



Town of Carolina Beach, NC

Request for Proposals (RFP)

for

Disaster Debris Monitoring & Consulting Services

Advertisement Dates:

July 30, 2024 - August 13, 2024

Proposals Due: August 13, 2024 2:00 P.M. Local Time

Town of Carolina Beach.

1121 N. Lake Park Blvd

Carolina Beach, NC 28428

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Section 1.0 – Introduction

1.1 Overview

The purpose of this RFP is to position the Town of Carolina Beach with access to a qualified on-call service provider should a disaster or other event requiring services occur. The Town desires to enter into an agreement with a qualified, responsive firm, price and other factors to be considered, that represents the best overall value to the Town.

The Contractor must have experience and demonstrable knowledgeable with Federal Emergency Management Agency (FEMA) and other governmental agency's regulations and guidelines pertinent to disaster recovery programs, debris monitoring, and Stafford Act claims.

1.2 Minimum Qualifications

Contractor must meet the minimum requirements outlined below to be considered a responsive vendor:

- Contractor must obtain a license or be currently licensed to do business in the State of North Carolina.
- Demonstrated knowledge and experience with FEMA recovery programs.
- Demonstrated minimum five (5) years' experience in debris monitoring and post-disaster recovery activities.
- Contractor must be able to provide at least three (3) references for municipal projects of similar scope and services.
- Demonstrated ability to provide an Automated Debris Management System (ADMS) to capture debris removal and disposal efforts.
- Contractor must meet and maintain minimum insurance requirements.

1.3 Schedule

It is the Town's intent to adhere to the following schedule. All times listed below are in Central Time (CT).

Task	Date	Time
Public Advertisement	July 30, 2024	N/A
Question Deadline	August 2, 2024	2:00 PM
Addenda Release Deadline (if necessary)	August 8, 2024	2:00 PM
Proposal Submission Deadline	August 13, 2024	2:00 PM
Notice of Intent to Award	August 30, 2024	N/A

1.4 Point of Contact

All communication concerning this RFP should be issued in writing, contain the RFP description in the subject line, and be directed solely to the point of contact at the email address below. To ensure Contractors receive all relevant communications pertaining to this RFP, Contractors are encouraged to request inclusion on the interested parties list.

Name: Brian Stanberry

Title: Director of Public Works
Email: brian.stanberry@carolinabeach.org

1.5 Contract Term and Renewal

It is the intent of the Town to secure a contract for an initial term of three (3) years with mutually agreeable options for two (2), one (1) year renewals. The maximum contract term will be five (5) years. Extensions, if agreed upon, will incorporate the same terms and conditions of the original contract plus any amendments. Active task orders may be extended beyond the 60-month term to allow for the completion of designated tasks.

1.6 Cooperative Services

For the term of the contract, and any mutually agreed extensions pursuant to this RFP, the Town may authorize use of this procurement by other local agencies that may otherwise be adversely affected without access to the services contracted. The Town reserves the right to ensure all Town needs are satisfied before extending use of this procurement to other local agencies. Local agencies will be required to do their own due diligence and execute their own separate contract directly with the Contractor.

1.7 Irrevocable Offer

Contractor commits that a proposal offered in response to this solicitation guarantees a firm and irrevocable offer for a period of thirty (30) days from date of submission deadline. This period may be extended by the Town as necessary to facilitate contract award. Contractors may submit a written request to withdrawal their proposals prior to the submission deadline or after the thirty (30) day irrevocable offer period expires otherwise the proposal shall remain firm until an award is announced.

1.8 Conflict of Interest

Contractor confirms that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the services required to be performed under the contract.

1.9 Disadvantaged and Small Business Enterprises

The Town is committed to fostering the development and economic growth of small and disadvantaged business enterprises. To this end, the participation by small and disadvantaged business enterprises in this solicitation as both prime contractors and subcontractors is encouraged.

1.10 Provisions for Federally Assisted Projects

FEMA and other federal agencies provide disaster-related assistance through various financial assistance programs. These programs require compliance with one or more applicable laws including laws that govern procurement procedures. Section 5.0 of this RFP includes the required provisions pertaining to this solicitation.

Section 2.0 – Procurement Process and Proposal Requirements

This section includes general instructions designed to ensure all Contractors understand the procurement process for this RFP and develop proposals in a format acceptable to the Town.

2.1 Question Submission

Contractors are encouraged to submit questions or requests for clarification to ensure a full understanding of the proposal requirements and the scope of services requested. Questions must be directed to the point of contact identified in Section 1.4 and in adherence with the schedule outlined in Section 1.3.

2.2 Addenda

If the Town finds it necessary to supplement, clarify, or modify any portion of this RFP, a written addendum will be issued to interested parties and incorporated into the bidding docs. Contractors will be required to acknowledge receipt of any addenda and include the addenda acknowledgement form(s) with their proposal.

2.3 Reserved Rights

The Town reserves the right to accept or reject all proposals, with or without cause, when doing so is perceived in the best interest of the Town. The Town reserves the right to waive technicalities or request additional information or clarification from Contractors. The Town reserves the right to accept the proposal which, in its sole judgement, best serves the interest of the Town.

This RFP does not constitute a guarantee from the Town.

2.4 Contract

It is the intent of the Town to award a contract to the Contractor that is deemed responsive and best serves the interest of the Town. A sample contract has been included as a supplement to this RFP. Contractors are encouraged to review the terms and conditions contained within. Contractors are not permitted to modify terms or conditions of this contract and any effort to suggest or otherwise do so may be grounds for disqualification.

2.5 Evaluation Criteria

Contractors will be evaluated by a review panel and scored against weighted criterion. Contractors will be evaluated on their past project experience, assigned project personnel, their demonstrated understanding of the scope of services to include providing an ADMS, references, and the costs associated with their proposed effort. The table below provides factors for each of the scoring criteria:

Criteria	Weight
Firm Qualifications and References	20
Past Project Experience	20
Key Personnel	20
Project Understanding and Approach	20
ADMS	10
Cost Proposal	10

TOTAL	100
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2.6 Submission Requirements

Contractors are required to follow the submission requirements including proper adherence to proposal quantities, page limitations, and formatting. Deviation from these requirements may cause proposals to be deemed nonresponsive.

- **Quantity – Contractor must submit one (1) hard copy and one (1) digital proposal.**
Proposals may be hand-delivered or shipped to the Town at the following address:

**1121 N. Lake Park Blvd
Carolina Beach, NC 28428**

Proposals must be received by the Town Administrative Office by no later than 2:00 PM on August 13, 2024.

- **Page Limits** – Contractor proposals are limited to no more than seventy-five (75) pages excluding the required forms. Each sections’ page limits are further defined in Section 2.8 Proposal Layout.
- **Text and Page Format** – A page is defined as one (1) 8 ½” by 11” piece of paper with text on one side. All body text must be in a font size no smaller than 10.

2.7 Preparation Costs

All costs associated with the development, production, and delivery of Contractor proposals are solely those of the Contractor. The Town will not reimburse any Contractor for expenses incurred during this procurement process. The Contractor also agrees that the Town bears no responsibility for any costs associated with administrative or judicial proceedings resulting from this solicitation process.

2.8 Proposal Layout

Contractors are required to follow the proposal layout defined below to enable ease review and evaluation consistency. Deviation from this format may cause proposals to be deemed nonresponsive.

- **Executive Summary/Letter** – Provide a brief introduction to the Contractor, a summary of their proposal, and the Contractor’s primary point of contact and authorized signatory. (2-page limit)
- **Table of Contents** – Provide a table of contents that identifies each section of the proposal and the corresponding page numbers. (1-page limit)
- **Section 1. Firm Qualifications and References** – Provide evidence that the Contractor meets the minimum qualifications identified in Section 1.2 and include a minimum of three (3) references from clients whom the Contractor has provided similar services in the past five (5) years. Include the name of the client, contact information, contract term and value, and services provided. (10-page limit)

- **Section 2. Past Project Experience** – Provide a detailed summary of similar projects performed in the past five (5) years. Include the name of the client, the event/FEMA declaration, and a detailed description of the services provided. (10-page limit)
- **Section 3. Key Personnel** – Provide an organization chart and brief one (1) page resumes for all key project personnel. (20-page limit)
- **Section 4. Project Understanding and Approach** – Provide a comprehensive understanding of the services required and the Contractor's means and methods for providing these services. (20-page limit)
- **Section 5. Automated Debris Management System (ADMS)** – Provide a comprehensive overview of the Contractor's proposed ADMS that will be utilized for tracking debris collection and disposal operations. (10-page limit)
- **Section 6. Cost Proposal** – Complete fee schedule. If additional roles/rates are to be included Contractor must provide a description of the roles responsibilities. (2-page limit)
- **Section 7. Required Forms** – Complete and include each of the required forms:
 - Byrd Anti-Lobbying Amendment Certification
 - Drug Free Workplace Certification
 - Equal Employment Opportunity Certification
 - Non-Collusion Oath
 - Good Faith Affidavit

2.9 Assertion of Contractor Confidentiality

Contractors that desire to keep supplied information confidential must assert proprietary, trade secret, intellectual property, or otherwise confidential claims specific to those sections or subsections of their proposal. Contractors must provide statutory citation(s) supporting their claim of confidentiality. Simply identifying the entire proposal as confidential may be grounds for disqualification.

Section 3.0 – Scope of Services

The purpose of this RFP is to engage a Contractor to provide Disaster Debris Monitoring and Consulting Services on an as-needed basis resulting from all-hazards. The scope of services is not specific to Federally declared disasters and may be utilized to support the Town's efforts in response to local or regional events that may not meet Federal funding thresholds.

3.1 General

Contractor shall provide debris monitoring, grants management and administration, and program management services to assist the Town with disaster recovery operations, including monitoring the operations of the disaster debris removal and disposal company. The Town shall appoint a Recovery Manager to work directly with the Contractor. The Town and/or its debris removal and disposal company shall provide debris management site(s) (DMS) for temporary storage and processing of disaster-generated debris.

The Contractor is knowledgeable in FEMA, and other agencies regulations, guidelines and operating policies that govern the work required.

All Contractor personnel shall at a minimum have an accredited high school diploma or GED and have proficient communication skills to include legible handwriting. Contractor personnel are also required to have a valid driver's license if operating a vehicle and wear appropriate work attire while engaged on the project. Contractors must provide adequate job-specific training to ensure field personnel are proficient and capable of performing their assigned duties. Contractor personnel must be certified to work on the project and provided with a verifiable form of Contractor identification.

Planning meetings are intended to establish operating procedures and to review applicable policies. Contractor will be required to provide a list of key personnel and subcontractors that may be involved in the project to include names, titles, phone numbers, and email addresses.

Contractor must be prepared to provide a management team in response to Town needs within forty-eight (48) hours of request. Town will issue a notice to proceed in concert with a task order for required services. The Town expects the Contractor to be fully mobilized to facilitate all project tasks within ninety-six (96) hours of operation commencement.

3.2 Project Management and Administration

The Contractor shall appoint a qualified and experienced Project Manager for overall coordination and communication with the Town. The Project Manager shall remain local and available to the Town during the operational phases of the debris collection and disposal project. Contractor shall supply enough trained debris monitors and trained field supervisors to accommodate the volume of debris and trees to be removed from rights of way, at loading sites, debris management sites and/or final disposal sites. Contractor shall remove and replace employees immediately upon notice from the Town Recovery Manager for conduct or actions not in keeping with the Agreement.

The Contractor must operate and document the work performed in a manner consistent with federal reimbursement policies, especially FEMA.

Project Management and Administration responsibilities include:

- Train and supervise field monitoring staff.
- Coordinate daily briefings or meetings to provide project status updates and to formulate or modify debris removal strategies.
- Coordinate daily scheduling of field staff and resource logistics.
- Conduct debris surveys and develop debris estimates.
- Provide training to Town staff in essential debris management and collection functions.
- Manage citizen complaints/concerns related to debris removal activities to include complaint resolution.
- Prepare and issue daily progress reports.
- Prepare and issue special reports as required by the Town.
- Provide permitting and environmental support to ensure DMS locations and debris removal activities comply with applicable environmental regulations.
- Develop forms, databases, etc. for tracking field activities in a format consistent with federal policies.
- Implement a Quality Control (QC) program to ensure project documentation and data is accurate and complete, and stored in a secure manner that will be accessible to the Town as required.
- Ensure the debris removal company is operating in compliance with their agreement with the Town.

3.3 Debris Collection Monitoring

To maximize potential reimbursement opportunities, the Contractor shall monitor all debris removal activities and document the work as it is performed. Debris monitors must be able to document work performed in eligible rights-of-way, and other areas designated by the Town's Recovery Manager.

The Contractor shall provide one (1) debris monitor for each field collection crew and debris management site or final disposal location, and no more than one supervisor for every eight (8) monitors unless otherwise approved by the Town. Monitoring personnel are responsible for ensuring compliance with debris removal requirements and documenting the work as it is performed.

Debris Collection Monitor responsibilities include:

- Identifying eligible loose debris, stumps, hazardous trees, and limbs for removal.
- Verifying all debris removed is a direct result of the applicable disaster and removed from authorized locations.
- Ensuring that debris removal crews are working within their assigned areas and within the Town's jurisdiction.
- Documenting debris loads and tree removal activities performed by the debris removal company to include GPS coordinates, photographs, crew identification, date and time.
- Make all reasonable efforts to ensure the debris removal company is working in compliance with their contract and applicable environmental regulations.
- Maintain a daily field log to document monitor assignments, tasks, and responsibilities.
- Proficiency with the Contractor provided ADMS.
- Maintain STOP WORK authority when work is not conducted in a compliant or safe manner.

3.4 Disposal Site Monitoring

Contractor should prepare disposal site reports for each temporary disposal facility to include soil sampling pre- and post-use if requested. Contractor should document the condition of each DMS prior to use by the debris removal company. Pre-use site documentation will be utilized to ensure each site is returned to pre-use conditions upon completion of operations. The debris removal company will be responsible for applicable remedies.

DMS and Final Disposal Site monitors are required at material receiving facilities to verify receipt of collected materials. Contractors should be prepared to provide disposal site monitors twenty-four (24) hours per day, seven (7) days per week if necessary. Each receiving facility is required to have at least one (1) monitor present during operating hours and two (2) monitors are preferred during congested operating windows to minimize delays.

Disposal Site Monitor responsibilities include:

- Verify the receipt of debris at respective receiving facilities.
- Observe the offloading of debris.
- Coordinate with debris removal company to ensure efficient flow of traffic at the receiving facility.
- Document materials received, to include debris type, quantity, time and location of receipt, and crew responsible.
- Maintain a daily field log to document monitor assignments, tasks, and responsibilities.
- Proficiency with the Contractor provided ADMS.
- Reconcile daily debris quantities received at each disposal site to include number of load tickets, debris type, and total quantities.
- Maintain STOP WORK authority when work is not conducted in a compliant or safe manner.

3.5 Debris Vehicle and Equipment Certifications

The Contractor will be responsible for ensuring that all debris removal equipment is certified for project use prior to performing debris removal activities. Each certification includes the completion of a certification form, photographs, and a signature of the Contractor's certification representative and the debris removal company.

Certified equipment requires a license plate, valid registration, proof of insurance, and a licensed operator. Equipment must be designated fit for operation to include secured tailgates and fabricated walls, minimal non-metal structural components, tires, warning systems to include lights, and tarps or other coverings to secure debris.

Each piece of certified equipment will require a placard to be placed on the operator and passenger side of the equipment. Placards are to be provided by the debris removal company and contain the Town's name, the debris removal company name, the certified capacity, and the vehicle certification number. Placards must be a minimum of 12" by 12" and contain an adhesive backing.

The Contractor shall measure the carrying capacity of each haul truck to the tenth of a cubic yard. Each certification record should be retained and reproduceable to support Town needs. The equipment certification process should capture the following data points at a minimum:

- Date of Certification

- Vehicle Type, Make, and Model
- Primary Measurements (Length, Width, Height)
- Modifying Measurements (Additions and Subtractions)
- Capacity (Volume in Cubic Yards)
- Weight if applicable (Tons)
- License Plate Number
- Operator Name and License Information
- Vehicle Registration Expiration
- Insurance Provider, Policy Number, and Expiration
- Contractor Hierarchy
- Certification ID Number
- Photographs
- Certifying Representative's Credentials

The Contractor warrants the completeness and accuracy of each equipment certification by signing the completed certification form. Certification records are to be retained by the Contractor for a period consistent with the records retention policy defined in Section 3.14 Documentation and Deliverables.

3.6 ADMS and Database Systems

Contractor shall provide an ADMS capable of fully digitizing the certification process and replacing the need for tradition hand-written debris tickets.

The system features shall include the following:

- Paperless electronic data collection and distribution. Field data should be collected on a tablet, phone, or other digital hardware capable of processing digital transactions and storing project data.
- ADMS should not require cellular or data connectivity to process ticket transactions. Critical transaction data should be transferrable on external media and transported between collection and disposal locations if required. Systems that require cellular or data connectivity may also be utilized but must have an operating mode that allows them to work offline in the event of service disruptions or outages.
- ADMS data should be stored indefinitely on secured servers that are backed up on regularly intervals. Data should be immediately retrievable if necessary.
- ADMS data capture should be automated to the greatest extent possible requiring minimal input from the user.
- Collection and disposal locations should be generated automatically and captured through GPS technologies integrated into the ADMS hardware.
- ADMS should provide a web-based interface accessible to project stakeholders and restricted by user credentials.
- Web interface should include a GIS interface and downloadable documents/reports at a minimum.

- Project data should be captured and organized in a manner that enables efficient payment reconciliation, conforms to FEMA documentation requirements, and supports the Town's reimbursement efforts.
- The Contractor must be capable of establishing an Access Point Interface (API) between Contractor databases and Town platforms if requested.
- Data entry errors and necessary data modifications must be captured in an exportable audit log.

3.7 Other Related Debris Services

Contractor will provide regular status updates, frequency determined by the Town's Recovery Manager for public information use. Contract may be required to provide infographics, fliers, or other publishable documentation to support the Town's public information campaign.

Contractor shall provide appropriate staff to assist with the distribution of notices, engage with residents to obtain access rights when necessary, and to manage and resolve damage complaints arising from debris removal activities.

The Contractor shall review, validate and reconcile debris removal company invoices prior to submission to the Town for processing and payment. The Contractor shall conduct a meeting at the beginning of the debris management operation to fully explain the process to project stakeholders. All invoices from the debris removal company shall be directed to the Contractor copying the Town Recovery Manager. Within seven (7) calendar days of receipt, each invoice shall be reviewed by the Contractor and accepted in full or rejected with justification to the debris removal company to amend. The debris removal company will submit invoices amended per the Contractor's recommendations. Once an accepted invoice is reconciled the Contractor shall submit a payment recommendation to the Town.

3.8 Grants Management and Administration

The Contractor shall work closely and collaborate with various funding agencies and internal the Town to ensure the proper use and application of federal and state funds. Contractor shall focus on maximizing eligible, allocable federal dollars. Contractor shall conduct efficient processes that reduce the timeline for eligibility determinations that support project cash flow sources and uses. Contractor will provide technical knowledge and experience, proven business processes, and policy strategies. In order to develop and implement the framework of grant activities, the Contractor shall perform services and work necessary to complete the following objectives and tasks:

- Prepare and coordinate the development of Project Worksheets (PW's) and versions as required with the Town, FEMA, and State agencies. This includes project development, formulation, and processing as required for small and large projects.
- Prepare, submit and track Hazard Mitigation Grant program applications as required with the Town, FEMA, and State agencies. This includes project or program development, formulation, processing, and monitoring as required.
- Work with the Town to obtain all costs and necessary backup documentation to develop, revise, and submit PW's and grant applications to FEMA and State agencies to be approved, obligated, and reimbursed.

- Review eligibility issues for the Town and develop justifications for presentation to FEMA, State agencies, and other agencies involved in providing disaster recovery funds.
- Ensure that all eligible damages have been identified, quantified, and presented to Federal and State agencies. All eligible damages shall be incorporated into PW' s and grant applications with supporting documentation and proper cost estimates, using the FEMA Cost Estimating Format (CEF) when necessary.
- Provide, or retain the services of professional experts to prepare damage assessments and technical reviews and oversight in the furtherance of program objectives.
- Review contracts, bid documentation, change orders, and other records to support the proper preparation and presentation of PW's, grant applications and eligible activities.
- Compile and summarize/justify costs for presentation to federal agencies and State agencies for reimbursement of eligible costs, ensuring compliance with applicable regulations.
- Attend meetings with the Town, federal agencies, and State agencies to negotiate and represent PWs and the obligation of eligible amounts.
- Provide grant management advice to maximize reimbursements of disaster recovery expenses.
- Provide advice to Town personnel and Contractors; attend and participate in meetings as required.
- Prepare draft correspondence to local, federal, and State officials as necessary.
- Provide the Town with any changes in policies, procedures, processes, or deadlines throughout the financial disaster recovery process.
- Prepare and conduct the close-out process, ensuring maximum recovery and retention of all eligible funding, satisfactory disposition of appeals, and availability of supporting documents for future audits.
- Prepare for and respond to inspections and audits for on-going and completed projects.
- Prepare formal audit responses and justifications; attend associated meetings and hearings as needed.
- Keep track and monitor Contractor's own time and activities by project, or as allowable under the provisions of Federal guidance for direct administrative, indirect, and project management costs (reference Federal regulations and policy guidance for these topics).
- Provide written performance and status reports to the Town on the status of the FEMA Public Assistance program and other grant programs as requested. The performance and status report should include, but is not limited to, the following:
 - Hours billed and amount invoiced by personnel
 - PW and grant application development and revisions
 - PW and grant application submissions and approvals
 - Obligated amounts versus eligible estimates
 - Issues with PW and grant application submissions and resolutions
 - Issues requiring assistance
 - Amounts awarded to the Town per PW and grant application
 - Requests for Reimbursement submitted

- Estimated and actual costs
- Reimbursements received by the Town
- Insurance deductions
- PW and grant application closeouts

3.9 Program Management

The overall objective is to assist the Town in managing the implementation of design and construction phases to achieve the objectives of the Town in accordance with federal and state regulations. The responsibilities and deliverables for this effort include, but are not limited to the following:

- Under the direction of the Town, direct and coordinate activities to meet the objectives of the overall program management plan.
- Manage, report, and monitor projects to ensure delivery within the established schedule and cost parameters and in compliance with quality assurance requirements; provide timely project communications; develop and implement appropriate recovery strategies when management objectives are at risk.
- Determine the status of all ongoing projects that exist prior to the start of this new contract and provide a plan for managing this transition.
- Assist the Town as required in project/ program financial or programmatic audits.
- Provide audit and funding compliance reviews on all projects as required based on the funding source.
- Support and assist in the preparation of the construction program procurement plan and schedule for all recovery projects.
- Integrate local and DBE business participation outreach into procurement plans.
- Administer the competitive bidding process for the procurement of construction, including conducting pre-bid conferences.
- Schedule and conduct pre-construction meetings.
- Provide project construction management services to include conducting regular jobsite meetings, oversee quality assurance testing and inspection programs, monitor Contractor and subcontractor work for deficiencies, maintain copy of all contract documents, change orders, and other documentation, oversee Contractor and subcontractor safety program. Expedite communication, processing, and documenting all Contractor submittals including RFI's, payments requests, and change orders.
- Monitor and manage the process of compliance with all applicable regulatory requirements, permitting, and necessary approvals.
- Process and track payment requests for approval.
- Report potential budget and schedule variances and prepare recovery plans.
- Administer post construction close-out, 3rd-party commissioning, start-up, and transition to operation including ensuring receipt of all operations and maintenance manuals and as-built drawings.
- Develop and update as necessary a construction inspection manual to provide guidelines for field inspection services consistent with national industry standards.
- Coordinate the building turn over process with the owner and Contractors.

3.10 Documentation and Deliverables

All project records including logs, invoices, contracts, paperwork, ADMS, and GIS data should be digitized and stored in a secure digital storage system. Contractor will also be required to prepare and organize supporting documentation that may be necessary to pursue federal grant funding. This includes scopes of work, damage descriptions, cost estimates or actual cost documentation, and grant applications.

Records should be maintained for up to five (5) years or such time the Town notifies the Contractor they are no longer needed.

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Section 4.0 – Cost Proposal

The Cost Proposal contains roles the Town has identified as necessary to fully perform the scope of services required. Rates should be provided based on hourly rates and are understood to include labor, overhead, and profit. Project-related expenses may be billed to the Town at cost with no markup. The Town reserves the right to amend the compensation schedule to meet project requirements that may not be evident at the time of this solicitation.

POSITION	HOURLY RATE (\$)
Debris Monitoring Services	
Project Manager	
Operations Manager	
Field Supervisor	
Field Monitor	
Debris Site/Tower Monitor	
Data Manager	
Administrative/Clerical	
FEMA Debris Specialist	
Grant & Program Management Services	
Principal/Program Manager	
Senior Program Specialist	
Senior Consultant	
Consultant	
Junior Consultant	
Senior Appeal/Policy Specialist	
Appeal/Policy Specialist	
Senior Technical Specialist	
Technical Specialist	
Junior Technical Specialist	
Administrative Support	

Section 5.0 – Required FEMA Provisions

This section includes provisions required for FEMA related projects and is included in the contract documents through incorporation in this RFP.

5.1 Equal Employment Opportunity

Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60–1.3 must include the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

5.2 Davis-Bacon and Copeland Anti-Kickback Act

When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

5.3 Contract Work Hours and Safety Standards Act

Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions

which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence

5.4 Clean Air Act and the Federal Water Pollution Control Act

Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non–Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

5.5 Debarment and Suspension [Executive Orders 12549 and 12689]

A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

5.6 Byrd Anti-Lobbying Amendment

Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non–Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non–Federal award.

5.7 Procurement of Recovered Materials

A non–Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

5.8 Contractual Provisions

(a) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(b) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.

5.9 Prohibition on Certain Telecommunications and Certain Video Surveillance Services or Equipment

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to: (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). (ii) Telecommunications or video surveillance services provided by such entities or using such equipment. (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

5.10 Domestic Preferences for Procurements

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. (b) For purposes of this section: (1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. (2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

5.11 Rights to Inventions Made Under a Contract or Agreement

Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

<Remainder of page left intentionally blank>

Section 6.0 – Required Forms

This section includes forms that must be completed and submitted with the Contractor's proposal. Each form should be completed accurately and in its entirety. Contractors that require clarification may submit a written request to the POC identified in Section 1.4.

<Remainder of page intentionally left blank>

BYRD ANTI-LOBBYING AMENDMENT CERTIFICATION

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned, [Contractor] _____ certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

DRUG-FREE WORKPLACE CERTIFICATION

THE BELOW SIGNED Contractor CERTIFIES that it has implemented a drug-free workplace program. In order to have a drug-free workplace program, a business shall:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violation of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under quote a copy of the statement specified in subsection 1.
4. In the statement specified in subsection 1, notify the employees that, as a condition of working on the commodities or contractual services that are under quote, the employee will abide by the terms of the statement and will notify the employer of any conviction or plea of guilty or nolo contendere to any violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in, drug abuse assistance or rehabilitation program if such is available in the employee's community, by an employee who is convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign this statement, I certify the Contractor complies fully with the above requirements.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

The Town requires compliance with State and Federal regulations governing Equal Employment Opportunity, External Equal Opportunities (EO), External On-the-Job Training (OJT), Title VI, and the Americans with Disabilities Act (ADA) programs.

Sub-recipients of federal-aid contracts must include notifications in all solicitations for bids of work or material and agreements subject to Title VI of the Civil Rights Act of 1964 and other nondiscrimination authorities. Sub-recipients, contractors and subcontractors may not discriminate in their employment practices or in the selection and retention of any subcontractor.

By signing this document, the Respondent hereby certifies their commitment to assure nondiscrimination in its programs and activities to the effect that no person shall on the grounds of race, color, national origin, sex, age, disability or income status be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination or retaliation under any federally or non-federally funded program or activity administered by the sub-recipient and/or its contractors.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

NON-COLLUSION OATH

STATE OF _____

COUNTY/PARISH OF _____

Before me, the Undersigned, a Notary Public, for and in the County/Parish and State aforesaid, personally appeared: _____ and made oath that the Contractor herein, its agents, servants, and/or employees, to the best of its knowledge and belief, have not in any way colluded with anyone for and on behalf of the Contractor, or themselves, to obtain information that would give the Contractor an unfair advantage over others, nor have they colluded with anyone for and on behalf of the Contractor, or themselves, to gain any favoritism in the award of the contract.

Affiant Signature

Sworn to (or affirmed) and subscribed before me this _____ day of _____,
20_____, by _____.

Signature of Notary Public

[STAMP HERE]

State of _____

Personally Known _____ OR Produced Identification _____

Type of Identification Produced: _____

GOOD FAITH AFFIDAVIT

STATE OF _____

COUNTY/PARISH OF _____

I hereby propose to provide the services requested in the RFP and, if awarded, enter into a contract. I agree that the terms and conditions of the RFP shall take precedence over any conflicting terms and conditions submitted with my proposal and agree to abide by all conditions of the RFP. I acknowledge that the Town may not accept the proposal due to any exceptions.

I certify that all information contained in my proposal is truthful to the best of my knowledge and belief. I further certify that I am duly authorized to submit this proposal on behalf of the company as its agent and that the company is ready, willing, and able to perform if awarded a contract.

I further certify, under oath, that this proposal is made without prior understanding, agreement, connection, discussion or collusion with any other person, company or corporation submitting a proposal for the same product or service; no gratuities, gifts or kick-backs were offered or given by the Contractor or anyone on its behalf to gain favorable treatment concerning this procurement; no elected official, employee or agent of the Town or of any other company is interested in said proposal; and that the undersigned executed this affidavit with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

Affiant Signature

Sworn to (or affirmed) and subscribed before me this _____ day of _____,
20____, by _____.

Signature of Notary Public

[STAMP HERE]

State of _____

Personally Known _____ OR Produced Identification _____

Type of Identification Produced: _____

Section 7.0 – Sample Agreement

The enclosed sample agreement is the proposed agreement between the Town and the Contractor. Contractors are encouraged to review all terms and conditions to ensure compliance and acceptance. The Town does not intend to modify this agreement unless one or more parts conflicts with preceding law.

<Remainder of page intentionally left blank>

Professional Services Agreement

This is an agreement for Professional Services Agreement (hereinafter referred to as the "Agreement") effective as of ____ day of _____, 2024 between The Town of Carolina Beach, 1121 N. Lake Park Blvd, Carolina Beach, NC 28428 (OWNER) and [CONTRACTOR] (CONTRACTOR), a company licensed to conduct business in the State of North Carolina, having its principal place of business at [CONTRACTOR ADDRESS].

WHEREAS, the OWNER requires the services of a qualified firm to perform certain professional services ("**Project**") for the OWNER and has selected (CONTRACTOR) to provide these certain services.

WHEREAS, the scope of work under this Agreement will have the following characteristics: On an as-needed basis, the OWNER will issue Task Orders describing the work required under this Agreement, containing a mutually-agreed upon "Not to Exceed" cost, unless otherwise provided herein, with all included work being directly related to those services originally sought by the OWNER. In response, the Contractor will prepare a scope of work and cost estimate which shall become part of the Task Order upon execution by both Parties.

NOW, THEREFORE, in consideration of the mutual promises herein, (CONTRACTOR) and the OWNER agree that the terms and conditions of this Agreement are as follows:

DEFINITIONS:

"**Fee Schedule**" shall mean the schedule attached as **Attachment 2** to any applicable Task Order as well as the identical schedule attached as **Schedule B**.

"**Projected Budget**" shall mean the initial projected amount it will cost to complete the Project, with such amount being listed under Section 4 of the Task Order.

"**Scope of Services**" shall mean the services and terms described within any forms which are attached as "**Attachment 1**" to any applicable Task Order, along with any modifications or additions to the services provided by CONTRACTOR to OWNER which are agreed upon by the Parties or otherwise contemplated in this Agreement.

"**Site**" or "**Work Site**" shall mean the location where CONTRACTOR is performing services for the Project on behalf of the OWNER.

"**Task Order**" shall mean the form attached as **Schedule A**, and any later-created substantially similar form, which includes basic information related to the Project and services to be performed by the CONTRACTOR as well as attachments related to the Scope of Services and Fee Schedule.

1. BASIC SERVICES

1.1. **Scope.** CONTRACTOR shall provide the Basic Services as described in individual Task Orders authorized in writing by the OWNER. A sample Task Order form is provided in **Schedule A**. The Task Order format may be modified from time to time. CONTRACTOR's obligations under this Agreement are solely for the benefit of the OWNER and no other party is intended to benefit or have rights hereunder. The Scope of Services are subject to modifications and/or additions and are thus subject to the terms of Section 6.1 herein.

1.2. **Standard of Care.** CONTRACTOR shall perform the professional services under this Agreement at the level customary for competent and prudent professionals performing such services at the time and place where the services are provided. These services will be

provided by CONTRACTOR's professionals and individuals skilled in other technical disciplines, as appropriate.

- 1.3. **Subcontractors.** CONTRACTOR shall be permitted to utilize subcontractors for performing services under any Task Order.
- 1.4. **Transportation or Disposal of Hazardous Materials.** The OWNER further agrees that, if this Agreement requires the containerization, transportation, or disposal of any hazardous or toxic wastes, materials or substances, CONTRACTOR is not, and has no authority to act as a generator, arranger, transporter, or disposer of any hazardous or toxic wastes, materials or substances that may be found or identified on, at, or around OWNER's Site(s).

2. THE OWNER's RESPONSIBILITIES

Unless stated otherwise in Section 7 or in individual Task Orders, the OWNER shall do the following in a timely manner:

- 2.1. **The OWNER's Representative.** The OWNER will designate a representative having authority to give instructions, receive information, define the OWNER's policies, and make decisions with respect to individual Task Orders. Such representative is listed in Section 1 of the Task Order.
- 2.2. **Project Criteria.** Provide criteria and information as to the OWNER's requirements for a Task Order, including design objectives and constraints, space, capacity, scope of work, task assignments, and performance requirements, and any budgetary limitations to the extent known to the OWNER.
- 2.3. **Access.** Arrange for CONTRACTOR to access the Site as may be reasonably required to perform the Scope of Services. CONTRACTOR will be provided with suitable access to appropriate areas of the Site and shall be entitled to the use of such parking facilities and rest room facilities as may be authorized for its use. CONTRACTOR or its representatives may be on Site during the various stages of the work to observe the progress and quality of the work and to determine, in general, if the work is proceeding in accordance with the intent of the Agreement. Visits and observations made by CONTRACTOR will not relieve other contractors of their obligation to conduct comprehensive inspections of the work, to furnish materials, to perform acceptable work, and to provide adequate safety precautions.
- 2.4. **Review.** Promptly respond to CONTRACTOR's request for decisions or determinations related to the scope of services.
- 2.5. **Meetings.** At CONTRACTOR'S request, hold or arrange to hold meetings required to assist in the work required by a Task Order.
- 2.6. **Project Developments.** Give prompt written notice to CONTRACTOR whenever the OWNER observes or otherwise becomes aware of any development that affects the Scope of Services, including but not limited to the timing, price, and/or of CONTRACTOR's services. For purposes of this Section 2.6, "prompt written notice" shall mean within two (2) business days.

3. PERIODS OF SERVICE

- 3.1. **Time of Performance.** Section 3 of the Task Order anticipates the orderly and continuous progress of the Task Order through completion of the Scope of Services. However, the period of service is subject to change and is thus subject to the terms of Section 6.1 herein.
- 3.2. **Start of Performance.** CONTRACTOR will start the Scope of Services described in each Task Order upon authorization by the OWNER. If the OWNER gives authorization before signing a Task Order, CONTRACTOR shall be paid as if the services had been performed after both parties signed the Task Order. Task orders will only be valid if signed by OWNER and CONTRACTOR authorized representatives.
- 3.3. **Force Majeure.** If a force, event, or circumstance beyond CONTRACTOR's or the OWNER'S control, including strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, approval delays by municipalities or governmental entities, riots, insurrection, war, military or usurped power, sabotage, terrorism, unusually severe weather, acts of God, fire, epidemic, pandemics, quarantine, or other casualty or other reason (but excluding financial inability) of a like nature which interrupts or delays CONTRACTOR's performance, then the time of performance shall be excused for the period of the delay, and the period for the performance shall be extended for a period equivalent to the period of the delay.
- 3.4. **Term and Termination.** This Agreement shall be in effect for three (3) years from the effective date, with two (2), one (1) year extensions available upon mutual consent of the parties. This Agreement may be terminated by either Party at will and without cause, at any time upon seven (7) days prior written notice to the other Party and shall remain in force until so terminated, however any outstanding Task Orders will not be affected by any such termination. All information and any materials provided to either Party must be returned to the other Party upon termination of the Agreement. Notwithstanding the foregoing, unless otherwise agreed by the Parties, the terms and conditions of this Agreement shall continue to apply to all outstanding Task Orders until the Scope of Services described thereunder are completed or the Task Order is terminated pursuant to the terms of the Task Order, if different than the terms of this Section 3.4, whichever is sooner.

4. COMPENSATION

- 4.1. **CONTRACTOR Services.** Based upon the Scope of Services provided for in each Task Order issued pursuant to the Agreement and any relevant agreed upon changes established after execution of said Task Order, along with the Fee Schedule, the OWNER shall pay CONTRACTOR the amount stated in invoices issued for actual work performed and reimbursable expenses incurred during the period covered by the invoice, subject to the funding limits established in each Task Order and any changes agreed upon by the parties or otherwise contemplated in this Agreement. The OWNER must raise any disputes regarding an invoice within thirty (30) calendar days of the date of such invoice ("Invoice Dispute Period"). Failure by OWNER to raise any such dispute within the Invoice Dispute Period shall result in OWNER waiving any and all claims, disputes, or other challenges associated with such invoice. In the event of a dispute as to any portion of an invoice within the Invoice Dispute Period, the undisputed portion shall be paid as provided in Section 4.1 herein. Invoices are payable by the OWNER within thirty (30) calendar days after receipt of invoice by OWNER.
- 4.2. **Late Payments/Interest Charges.** Accounts not paid within the terms of this Agreement are subject to a 1.5% monthly finance charge, or the highest rate allowable by law, at the

discretion of CONTRACTOR and waivable in whole or in part by CONTRACTOR at its discretion.

- 4.3. **Price Escalation.** Hourly rates shall remain fixed during the initial three (3) year term of the Agreement. The current hourly rates for each labor classification are included in Schedule B to this Agreement. Upon each renewal, the hourly rates listed in Schedule B will be adjusted to reflect annual increases in the cost-of-living, based on increases in the national consumer price index for urban wage earners and clerical workers, or any successor index, published in the United States Department of Labor News by the Bureau of Labor Statistics for the 12-month period ending on the most recently available month. CONTRACTOR shall submit to the OWNER a replacement Schedule B containing the adjusted hourly rates and a written calculation of the rate increases. The hourly rates included in any replacement Schedule B will apply to any Services performed after the applicable anniversary of the effective date of this Agreement. CONTRACTOR and the OWNER will amend this Agreement to reflect any changes.

5. NON-CONTROLLABLE COSTS

- 5.1. **Non-Controllable Costs.** CONTRACTOR has no control over the cost of labor, materials, equipment, services furnished by others, including, but not limited to, OWNER's contractors, and/or subcontractors. CONTRACTOR has no control over any other person or entity's methods of determining prices. Further, CONTRACTOR has no control over competitive bidding or market conditions. CONTRACTOR's opinion of probable cost is made on the basis of CONTRACTOR's experience and qualifications and represents CONTRACTOR's judgment as an experienced and qualified professional firm, familiar with the disaster recovery industry. CONTRACTOR does not guarantee that proposals, bids or actual project cost will not vary from CONTRACTOR's opinions of probable cost.

6. GENERAL CONSIDERATIONS

- 6.1. **Changes.** By written and/or electronic notice at any time, the OWNER or CONTRACTOR may change services required by a Task Order, provided such changes are within the general scope of the services contemplated by this Agreement, and subject to validation under any applicable cost or price analysis required by federal, state, or local law. In such event, an equitable adjustment both in the compensation for and time of performance of the adjusted Task Order shall be made in writing prior to CONTRACTOR performing the changed services, unless otherwise provided herein. During the course of the Project, the Scope of Services may be subject to changes in length and/or price dependent upon the nature of the Project and required materials, labor, and/or resources. Any changes requested by OWNER or CONTRACTOR must be requested and approved by the OWNER's or CONTRACTOR's authorized representative as the case may be.
- 6.2. **Access to Records.** The following access to records requirements apply to CONTRACTOR, which includes its successors, transferees, assignees, and subcontractors:
 - (a) CONTRACTOR agrees to provide the OWNER, the State of North Carolina, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions;
 - (b) CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed; and
 - (c) CONTRACTOR agrees to provide the FEMA Administrator or their authorized representatives access to construction or other work sites pertaining to the work being completed under this Agreement, as permitted by the OWNER.

- 6.3. **Confidentiality and Proprietary Information.** In the course of providing services under this Agreement, OWNER and CONTRACTOR may receive confidential and/or proprietary information and/or materials of the other Party. Each Party agrees to hold secret and confidential all information designated by the other Party as confidential (“Confidential Information”). Neither Party will reveal Confidential Information to a third party unless: (a) the non-disclosing Party consents in writing; (b) the information is or becomes part of the public domain; (c) applicable law, regulation, court order or an agency of competent jurisdiction requires its disclosure; or (d) failure to disclose the information would pose an imminent and substantial threat to human health or the environment. All drawings, specifications, and technical information furnished to OWNER by CONTRACTOR or developed for OWNER by CONTRACTOR in connection with the Scope of Services are, and will remain, the property the OWNER.
- 6.4. **Dispute Resolution.** Prior to filing any cause of action, or legal proceeding, with the requisite court of law, the Parties agree that they will first be required to attend mediation. The Parties agree that the Party who initiates the dispute by this procedure shall provide to the non-initiating Party notice of the commenced proceedings and the names of three (3) proposed mediators, whereby the non-initiating Party shall within ten (10) days thereafter select one (1) mediator of the proposed mediators to conduct the mediation. Any controversies or disputes arising out of or relating to this Agreement will be submitted to mediation in accordance with any statutory rules of mediation. Both Parties agree that they will send a representative with full settlement authority to the mediation. The cost of the in-person mediation shall be split amongst the Parties but shall not include travel costs of either Party associated with attending the in-person mediation and/or the expenses of each Party’s own legal counsel. Notwithstanding the foregoing, the pre-suit mediation requirement will be waived and not required at the discretion of CONTRACTOR and/or in the event CONTRACTOR brings an action against the OWNER for unpaid invoices or other unpaid fees.
- 6.4.1. **Mediation.** If negotiation is unsuccessful, a mutually acceptable third party [**Facilitator**] having expertise in the subject of the Dispute shall be engaged to mediate the Dispute. The fee and expenses of the Facilitator shall be shared equally by the parties to the Dispute. The parties may present evidence and arguments to the Facilitator. Unless the Facilitator and the parties agree otherwise, a minimum of one face-to-face meeting shall be held within the sixty-day period beginning on the date of the Facilitator's engagement. Following the meeting or earlier if appropriate, the Facilitator shall report to the parties whether he believes the Dispute is resolvable through mediation. At that point the parties shall elect (a) to continue mediation, (b) replace the Facilitator and continue mediation, or (c) end mediation. If the mediation is ended, the parties may litigate the Dispute.
- 6.4.2. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of North Carolina.
- 6.4.3. **Compliance with Dispute Resolution.** In the event that either Party fails to comply with the Dispute Resolution procedure set forth in Section 6.4 of this Agreement, and files a cause of action or legal proceeding prior to a required mediation taking place, the filing Party agrees to pay the non-filing Party’s reasonable attorneys’ fees and all costs and expenses incurred with respect to defending such improperly filed cause of action or legal proceeding.
- 6.5. **Remedies.** Nothing in this Agreement otherwise prevents the OWNER from utilizing any available remedies, administrative, contractual, or legal, where CONTRACTOR has been found to have violated or breached the terms of this Agreement, subject to the Limitation of Liability provision below.

6.6. **Insurance.** CONTRACTOR will maintain **insurance** against the following risks during the term of the Agreement: (a) workers compensation in statutory amounts and employer's liability for CONTRACTOR's employees' project-related injuries or disease; (b) general liability and automobile liability each in the amount of \$1,000,000 for personal injury or property damage to third parties which arises from CONTRACTOR's performance under this Agreement; and (c) professional liability in the amount of \$1,000,000 for legal obligations arising out of CONTRACTOR's failure to meet the Standard of Care.

6.7. **Mutual Indemnification.**

6.7.1. CONTRACTOR hereby agrees to indemnify and hold the OWNER harmless from and against any and all losses, damages, settlements, costs, charges, or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind and character arising from the gross negligence or willful misconduct of CONTRACTOR in the performance of its obligations under this Agreement.

6.7.2. The OWNER hereby agrees to indemnify and hold CONTRACTOR harmless from and against any and all losses, damages, settlements, costs, charges, or other expenses or liabilities of every kind and character arising out of or relating to any and all third party claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind and character which specifically and directly arise from the gross negligence or willful misconduct of OWNER as related to the services which OWNER has engaged CONTRACTOR for under this Agreement or for any injuries suffered by an employee or contractor of OWNER who is performing work for OWNER.

6.8. **Limitation of Liability.** Notwithstanding any other provision of this Agreement and to the fullest extent permitted by law the parties agree that neither the OWNER nor CONTRACTOR shall be liable to each other for any special, indirect or consequential damages, whether caused or alleged to be caused by negligence, strict liability, breach of contract or warranty under this Agreement. Except for amounts for which indemnification is given by CONTRACTOR hereunder, in no event will CONTRACTOR's liability to the OWNER, whether in contract, tort or any other theory of liability, exceed CONTRACTOR's fees for services from which the liability arises.

6.9. **Interpretation.** This Agreement shall be interpreted in accordance with the laws of the State of North Carolina.

6.10. **Successors.** This Agreement is binding on the successors and assignees of the OWNER and CONTRACTOR. The Agreement may not be assigned in whole or in part to any third parties without the written consent of the OWNER.

6.11. **Independent Contractor.** CONTRACTOR represents that it is an independent contractor and is not an employee of the OWNER.

6.12. **Notices.** Written notices may be delivered in person or by certified mail, or by facsimile, or

by courier or by email. All notices shall be effective upon the date of receipt by the party.

6.13. **Entire Agreement.** This Agreement, including Schedules, Attachments, and Task Orders (including references to other agreements contained in the Task Order), which are executed pursuant to this Agreement, is the entire agreement between the OWNER and CONTRACTOR. Any prior or contemporaneous agreements, promises, negotiations or representations not expressly stated herein are of no force and effect. Any changes to this Agreement shall be in writing and signed by the OWNER and CONTRACTOR, unless otherwise provided in this Agreement.

6.14. **Waivers and Severability.** A waiver or breach of any term, condition, or covenant by a party shall not constitute a waiver or breach of any other term, condition, or covenant. If any court of competent jurisdiction declares a provision of this Agreement invalid, illegal, or otherwise unenforceable, the remaining provisions of the Agreement shall remain in full force and effect.

6.15. **Effective Date.** This Agreement is effective on the date shown on the cover page.

7. SCHEDULES.

7.1 **Schedules.** The following **Schedules** are attached to and made a part of this Agreement:

7.3.1 **Schedule A:** *Sample Task Order*

7.3.2 **Schedule B:** *Fee Schedule*

7.3.3 **Schedule C:** *Request for Proposals*

7.3.4 **Schedule D:** *Contractor Proposal*

7.2 **Required Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.**

In addition to the terms and conditions expressed within this Agreement, the Code of Federal Regulation ("CFR") Part 200.326 requires that contracts made by non-Federal entities under a Federal award must contain certain provisions and/or clauses, as applicable, to the contract. These clauses are identified in 2 CFR Part 200 Appendix II, and by their inclusion in the RFP are incorporated into this Agreement, as applicable, and any Task Orders issued by the OWNER.

8. **Execution Authority.** This Agreement is a valid and authorized undertaking of the OWNER and CONTRACTOR. The representatives of the OWNER and CONTRACTOR who have signed below have been authorized to do so.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement as of the day and year shown on the cover page.

TOWN OF CAROLINA BEACH, NC

[CONTRACTOR]

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Schedule A

TASK ORDER

Task Order Number: _____

Task Order Date: _____

Subject to the Agreement between the OWNER and CONTRACTOR, effective [DATE], the OWNER hereby authorizes CONTRACTOR to perform services as specified in this Task Order and in accordance with the above-referenced Agreement.

1. Basic Project Information:

Project Name: _____

Project Location: _____

OWNER Representative: _____

CONTRACTOR Representative: _____

2. Scope of Services: CONTRACTOR shall perform services described in Attachment 1, Scope of Services, attached and incorporated into this Task Order.

3. Period of Service: The period of service shall be from [DATE] to [DATE] (__ days) from Task Order effective date.

4. Compensation: CONTRACTOR's compensation under this Task Order, which shall not be exceeded without prior written authorization of the OWNER, is \$_____.

5. This Task Order's Fee Schedule is incorporated and provided as Attachment 2.

6. Amendment: This Task Order amends Task Order No. _____, Dated: _____.

ISSUED AND AUTHORIZED BY:

The Town of Carolina Beach

Signature: _____

Name: _____

Title: _____

ACCEPTED AND AGREED TO BY:

[CONTRACTOR]

Signature: _____

Name: _____

Title: _____

PROFESSIONAL SERVICES TASK ORDER

Task Order Number: _____

Attachment 1

Scope of Services

Attachment 2

Fee Schedule

SAMPLE

Fee Schedule

SAMPLE

Request for Proposals (RFP) for Debris Monitoring Services

SAMPLE

Contractor Proposal

SAMPLE