SECTION 00500

AGREEMENT

THIS AGREEMENT made as of the _____day of _____ in the year _____ by and between Buncombe County, North Carolina, hereinafter called Owner, and

_____

with legal address and principal place of business at

_____

_____

hereinafter called Contractor. Owner and Contractor in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK.

1.1 Contractor shall perform the Work as specified or indicated in the Contract Documents. The Work generally consists of the following at the existing Buncombe County Solid Waste Management Facility:

Construction of a ±4.7-acre C&D Landfill expansion, including but not limited to clearing and grubbing, excavation and backfill, landfill soil base construction, construction of stormwater and erosion and sedimentation controls, seeding and mulching, and modification to the existing C&D Landfill access road.

ARTICLE 2. ENGINEER.

2.1 The Project has been designed by SCS Engineers, PC, 2520 Whitehall Park Drive, Suite 450, Charlotte, North Carolina 28273, who will act as Engineer in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3. CONTRACT TIME.

3.1 The Project will be considered substantially complete (complete as generally defined on Sheets C-2 and C-3 of the Drawings) upon construction of the Phase 8 disposal area, modification of the existing access road, construction of stormwater and erosion and sedimentation control features, completed and passing testing as required by the approved CQA Plan and construction documents, certification surveys, and all else incidental to the Work. The work shall be substantially completed in accordance with the General Conditions within 210 calendar days from (and including) the date when the Notice to Proceed is issued.

3.2 All work shall be complete and ready for final payment in accordance with the General Conditions within 240 calendar days from (and including) the date when the Notice-to-Proceed is issued.

ARTICLE 4. CONTRACT PRICE.

4.1 Owner will pay Contractor for performance of the Work in accordance with the Contract Documents in current funds at the unit prices agreed upon in the Contractor's Bid Form attached to this Agreement.

ARTICLE 5. APPLICATIONS FOR PAYMENT.

5.1 Contractor shall submit Applications for Payment in accordance with the General Conditions of the Contract and Section 01027. Applications for Payment will be processed by Engineer as provided in the General Conditions of the Contract.

ARTICLE 6. PROGRESS AND FINAL PAYMENTS.

6.1 Owner will make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer, monthly during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values provided for in the General Conditions of the Contract.

6.2 Progress payments will be in an amount equal to 90% of the value of the Work completed and 90% of materials (excluding soils) and equipment not incorporated in the Work but delivered and suitably stored, less, in each case, the aggregate of payments previously made.

6.3 Upon Substantial Completion of the Work, Owner may pay an amount sufficient to increase total payments to Contractor to 95% of the Contract Price, less retainages as Engineer shall determine, in accordance with the General Conditions of the Contract.

6.4 Upon final inspection and acceptance of the Work, in accordance with of the General Conditions of the Contract, Owner will pay the remainder of the Contract Price as recommended by Engineer.

ARTICLE 7. LIQUIDATED DAMAGES.

7.1 Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the Contract Time specified in Article 3 above, plus any extensions thereof allowed in accordance with Article 14 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving, in a legal proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner as follows:

$4,800 per day for each calendar day of delay until the Work as defined in Article 3 has reached substantial completion.

$500 per day for each calendar day of delay until the Work as defined in Article 3 has reached final completion.

7.2 Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the Work is for reasons included in Article 14 of the General Conditions.

7.3 Contractor shall furnish Owner the required notification of such delays in accordance with Article 14 of the General Conditions.

ARTICLE 8. ASSURANCE

8.1 Contractor has familiarized himself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and Federal, State and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.

8.2 Contractor has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which were relied upon by Engineer in the preparation of the Drawings and Specifications and which have been identified in Article 5 of the General Conditions.

8.3 Contractor has made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in the above paragraph as he/she deems necessary for the performance of the Work at the Contract Price within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by him/her for such purposes.

8.4 Contractor has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.

8.5 Contractor has given Engineer written notice of any conflict, error or discrepancy that he/she has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Contractor.

8.6 Contractor agrees that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Work.

ARTICLE 9. CONTRACT DOCUMENTS.

9.1 The Contract Documents which comprise the Contract between Owner and Contractor are attached hereto and made a part hereof and consist of the following:

A. Advertisement for Bids (Section 00020)

B. Instructions to Bidders (Section 00100)

C. Bid Form (Section 00300)

D. Minority Business Plan (Section 00310)

E. Non-Collusive Affidavit (Section 00480)

F. Authority to Execute Contract (Section 00485)

G. This Agreement (Section 00500)

H. Construction Performance Bond, Construction Labor and Material Payment Bond, and other required Bonds

I. Certificate of Insurance

J. General Conditions (Section 00700)

K. Specifications (as listed in Table of Contents)

L. Drawings bearing the general title "Buncombe County Solid Waste Management Facility, C&D Landfill Phase 8 Construction Project" dated May 2025

M. Project Manual bearing the general title "Buncombe County Solid Waste Management C&D Landfill Phase 8 Construction Project" dated May 2025

N. Addenda numbers [_____] to [_____], inclusive

O. Any modification, including Change Orders, duly delivered after execution of Agreement.

ARTICLE 10. MISCELLANEOUS

10.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions of the Contract shall have the meanings assigned in the General Conditions of the Contract.

10.2 Neither Owner nor Contractor shall, without the prior written consent of the other, assign or sublet in whole or in part his/her interest under any of the Contract Documents; and, specifically but without limitation, Contractor shall not assign any monies due or to become due without the prior written consent of Owner. In case Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to Contractor shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.

10.3 Owner and Contractor each binds himself, his/her partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

10.4 The Contract Documents constitute the entire agreement between Owner and Contractor and may only be altered, amended or repealed by a Modification.

ARTICLE 11. INSURANCE

11.1 **Insurance:**

a. Contractor agrees their insurance policies shall be endorsed evidencing the minimum insurance coverage and limits set forth below prior to the County's signing of this Agreement. The insurance coverage and limits set forth below shall be deemed minimum coverage limits and shall not be construed in any way as a limitation on Contractor's duty to carry adequate insurance. All policies of insurance shall be primary insurance and non-contributory with respect to all other available sources. The minimum insurance coverage which the Contractor shall procure and maintain at its sole cost and expense during the term of the Agreement is as follows:

i. **Worker's Compensation**. Coverage at the statutory limits in compliance with applicable State and Federal laws. Contractor shall ensure that any subcontractors also have workers compensation coverage at the statutory limits.

ii. **Employer's Liability.** Coverage with minimum limits of $1,000,000 each employee accident and $1,000,000 each employee disease.

iii. **Commercial General Liability.** Insurance covering all operations performed by the Contractor with a minimum limit of $5,000,000 per occurrence with a $5,000,000 aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations or Contractual Liability. Buncombe County shall be named as an additional insured under the policy.

iv. **Business Automobile Liability.** Insurance covering all owned, non-owned, and hired vehicles used in performance of this Agreement. The minimum combined single limit per occurrence shall be $1,000,000 and shall include uninsured/underinsured motorist coverage per N.C. Gen. Stat. § 20-279.21.

v. **Builder's Risk.** Contractor shall purchase and maintain property insurance (commonly known as Builder's Risk) in the amount of the initial contract plus values of subsequent modification, change orders, and loss of materials supplied or installed by others comprising the value of the entire project at the site on a replacement cost basis (subject to such deductible amounts as may be required by laws and regulations). Such builder's risk insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed to in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than Buncombe County has insurable interest in the property to be covered, whichever is earlier. This insurance shall include the interests of the Owner, Contractor, financing institution (if applicable), Subcontractors, Owner's Representatives and Owner's Representative's Consultants in the Work. If the construction involves work on existing structures, such coverage shall be provided through Installation Floater Coverage written on a Special Covered Cause of Loss Form and shall, in any event, include theft, faulty workmanship, mechanical or electrical damage during testing and labor costs to repair damaged work, and soft costs (expediting expenses); deletion of any coinsurance provision is also required; any exclusions

for underground exposures shall be deleted. Flood and Earthquake coverages are also to be provided. Coverage shall only end when the work is accepted by Buncombe County.

vi. **Contractor's Pollution Liability.** If the Contractor's commercial general liability policy referenced above does not include an endorsement including the Limited Pollution Liability Extension, Contractor will be required to purchase a Pollution Liability policy with limits of $1,000,000 per loss and $2,000,000 aggregate. Contractor shall keep this policy in effect 3 years after completion of the project. Buncombe County shall be named as an additional insured with respect to liability and defense of suits arising out of the activities performed by, or on behalf of the Contractor, including completed operations.

b. **Additional Insurance Provisions.**

i. If the Contractor maintains higher limits than the minimums shown above, the County requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

ii. The Contractor shall provide the County with certificates of insurance on an approved form, evidencing the above amounts. Buncombe County shall be named as additional insureds under the commercial general liability policy. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under the Contract and remain in effect for the duration of the Agreement.

iii. Each insurance policy required above shall state that coverage shall not be canceled, except with written notice to the County, delivered in accordance with the policy provisions. All insurance shall be procured from reputable insurers authorized and qualified to do business in North Carolina with a rating of A- VII or better as determined by A. M. Best Company and shall be in a form acceptable to the County.

iv. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that Buncombe County are additional insureds on insurance required from subcontractors.

c. Waiver of Subrogation: Contractor hereby grants to County a waiver of any right to subrogation which any insurer of said Contractor may acquire against the County by virtue of payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

d. The limits of coverage under each insurance policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under this Agreement.

e. Nothing in this section is intended to affect or abrogate Buncombe County's governmental immunity.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement. Two copies each have been delivered to Owner and one copy each to Contractor and Engineer. All portions of the Contract Documents have been signed or identified by Owner and Contractor or by Engineer on their behalf.

This Agreement shall become effective on _____, 20___.

OWNER	CONTRACTOR
_____	_____
BY	BY
_____	_____
(CORPORATE SEAL)	(CORPORATE SEAL)
Attest	Attest
_____	_____
Address for giving notices	Address for giving notices
_____	_____
_____	_____
_____	_____

Note: If Contractor is a corporation, an affidavit giving the principal the right to sign the Agreement must accompany the executed Agreement.

END OF SECTION 00500