

## **APPENDIX H**

### **Pre-Event Contract for Disaster Debris Management Services**

## **PRE-EVENT CONTRACT FOR DISASTER DEBRIS MANAGEMENT SERVICES**

THIS CONTRACT entered into this 18<sup>th</sup> day of April, 2011 by and between Lee County North Carolina, a political subdivision of the State of North Carolina (hereinafter referred to as the "County"), and Byrd Brothers Emergency Services, L.L.C. hereinafter referred to as the "Contractor".

WHEREAS, it is in the public interest to provide for the expedient management of storm debris within the County of Lee and to provide recovery Technical Assistance to the appointed and elected officials resulting from a future natural or manmade disaster; and

WHEREAS, the County of Lee has in the past suffered the full force and effects of major storms and the resulting destruction brought upon the County of Lee by such storms or events; and

WHEREAS, without being able to quickly remove storm debris, the Health and Safety of all the citizens could be at serious risk; and

WHEREAS, the immediate economic recovery of the County of Lee and its citizens after a natural or manmade disaster is a major concern and the primary priority for recovery; and

WHEREAS, the immediate availability of experienced prime disaster debris management contractors may be severely limited during a natural or manmade disaster; and

WHEREAS, the Contractor has the experience, equipment, manpower, general ability, and resources, as well as the necessary permits and licenses to perform all related debris and other storm services; and

WHEREAS, the County of Lee and the Contractor have agreed to the Scope of Services, pricing schedule, terms, conditions and technical specifications as set out in this competitive Contract; and

THEREFORE, said parties do agree to the following stipulations, conditions and technical specifications.

### **ARTICLE 1 TERM OF CONTRACT**

This Contract shall be for a base period of three (3) years with an option to renew for up to two additional one (1) year periods, upon consent of all parties. This Contract shall only be used on an "as needed" basis as determined solely by the County. Should the term of this Contract expire during an event where work has been commenced, but not completed, the terms and conditions of this Contract shall continue until the completion of all work authorized prior to the expiration of the term.

## **ARTICLE 2 NATURE OF RELATIONSHIP**

The Contractor understands that it is an independent contractor and is not an employee, subcontractor, agent, servant, partner nor joint venturer of the County and shall not represent itself in any way as an agent of the County. The Contractor understands that it has the right to use its best judgment and efforts to fulfill the terms and obligations of this Contract. The Contractor further understands and acknowledges the following:

- (1) That it will receive no compensation other than as outlined in this Contract and is not subject to nor eligible for any benefits which may be offered by County to its employees, such as vacation pay, sick leave, insurance coverage or retirement plan participation.
- (2) Its Services provided in accordance with this Contract are an independent calling or occupation.
- (3) Contractor needs no training from County as to how to fulfill its duties and responsibilities.
- (4) Contractor furnishes its own equipment and supplies and is expected to maintain its business office somewhere other than at the County's office.
- (5) To the extent Contractor must procure or maintain any insurance, license, certification or trade membership, it must do so at its own cost.

## **ARTICLE 3 SCOPE OF SERVICES**

The primary purpose of this scope of work is to maintain the public health, safety, and well being of the County during the response to an emergency situation, as well as to restore the public areas of the County to a normal condition. The Contractor understands and agrees that debris removal in the most expeditious manner possible is of the utmost importance and it will make every effort to complete all requirements of this Contract in the shortest time possible. The work to be performed under this Contract shall consist of collection, removal, and disposal of the debris caused by the disaster. The Contractor shall not be paid to remove, process or dispose of debris that is unrelated to disaster damage. Direction by the County in this proposal shall also mean direction by the Monitor.

The services which the Contractor shall provide include, but are not limited to, those described or specified herein. The services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned.

### 3.1 EMERGENCY ROAD CLEARANCE

The Contractor will be responsible for the removal of debris from the primary transportation routes as directed by the County. These debris "push" activities include, but are not necessarily limited to the cutting, tossing, stacking and/or pushing of storm debris from the primary transportation routes. The emergency road clearance operation shall be for a period not to exceed 70 hours after a declared disaster event.

### 3.2 DEBRIS REMOVAL FROM PUBLIC PROPERTY

3.2.1 The Contractor will be responsible for the removal of vegetative debris, construction and demolition debris ("C & D Debris"), or other eligible debris from public rights-of-way and other public properties.

3.2.2 At the direction of the County trees, limbs and debris (including fallen trees) which are located partially on or above public property or rights-of-way shall be cut at the right-of-way line or property line, and the public portion only shall be removed under this contract.

3.2.3 Contractor will also be responsible for the removal of debris beyond the limits of public rights-of-way as necessary to abate imminent and/or significant threats to public health and safety of the community, when directed by the County.

### 3.3 DEBRIS REMOVAL FROM PRIVATE PROPERTY

Removal of debris from private properties shall be directed by the County only when an imminent threat to life, safety and health is present on private property. This item will require prior approval of the Federal Emergency Management Agency (FEMA) and will be monitored for strict compliance with federal regulations regarding eligibility for reimbursement costs.

### 3.4 DEBRIS MANAGEMENT SITES (DMS)

3.4.1 The Contractor will identify, prepare and maintain a sufficient number of DMSs to accept and process all eligible debris. The County shall assist in the identification of DMSs. Preparation and maintenance of DMS shall include, but not necessarily be limited to:

- (1) The Contractor shall provide to the County a pre-use condition report to include soil test, photos and other evidence of prior use and conditions;
- (2) All approach and interior haul roads;
- (3) Dump pads and lined temporary storage areas for household hazardous waste, fuels and other materials that can contaminate soils, runoff or groundwater; and,

- (4) An inspection tower sufficient for the monitoring of all incoming and exiting traffic shall be built according to USACE specifications and shall comply with standard OSHA requirements and local codes.
- (5) The Contractor shall maintain DMSs in accordance with appropriate use standards, safety standards, and regulatory requirements.
- (6) The Contractor shall provide to the County all appropriate and required permits from the NC Department of Environment and Natural Resources or other regulatory agencies. If the Contractor, upon approval of the County, elects to incinerate eligible debris the Contractor shall furnish to the County copies of required burn permits from the local Fire Chief or other regulatory agencies.

3.4.2 All debris shall be processed in accordance with local, state and federal law, standards and regulations. Processing shall include, but not necessarily be limited to: reduction by tub grinding or chipping and/or incineration when approved by the County. Prior to reduction, all debris shall be segregated into the following categories:

- (1) Vegetative and clean, woody debris;
- (2) Construction and demolition debris;
- (3) White goods;
- (4) Recyclable debris; and,
- (5) Household hazardous wastes.

3.4.3 Debris collected by Contractor at rights-of-way, at discretion of County, may be hauled directly to the nearest lawfully permitted solid waste management/recycling facility, bypassing the DMS.

3.4.4 The Contractor shall restore DMSs to pre storm conditions using the pre-use condition report as a basis and obtain appropriate releases from the NC Department of Environment and Natural Resources or other regulatory agencies.

### 3.5 GENERATED HAZARDOUS WASTE ABATEMENT

The Contractor will be responsible for the abatement of hazardous waste identified by the County in accordance with all applicable federal, state and local laws, standards and regulations.

### 3.6 HAZARDOUS OR CONDEMNED STRUCTURES

The Contractor will be responsible for the demolition of hazardous or condemned structures that are deemed by the County to be an imminent threat to life, safety and public health.

### 3.7 WHITE GOODS

The Contractor may expect to encounter white goods available for recycling. White goods will constitute household appliances as defined in FEMA 325 Debris Management Guide. The Contractor will handle the disposition of all white goods encountered in accordance with applicable federal, state and local laws. Proper disposal of Freon is essential.

### 3.8 HAZARDOUS STUMPS

The Contractor shall remove all stumps according to FEMA Disaster Assistance Policy (DAP) 9523.11 Hazardous Stump Extraction and Removal Eligibility.

### 3.9 STUMP ROOT BALL HOLES

The Contractor will be responsible for the backfilling of stump root ball holes upon direction of the County. This clean fill dirt shall be compacted as directed by the County.

### 3.10 CANAL/WATERWAY DEBRIS REMOVAL

Contractor shall remove eligible storm debris from drainage canals and ditches at direction of County.

### 3.11 STORM-DEPOSITED SOILS

The Contractor will be responsible for the loading and hauling of eligible storm-deposited soils (e.g., silt, sand, or mud).

### 3.12 LOADING OF DEBRIS

No debris shall be loaded without the presence of a monitor issuing a proper load ticket to document the origin of the load, date, contractor name, truck number, truck capacity, point of debris collection, and loading departure time. All loads hauled shall be full and well compacted. The loading of all debris onto transportation vehicles shall be done by mechanical means.

### 3.13 DEBRIS DISPOSAL

The Contractor will be responsible for the disposal of all eligible debris, reduced debris, ash residue and other products of the debris management process in accordance with all applicable federal, state and local laws, standards and regulations.

### 3.14 DOCUMENTATION AND INSPECTIONS

All debris shall be subject to inspection by the County. Inspections will be to insure compliance with the contract and applicable local, state and federal laws. The Contractor will, at all times, provide the County access to all work sites and disposal areas. The Contractor and the County will have in place at the DMS personnel to verify and maintain records regarding the contents and cubic yards of the vehicles entering and leaving the DMS(s). The Contractor will assist the County in preparation of any required FEMA and state reports for any potential reimbursement through the training of County employees and the review of documentation prior to submittal. The Contractor will work closely with the County to ensure that eligible debris collection and data documenting appropriately address concerns of any likely reimbursement agencies including but not limited to the North Carolina Division of Emergency Management, FEMA and other applicable state and federal agencies.

3.15 WORK SITES

The County will establish and approve all sites that the Contractor will be allowed to use. The Contractor will remove all eligible debris and leave the site from which debris was removed in a clean and neat condition. The condition of the work site shall be equal to the original condition of the site.

3.16 NON-DISASTER RELATED DEBRIS

The Contractor shall not be required or paid to remove, process or dispose of debris that is unrelated to disaster damage.

3.17 TECHNICAL SUPPORT

Contractor shall provide to the County disaster recovery technical program management assistance relating to reimbursement of eligible damage costs from federal and state agencies when available.

**ARTICLE 4  
DOCUMENTATION AND REPORTING**

4.1 Load Tickets: A "load ticket" will be utilized as the primary debris tracking document. The form of the ticket shall be approved by the County and shall include at a minimum the following information:

- Ticket Number
- Contract Number
- Date
- Contractor Name
- Loading Location

- Loading Time
- Unloading Location
- Unloading Time
- Debris Classification
- Debris Quantity
- Monitor Name(s) and Signature(s)

Load tickets shall be accepted by the County as the certified, original source documents to account for the measurement and accumulation of the volume/tonnage of debris delivered and processed at the debris management site. The ticketing system will also be used in the event of additional debris handling for volume reduction and/or the possible requirement for a debris transfer station(s). These load tickets will also be utilized for debris haul out for final disposal. These tickets will be the basis of any electronic generated billing and/or report(s).

- 4.2 Reports The Contractor shall submit to the County periodic written reports as agreed upon by the parties to this Contract. The reports, documents, and data to be provided shall represent an accurate assessment of the current status of the Project and of the work remaining to be accomplished and it shall provide a sound basis for identifying variances and problems and for making management decisions. It shall be prepared and furnished to the County and shall accompany each pay request.
- 4.3 Additional Supporting Documentation The Contractor shall submit reports and/or other documentation regarding, but not necessarily limited to debris loading, hauling, disposal and load capacity measurements as may be required by the County and/or other Governmental entities to support requests for debris project reimbursement from external funding sources.
- 4.4 Report Maintenance Contractor will be subject to audit by federal, state and local agencies pursuant to this Contract. The Contractor will maintain all reports, records, and debris reporting tickets and contract correspondence for a period of not less than seven (7) years.
- 4.5 Contract File Maintenance The Contractor will maintain this Contract and the invoices that are generated for the contracted services for a period of seven (7) years or the period of standard record retention of the County, whichever is longer.

## ARTICLE 5 SUBCONTRACTORS

- 5.1 Definition A subcontractor is a person or organization who has a direct contract with the Contractor to perform any of the work. Nothing contained in this Contract shall create any contractual relationship between the County and any subcontractor.



5.2 Local Preference Contractor will make every effort to utilize and employ local subcontractors whenever possible, provided that these local contractors hold proper license and insurance credentials for the intended work. For purposes of this project, local shall be defined to mean the jurisdictional boundaries of Lee County.

5.3 Contractor shall not employ any subcontractors who are on any FEMA listing of debarred contractors. Contractor shall be solely responsible for timely paying its subcontractors. The County reserves the right to reject the selection of any subcontractor and to inspect the facilities and equipment of any subcontractor. Contractor is encouraged to seek minority and women-owned business enterprises for participation in subcontracting opportunities. If any subcontractor fails to perform or make progress, as required by this Contract, and the replacement of such subcontractor is necessary in order to complete the work hereunder in a timely fashion, Contractor shall promptly replace such subcontractor, subject to the County's approval of the new subcontractor.

5.4 Subcontractual Relations By an appropriate written agreement, the Contractor shall require each subcontractor to the extent of the work to be performed by the subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor by these Documents, assumes toward the County. Said agreements shall preserve and protect the rights of the County under the Contract Documents with respect to the Work to be performed by the subcontractor so that the subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with his Sub-subcontractor.

The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to his Sub-subcontractors.

5.5 Subcontractor Interfacing The Contractor shall be the single point of interface with all subcontractors for the County and all of its agents and representatives. He shall negotiate all change orders, field orders and request for proposals, with all affected subcontractors and shall review the costs of those proposals and advise the County of their validity and reasonableness, acting in the County's best interest prior to requesting approval of each change order from the County. Before any work is begun on any change order, a written authorization from the County must be issued. However, when health and safety are threatened, the Contractor shall act immediately to remove the threat to health and safety.

5.6 Responsibilities for Acts and Omissions The Contractor shall be responsible to the County for the acts and omissions of his employees and agents and his subcontractors, their agents and employees, and all other persons performing any of the work or supplying materials under a contract to the Contractor.

5.7 Subcontracts to be provided The Contractor shall furnish to the County a list of all subcontractors that it intends to utilize for the project and a copy of each subcontract, including the general supplementary conditions no later than five (5) days after the Notice to Proceed and every Tuesday and Friday during debris operations. Contractor shall also include a clear description of the percentage of the work the contractor intends to subcontract out.

## **ARTICLE 6 FUNDING OUT CLAUSE**

In the event of a disaster, County may elect to remove debris with County forces, to activate this Contract, or to contract separately for debris removal.

## **ARTICLE 7 CONDITIONS OF WORK**

The Contractor must inform himself fully of the conditions relating to the execution of the project and the employment of labor thereon. Failure to do so will not relieve the Contractor of his obligation to furnish all material and labor necessary to carry out the provisions of this Contract. Insofar, as possible the Contractor, in carrying out his work, must employ such methods or means as will not cause any interruptions of or interference with the work of any other contractor(s).

## **ARTICLE 8 LAWS AND REGULATIONS**

All applicable state laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over the scope of work of the project shall apply to this Contract throughout, and they will be deemed to be included in the contract the same as though herein written out in full.

## **ARTICLE 9 FORCE MAJEURE**

It is mutually understood and agreed that the Contractor shall be waived of its obligations under the contract during any period or periods of time when acts of God, war or public enemy render impossible its performance under the contract. In such case, the Contractor shall give the County prompt oral notification followed by written notice of the particulars and estimated duration of said Force Majeure.

**ARTICLE 10**  
**PAYMENT TO CONTRACTOR**

- 10.1 Contractor shall be paid for the Services rendered and accepted in accordance with the unit prices specified in the "Contractor's Price Proposal" attached hereto for eligible debris. To receive payment under this Contract, Contractor shall submit an invoice to the County's Representative for the debris hauled to each disposal site, which shall be calculated from load tickets that are issued by County representative at each site.

Contractor shall be paid solely on the tickets issued and verified by the Monitor for the County at the disposal facilities. All loads hauled shall be full and well compacted. When a load is delivered, the driver shall provide the County's Monitor with the load ticket. The Monitor at the disposal site will rate each load as a % of fully loaded capacity as predetermined through truck or trailer bed measurement by the Monitor.

- 10.2 Contractor shall furnish and pay the cost of all the necessary materials and shall furnish and pay for all the superintendents, labor, tools, equipment, transportation and perform all other work required for the removal of all disaster debris, as defined herein, in strict accordance with this Contract, and any amendments thereto and such supplemental plans and specifications which may hereafter be approved.
- 10.3 Contractor acknowledges that the County will apply for FEMA and/or State assistance. Therefore, Contractor represents that it will perform all Services hereunder in a manner, time and place so as to insure and be consistent with such reimbursement by those agencies to the County. County reserves the right to withhold amounts owed to County by Contractor from any payments due to Contractor from County.
- 10.4 All invoices shall include at a minimum the following information:

- Contractor's Name
- Contract Number
- Project Worksheet Number (PW #)
- Disaster Number
- Location and/or site of work
- Category of Work (FEMA Categories A-G)
- Period Covered
- Brief description of type of work performed
- Debris Quantities and Type

All invoices shall be delivered to the monitoring firm first for review. No invoice shall have either multiple PW #'s or Category of Work or be for a period exceeding 30 days.

- 10.5 Contractor shall submit Applications for Payment to the County in a timeframe as agreed upon by the parties to this Contract. Within ten (10) calendar days after receipt of each Application for Payment, the County shall either: (1) indicate approval of the requested payment; (2) indicate approval of only a portion of the requested payment, stating in writing the reasons therefore; or (3) return the Application for Payment to the Contractor's indicating, in writing, the reason for refusing to approve payment. In the event of a total denial and return of the Application for Payment by the County, the Contractor may make the necessary corrections and resubmit the Application for Payment. The County shall, within thirty (30) calendar days after County approval of an Application for Payment, pay the Contractor the amounts so approved: Provided, however, in no event shall the County be obligated to pay an amount greater than that portion of the Application for Payment approved by the County.

County shall retain five percent (5%) of the gross amount of each monthly payment request or five percent (5%) of the portion thereof approved by the County for payment whichever is less. The retained sum shall be accumulated and not released to Contractor until final payment is due to insure against timely completion of the project and/or undiscovered damage to public or private property. Any interim interest on such sums shall accrue to County.

Monthly payments to Contractor shall in no way imply approval or acceptance of Contractor's work.

Each Application for Payment shall be accompanied by Release and Affidavit showing that all material, labor, equipment, and other bills associated with that portion of the Work payment is being requested or have been paid in full. The County shall not be required to make payment until and unless these affidavits are furnished by Contractor.

- 10.6 Contractor shall not be paid to handle, process, or dispose of debris that is unrelated to disaster damage. Further, Contractor shall bill the County and be paid only for eligible debris that originates within County.
- 10.7 The County does not guarantee Contractor a specific amount of work under this Contract or a specific amount of compensation hereunder.
- 10.8 Contractor shall not charge any resident, business or institution for work performed under this scope of work, nor shall Contractor or anyone employed or subcontracted by Contractor accept any additional monies from any resident, business, or institution for work performed under this scope of work.
- 10.9 Contractor shall clearly include the words "final invoice" on Contractor's final billing to the County. This statement by Contractor shall constitute Contractor's certification that all services have been properly and completely performed by Contractor and all charges and costs have been properly invoiced to the County and that all such charges are for

Eligible Services. Since this account will thereupon be closed, any and all further charges if not properly included on this final invoice shall be deemed waived by Contractor.

#### **ARTICLE 11 INSPECTION BY CONTRACTOR**

Contractor represents that it has inspected the areas where Debris is to be collected and removed and is familiar with the roadway system within the jurisdiction of the County, roadway widths, and other factors that will affect the work to be performed and has not relied on any representation of conditions made by any officer, agent or employee of the County.

Contractor understands that any information provided by the County is meant only to assist the Contractor and Contractor agrees to rely on its own knowledge and investigation and not any assistance provided by County. Contractor acknowledges that it is prepared for potentially adverse working conditions including, but not limited to, limited fuel supplies, limiting housing availability, limited food and water supplies, and wet and muddy conditions, and that these factors were considered in determining the costs originally agreed upon by the parties.

#### **ARTICLE 12 HOURS OF WORK**

Contractor recognizes that, at the time this Request for Proposals was prepared, the time period for reimbursement by FEMA for debris removal is limited. The Contractor shall operate during daylight hours coordinating with landfills, unless otherwise directed by the County's designated representative. Removal of debris shall be restricted to between the hours from dawn to dusk. Contractor shall devote such time, attention and resources to the performance of Contractor's services and obligations hereunder as shall be necessary to complete this project. Contractor shall notify Monitor by close of business each Thursday whether weekend work is anticipated. If a truck is loaded too late in the day to travel to the disposal site, a load ticket may be written for a full load only.

#### **ARTICLE 13 LOCAL PREFERENCE**

In choosing materials related to its services under this Contract, the Contractor shall give preference to materials grown, produced, prepared, made or manufactured in the State of North Carolina. Contractor will make every effort to utilize and employ local subcontractors, equipment rental, supplies and other locally available resources. For purposes of this project, local shall be defined to mean the jurisdictional boundaries of Lee County.

**ARTICLE 14**  
**TIME OF THE ESSENCE**

- 14.1 Contractor understands that the deadline for reimbursement by FEMA is limited, and that time is of the essence in the performance of this Contract.
- 14.2 Contractor agrees to provide necessary performance bond, payment bond and insurance certificates and commence the performance of services under this Contract no later than seventy-two (72) hours after execution hereof.
- 14.3 Contractor agrees to work diligently to complete this Contract at the earliest possible date; however, in no event shall the time period for Completion of this contract exceed 90 days from Notice to Proceed for complete performance in every respect under this Contract, unless extended by FEMA declaration or unless the County initiates additions or deletions to the Contract by written change orders, in its sole discretion extends this period due to the progress of the debris removal, or the Contract is terminated as provided herein.
- 14.4 Both parties pursuant to applicable federal, state and local law will equitably negotiate subsequent changes and completion time.

**ARTICLE 15**  
**INSURANCE, INDEMNITY AND WAIVER OF SUBROGATION**

- 15.1 Indemnity Contractor agrees to indemnify and save harmless the County, its officers, agents, monitors, representatives, employees and attorneys from and against any and all losses and claims, demands, payments, suits, actions and judgments of every kind, including, without limitation, attorneys fees and expenses for the total cost of review and defending same, that may be brought or recovered against them by reason of any action or omission of the Contractor, its agents or employees (including those of any of his sub-contractors) in the performance of work under this Contract.
- 15.2 Contractor's Insurance
- 15.2.1 The Contractor shall not commence any work in connection with this Agreement until he has obtained all of the following types of insurance and such insurance has been approved by the County, nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved. All insurance policies shall be with insurers qualified and doing business in the State of North Carolina.
- 15.2.2 Worker's Compensation Insurance - Contractor shall provide Workers Compensation Insurance and maintain at its expense during the term of this



Contract, in accordance with workers compensation laws of the State of North Carolina, including occupational disease provisions, for all of the Contractor's employees, and in case any work is sublet, Contractor shall require any such subcontractor similarly to provide Workers Compensation Insurance, including occupational disease provisions, for all of the subcontractor's employees unless such employees are covered by the protection afforded by the Contractor. In case employees engaged in hazardous work under this contract are not protected under the Workers Compensation Law, the Contractor shall provide, and shall cause each subcontractor to provide adequate and suitable insurance for the protection of its employees not otherwise protected. Any uninsured subcontractors are hereby deemed to be covered by the Contractor's workers compensation coverage.

- 15.2.3 Contractor's Public Liability and Property Damage Insurance The Contractor shall procure and maintain during the duration of this Contract, Contractor's general public liability and property damage insurance, including auto liability and employer's liability coverage, insuring Contractor from all claims from personal injury, including death, and claims for destruction or damage to property arising out of or in connection with any operations under this Contract, whether such operations are by the Contractor or a subcontractor of the Contractor, and said insurance shall name as additional insured, waive and hold harmless the County and the Monitor. Insurance shall be written with limits of liability of not less than the following:

|   |  |
|---|--|
| (a) Debris Removal Manager's Comprehensive General Liability        | \$1,000,000.00 Each Occurrence,                    |
| Coverages, Bodily Injury & Property Damage                          | Combined Single Limit                              |
| (b) Automobile Liability Coverages, Bodily Injury & Property Damage | \$1,000,000 Each Occurrence, Combined Single Limit |
| (c) Excess Liability, Umbrella Form                                 | \$4,000,000 Each Occurrence, Combined Single Limit |

Insurance clause for both BODILY INJURY AND PROPERTY DAMAGE shall be amended to provide coverage on an occurrence basis.

- 15.2.4 Subcontractor's Public Liability and Property Damage Insurance - The Contractor shall require each of his subcontractors to procure and maintain during the life of this subcontract, insurance of the type specified above or insure the activities of his subcontractors in his policy, as specified above.

### 15.3 County's and Contractor's Protective Liability Insurance

The Contractor shall procure as a cost of the project and furnish a County and Contractor's Protective Liability Insurance Policy with the following minimum limits:

|  |  |
|--|--|
| (a) Bodily Injury Liability &<br>Property Damage Liability | \$1,000,000 Each Occurrence<br>Combined Single Limit |
|--|--|

15.4 "XCU" {Explosion, Collapse, Underground Damage}

The Contractor's Liability Policy shall provide "XCU" coverage for those classifications in which they are excluded.

15.5 Broad Form Property Damage Coverage. Products & Completed Operations Coverages

The Contractor's Liability Policy shall include Broad Form Property Damage Coverage, Products and Completed Operations Coverages.

15.6 Contractual Liability Work Contracts

The Contractor's Liability Policy shall include Contractual Liability Coverage designed to protect the Contractor for contractual liabilities assumed by the Contractor in the performance of this Contract.

15.7 Indemnification Rider

15.7.1 The Contractor shall indemnify and hold harmless the County and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right to obligation of indemnity which would otherwise exist as to any party or person described in this Article.

15.7.2 In any and all claims against the County or any of their agents or employees by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workers' or



workmen's compensation acts, disability benefit acts or other employee benefit acts.

#### 15.8 Certificate of Insurance

The County shall be furnished proof of coverage of Insurance as follows:

Certificate of Insurance form will be furnished to the County along with the Contract Documents. These shall be completed and signed by the authorized North Carolina Resident Agent, and returned to the office of the General Services Director. This Certificate shall be dated and show:

- (a) The name of the insured Contractor, the specific job by name and job number, the name of the insurer, the number of the policy, its effective date, and its termination date.
- (b) Statement that the Insurer will mail notice to the County at least fifteen (15) days prior to any material changes in provisions or cancellation of the policy.
- (c) Certificate of Insurance shall be in the form as approved by County Risk Manager and such Certificate shall clearly state all the coverages required in this Section commencing at 15.2 and ending with 15.9.4.
- (d) Certificate of Insurance shall state that the County is listed as additional insured on all appropriate policies.
- (e) Copy of the endorsement or additional insured rider to the General Liability Policy.
- (f) Date of Birth of authorized Resident Agent.

#### 15.9 Waiver of Subrogation

15.9.1 The County and the Contractor waive all rights against each other, for damages caused by perils covered by insurance provided under Article 15.2 to the extent covered by such insurance except such rights as they may have to the proceeds of such insurance held by the County and Contractor as trustees. The Contractor shall require similar waivers from all subcontractors and their sub-subcontractors.

15.9.2 The County and Contractor waive all rights against each other for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The Contractor shall require similar waivers from all subcontractors and their sub-subcontractors.

15.9.3 The County waives subrogation against the Contractor on all property and consequential loss policies carried by the County on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.

15.9.4 If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owner of such policies will cause them to be so endorsed, failure to obtain proper endorsement nullifies the waiver of subrogation.

#### **ARTICLE 16 PERFORMANCE BONDS**

Prior to beginning work, Contractor agrees to provide the County with performance bond payable to, in favor of, or for the protection of the County for the work to be performed under this Contract in an amount not less than 100% of the estimated contract amount, unconditioned for the full and faithful performance of this Contract. All insurance or bonds required under the terms of this Contract and General Conditions shall be issued by company licensed to do business in the State of North Carolina.

#### **ARTICLE 17 PAYMENT BOND**

Prior to beginning work, Contractor agrees to provide the County with a payment bond conditioned for the prompt payment of all persons supplying labor or material in the performance of the work in an amount not less than the estimated contract amount.

#### **ARTICLE 18 TERMINATION**

Contractor may terminate this Contract upon thirty (30) days written notice to the County, provided, however, that during such thirty (30) days (or until earlier release by the County), Contractor shall continue to diligently perform all of its duties hereunder. The County may cancel this Contract at any time for any reason, with or without cause, upon written notice to the Contractor. If this Contract is terminated by the County with written notice to Contractor, the Contractor shall be paid for the eligible work performed to the time of termination. The termination of this Contract by the County for inadequate performance shall not relieve Contractor of any obligations and liabilities that have accrued at the time of such termination. If this Contract is so terminated, the County shall be liable only for goods or services then delivered by Contractor and accepted by the County. Such termination shall be effective as of the date and time designated by the County. This contract shall be deemed to have been completed in accordance with its terms when the County notifies Contractor that all Debris has been removed to the satisfaction of the County.

## **ARTICLE 19 PERSONNEL**

Contractor represents and warrants to the County that Contractor has, or shall secure at its own expense prior to the commencement of services hereunder, all necessary personnel required to perform the services under this Contract. Such personnel shall not be deemed to be employees or agents of the County or to have any contractual relationship with the County. All services required of Contractor hereunder shall be performed by Contractor or under its supervision, and all personnel engaged in performing such services shall be fully qualified, and if necessary, authorized under applicable law to perform such services. Any changes or substitutions in Contractor's key personnel must be approved in advance by the County. Contractor represents and warrants to the County that all services shall be performed by skilled and competent personnel to the highest professional standards in the field. Contractor shall remove from the work described in this Contract any person the County deems to be incompetent, careless or otherwise objectionable. Provide in the Contractor's Technical Proposal, the number of personnel that will be secured to provide the services described herein broken into categories of job titles.

## **ARTICLE 20 SAFETY**

- 20.1 Contractor understands and acknowledges that it will be working in congested areas. Contractor shall employ flag men and other necessary measures to protect the public and shall be fully responsible for implementing safety measures in performing its work under this Contract. Contractor will provide necessary traffic control measures.
- 20.2 Contractor shall be responsible for the conduct and actions of all of its employees and subcontractors. Contractor's employees and subcontractors shall not exhibit any pattern of discourteous behavior to the public or otherwise act in a manner contrary to the best interests of the County.
- 20.3 Contractor shall employ and utilize sufficient manpower and equipment to assure that work zone safety is in keeping with all requirements established by the Federal Highway Administration's Manual for Work Zone Safety. The County reserves the right to curtail work efforts until unsafe practices are corrected. Contractor shall present to the County, within 48 hours of the execution of this Contract, a copy of emergency procedures designed to facilitate prompt notification of emergency response personnel in the event of accidents or injuries to employees or other persons associated with or in proximity to work zones. It shall be the responsibility of Contractor to make assurances that any and all equipment and/or vehicles used in connection with the work hereunder meet applicable federal, State, and local laws and regulations regarding the use of such vehicles and equipment on public roadways.

**ARTICLE 21  
FEDERAL AND STATE TAXATION**

Contractor shall be responsible for payment of its own and its share of its employee FICA and Social Security benefits with respect to work performed under or contemplated by this Contract and all other applicable taxes.

**ARTICLE 22  
SUCCESSORS AND ASSIGNS**

This Contract shall be binding upon the parties and their respective successors and assigns; provided, however, that this Contract may not be assigned by Contractor without the prior written consent of the County, which consent may be withheld at the sole and absolute discretion of the County. No provision hereof shall be deemed to create any personal liability on the part of any officer, agent, or Monitor for the County, nor shall this Contract be deemed to create any rights or benefits to any person other than the County or Contractor.

**ARTICLE 23  
PROGRESS REPORTS**

Contractor shall provide progress reports to the County on a weekly basis or more frequently as requested by the County. Such reports shall contain, at a minimum, total cubic yards collected, daily totals, and description of the geographical areas being addressed by the Contractor.

**ARTICLE 24  
DEFAULT**

Either party shall be in default hereunder upon the failure to perform any material provision hereof. In the event of a default by the County, Contractor shall be entitled to exercise any and all rights and remedies available under the laws of the State of North Carolina. In the event of a default by Contractor, the County shall be entitled to exercise any or all of the following remedies, alone or in conjunction with others: (a) the termination of this Contract; (b) the withholding of the retainage specified herein to be applied to damages incurred by reason of such default; and (c) the exercise of all other rights and remedies available under the laws of the State of North Carolina.

**ARTICLE 25  
CREDIT**

Contractor shall not pledge the County's credit or make the County a guarantor for payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. Contractor further represents and warrants that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.