

2021-269



5000 Diamondhead Circle ·
Diamondhead, MS 39525-3260

August 10, 2021

Mayor and Council
City of Diamondhead
5000 Diamondhead Circle
Diamondhead, MS 39525

Dear Councilmembers:

Re: Disaster Debris Monitoring Services

The City solicited proposals from qualified firms for Disaster Debris Monitoring Services. Direct-mail solicitations were made to seven small and disadvantaged business encouraging participation. Of the four firms acquiring specifications, only one response was received. Tetra Tech, Inc. submitted qualifications being the sole responder to the RFQ.

Tetra Tech, Inc. provided monitoring services for the City relating to Hurricane Zeta debris removal. They did an outstanding job and managed our project with professionalism and accuracy. It is my recommendation to accept and award the Disaster Debris Monitoring Services to Tetra-Tech, Inc. for an initial term of 3 years with 2 one-year optional renewals and further to authorize the signing of the agreement.

Thank you for approval and consideration in this matter.

Sincerely,


Michael Reso
City Manager

Professional Services Agreement
DISASTER DEBRIS MONITORING SERVICES

This is an agreement for Professional Services Agreement (hereinafter referred to as the "Agreement") effective as of 18th day of August, 2021 between the City of Diamondhead, MS (OWNER), having its principal office at 5000 Diamondhead Circle, Diamondhead, Mississippi and Tetra Tech, Inc., a company licensed to conduct business in the State of Mississippi, having its principal place of business at 101 Teal Street, St. Rose, LA 70087].

WHEREAS, the OWNER requires the services of a qualified firm to perform certain professional services relating Disaster Debris Monitoring for the OWNER, has carefully reviewed the Disaster Debris Monitoring and management Services], and has selected Tetra Tech, Inc. to provide certain services as outlined in the same.

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, Tetra Tech, Inc. and the City of Diamondhead agree that the terms and conditions of this Agreement areas 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 interrupts or delays CONTRACTOR's performance, the time of performance shall be equitably adjusted.
- 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.

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 Mississippi, 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. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Mississippi and the venue for all disputes shall be any competent court of Hancock County, Mississippi.
- 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. **Assignment Rights.** OWNER may offer adoption of this agreement in whole to other local governing agencies with the express written approval of the CONTRACTOR. The OWNER makes no guarantee of assignment and the CONTRACTOR maintains the right to refuse services to other local governing agencies.
- 6.10. **Interpretation.** This Agreement shall be interpreted in accordance with the laws of the State of Mississippi.
- 6.11. **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.
- 6.12. **Independent Contractor.** CONTRACTOR represents that it is an independent contractor and is not an employee of the OWNER.
- 6.13. **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.
- 6.14. **Entire Agreement.** This Agreement encompasses all procurement and contract documents to include the RFQ and addenda, CONTRACTOR Proposal, Contract, Schedules, Attachments, and Task Orders executed pursuant to this Agreement. 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.
- 6.15. **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.

6.16. **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 RFQ 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.

CITY OF DIAMONDHEAD, MS

[CONTRACTOR]

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____