_

State of North Carolina County of \_\_\_\_\_

Signed and sworn to (or affirmed) before me, this the \_\_\_\_\_

day of \_\_\_\_\_, 2014.

My Commission Expires:

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

(Affix Official/Notarial Seal)



# **Contractor Compliance Requirements**

## Introduction

The safety and health of all contractors, customers, and employees of the New Hanover County Department of Environmental Management is of primary importance. As a result, the prevention of occupationally induced injuries and illnesses will be given precedence over operating productivity whenever necessary.

Our goal is to maintain a safety and health program conforming to all applicable OSHA standards and to lead in safety program management within our industry. To be successful will require contractor cooperation in all safety and health matters.

As a contractor you will be required, as part of your contract, to take an active role in the Department of Environmental Management safety and health program. The following contractor safety and health requirements, when adhered to, will ensure safety for contractors, customers, and County employees. Additionally, potential damage to equipment and property will be avoided. It is impossible to document all possible situations or to provide precise guidance for every contingency a contractor may encounter in the course of their work. However, adherence to the rules as written and the desire to apply safe work practices will result in the highest level of safety.

## **General Requirements**

1. All contractor employees shall abide by the Department of Environmental Management safety and health rules and regulations at all times. The DEM Safety Manual is available for copy or review in each of the Department's offices.
2. The contractor and all contracted employees are required to follow the procedures for signing in and out. Procedures may differ depending on the section of the department the contractor is working in; they will be explained fully before the work begins.
3. The contractor shall have a competent individual in charge at the job site to supervise the job, conduct an adequate accident prevention program, and ensure compliance to OSHA and DEM rules.
4. All accidents or injuries shall be reported immediately to the DEM Project Manager or Safety Manager.
5. Contractor employees are not allowed to enter areas other than the work site, unless it is required for the performance of their job.
6. The contractor shall inform the Project Manager of any known hazardous conditions that exist, due to the contract work being done, in areas where Departmental employees may be exposed to the known hazards.
7. The contractor shall provide Material Safety Data Sheets for all containers of hazardous substances brought onto DEM property.
8. The contractor shall sign the "Contractor Hold Harmless" waiver form in order to use any Department equipment.
9. Periodic job site inspections will be conducted by the DEM Project Manager or Safety Manager to ensure that the job is proceeding safely in accordance with safety rules.
10. Violation of these rules is grounds for immediate termination of contract work.

## **Standards of Conduct**

The Department of Environmental Management has established standards to ensure the smooth, safe, and efficient operations of the Department. Violation of these standards is considered serious and may lead to termination of the contract. The following are prohibited:

1. Willful damage to any Departmental property, customer property, or the property of Department employees.
2. Possession, use, or distribution of alcohol, narcotics, or illegal drugs on Department property.
3. Possession of firearms, ammunition, concealed weapons, or explosives (unless properly authorized).
4. Abusive or threatening language, harassment, disrespectful behavior, workplace violence, or interfering with the work of Department employees.
5. Theft or attempted theft from the Department or Department employees.
6. Refusal to perform contracted work or refusal to obey instructions.
7. Sleeping on the job.
8. Negligence or conduct which could result in injury or damage to property.
9. Falsification of documents.

## Contractor Safety Training

Please place a check by each of the following categories in which one or more of your employees has been trained. It is understood that not all contractors will have employees who are trained in all of the areas listed.

- Personal Protective Equipment
- First Aid and CPR
- Lockout/Tagout
- Confined Space Entry
- Respiratory Protection
- Hazardous Communication
- Material Safety Data Sheets
- Fire Prevention and Protection
- Fall Protection
- Scaffolding
- Heavy Equipment Training/Certification (includes bulldozer, loader, forklift, excavator, grader, roller, back-hoe, bobcat)
- Welding, Cutting, and Brazing
- Electrical Safety
- Trenching/Excavation
- Other \_\_\_\_\_
- Other \_\_\_\_\_

\* If the contracting company has ten (10) or more employees, they will be required to present OSHA 300 Logs, at a minimum for the past three calendar years, along with their bid.

The Department of Environmental Management reserves the right to ask for any training records from the categories that were checked above. The County reserves the right to reject the bid of any firm that cannot document proper safety training as it relates to conducting the work included in the contract.

### **Contractor Agreement to Comply**

I, \_\_\_\_\_, a representative of \_\_\_\_\_ do hereby acknowledge that my company has received a copy of the guidelines governing contract work being performed on New Hanover County Department of Environmental Management property. It is agreed that as part of the contract my company and its employees will comply with these guidelines and all the written programs which apply to the work being performed.

Signed \_\_\_\_\_ Date \_\_\_\_\_  
(Contractor)

Please return this signed page to the designated Department of Environmental Management Project Manager. A copy of the signed form will be kept in the Safety Officer's files.