



**TOWN OF  
NAGS HEAD**

**Request for Proposals  
Disaster Debris Removal Monitoring Services  
For the Town of Nags Head, NC**

**Date: June 8, 2023**

**Submittal deadline:  
June 27, 2022, 2:00 PM, Local Time**

***If you have received this Request for Proposal from a source other than the Town of Nags Head Department of Administration, it is the responsibility of the Respondent to ensure that all addenda has been received. Respondents should email the Administration Department to ensure that your company is added to the distribution list.***

**Email:** [David.Ryan@nagsheadnc.gov](mailto:David.Ryan@nagsheadnc.gov) or  
[Carolyn.Morris@nagsheadnc.gov](mailto:Carolyn.Morris@nagsheadnc.gov)

***However, it is still the responsibility of the Respondent to ensure that all addenda have been received prior to submitting a bid/proposal.***

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June 8, 2023

RE: **Request for Proposals**  
**Disaster Debris Removal Monitoring Services**

To Whom It May Concern:

The Town of Nags Head, NC is requesting proposals from fully qualified offerors to provide highly skilled technical services to provide planning, management, quality control, and debris collection monitoring services in the event of a natural disaster or man-made event.

The Town of Nags Head, NC is a major tourist destination in Dare County on the Outer Banks of North Carolina. The Town is located in the northeastern portion of North Carolina, 3-½ hours east of Raleigh and approximately 2 hours south of Norfolk and Virginia Beach, Virginia. Dare County consists of 800 square miles of area with an annual average population of 37,000 year round residents. The Town of Nags Head is bordered on the south by the Cape Hatteras National Seashore and the Township of Kill Devil Hills to the north. The Town is bordered by the Atlantic Ocean to the east and the Roanoke Sound to the west.

The municipality is served primarily by local streets which are connected to two main thoroughfares, S. Croatan Hwy, (US Hwy 158) and Virginia Dare Trail (NC 12). The Town of Nags Head is served by approximately 15 miles of NCDOT roads in conjunction with 37 miles of locally maintained roadways.

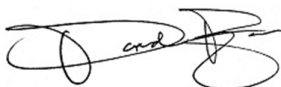
The award of a contract under this solicitation will be paid with federal funding. Funding is contingent upon compliance with all terms and conditions of funding award. All prospective contractors shall comply with all applicable federal laws, regulations, executive orders, FEMA requirements and the terms and conditions of the funding award. In addition, contractors providing submittals shall be responsible for complying with state law and local ordinances.

Attached you will find a "Request for Proposals" (RFP) which identifies the services to be undertaken. In order to be considered, all proposals must be submitted in writing no later than **2:00 PM (EST) on June 27, 2023**. Contractors mailing proposal packages should allow delivery time to ensure timely receipt of their proposal. The responsibility for getting the proposal to the Town of Nags Head Department of Administration on or before the specified time and date is solely and strictly the responsibility of the proposing contractor. The Town of Nags Head will in no way be responsible for delays caused by any occurrence. Proposals may be hand carried or mailed to:

**Town of Nags Head Department of Administration**  
**Attention: Carolyn Morris, Town Clerk**  
**5401 S. Croatan Hwy. Nags Head, NC 27959**  
Hours of Operation: 8:00 a.m. - 5:00 p.m. (EST)  
Monday through Friday  
Phone: (252) 449-2009  
Email: Carolyn.morris@nagsheadnc.gov

The Town of Nags Head reserves the right to waive any informalities and to reject any and all proposals.

Thank you,



David M. Ryan, P.E.  
Town Engineer

## SECTION I - GENERAL INFORMATION FOR OFFERORS

### A. PURPOSE:

The Town of Nags Head, ("Town" or "the Town") is requesting proposals from fully qualified offerors to provide highly skilled technical services to provide disaster monitoring and consulting services in the event of a natural disaster or man-made event. The Town desires to have available the assistance of a responsible firm, licensed to do business in the State of North Carolina for the purpose of providing support services to the Town for the planning, management, and quality control for the removal of debris pursuant to the Contract, a copy of which accompanies this document and is incorporated by reference. The initial one (1) year period for the agreement to be issued by the Town based on this RFP will be from July 6, 2023, through June 30, 2024, and may be renewed as further provided in this RFP.

The Town is seeking to enter into a contractual agreement separately with a firm to provide the services contained within this Request for Proposals (RFP)(together with all attachments or incorporated documents, as context may require, the "RFP") (each such contractual agreement shall be referred to as a "Contract"). The Contract to be awarded by the Town under this RFP will only be activated upon a declaration of an emergency by the applicable Town's Board of Commissioners or other governing body and then only upon the issuance of a "Notice to Proceed" by the Town to the successful offeror. The Town shall not be obligated to purchase any specific quantity of services. The Town reserves the exclusive right to extend any Contract as result of this solicitation for up to three (3) additional one (1) year periods. This Request for Proposals (RFP) states the instructions for submitting proposals, the procedure, and criteria by which a vendor may be selected and the contractual terms by which the Town intends to govern the relationship between it and the selected vendor.

It is the desire of the Town to obtain the services from the successful offeror that has a high level of expertise in FEMA and Federal requirements, procedures, and debris removal monitoring experience. The successful offeror shall provide all expertise, personnel, tools, materials, equipment, transportation, supervision and all other services and facilities of any nature necessary to execute, complete and deliver the timely removal and lawful disposal of all *FEMA eligible storm-generated debris* under each proposed Work Order issued. The successful offeror will also represent that its services shall be capable of assembling, directing and managing a work force, to include all necessary equipment that can complete the debris monitoring operations. All offerors will provide representations and certifications as to its expertise and experience with FEMA and other federal reimbursement requirements with its proposal response; such expertise and experience is essential to any Contract.

All rights and ownership of the work completed during the performance of a Contract shall become the sole property of the respective Town without future usage restrictions of any kind. Please note that specific references to "the Town" shall apply to The Town of Nags Head, North Carolina.

### B. ISSUING OFFICE:

Town of Nags Head  
Town Clerk  
Town of Nags Head Municipal Complex  
5401 S. Croatan Highway  
Nags Head, North Carolina 27959  
Telephone (252) 449-2009  
Fax (252) 441-4680

### C. CONTACT FOR INFORMATION:

Project Representative- David Ryan, P.E. -Town Engineer  
Town of Nags Head Department of Public Services  
5401 S. Croatan Highway  
Nags Head, North Carolina 27959  
Telephone (252) 441-6221  
FAX (252) 441-0776  
Email: [david.ryan@nagsheadnc.gov](mailto:david.ryan@nagsheadnc.gov)

## SECTION 2 – SUBMISSION OF PROPOSALS

### A. DEADLINE:

Receipt of Proposals: 2:00 P.M., June 27, 2022

Proposals will not be accepted or considered after 2:00 P.M. on the closing date. Proposals received after the submission deadline will be returned unopened. The original hardcopy submittal and the electronic version must be received by the time and date above.

### B. QUESTIONS AND ADDENDA:

Offerors shall carefully examine this RFP and any addenda. Vendors should seek clarification of any ambiguity, conflict, omission or other error in this RFP in writing. Questions should be addressed to the Project Representative for the Town of Nags Head. If the answer materially affects the RFP, the information will be incorporated into an addendum and distributed to vendors of record. Discussions with other Town employees or officials during the solicitation and evaluation period are inappropriate. Therefore, offerors shall not contact any other Town employees or officials regarding this RFP during the period of solicitation and evaluation. Oral comments do not form a part of this RFP.

### C. CHANGES IN THE REQUEST FOR PROPOSALS:

Any changes made in this RFP will be posted and distributed to vendors of record. Any and all addenda will be numbered in sequence, dated as of the date of issue, posted and distributed via fax, e-mail or U.S. Mail. Each proposer is responsible for determining that all addenda issued by the Town has been received before submitting a proposal to the Town.

### D. PROPOSAL PREPARATION OF RESPONSE:

Proposals should be prepared simply and economically, providing a straightforward, concise delineation of the capabilities of their offering AND provide all the information which it considers pertinent to its proposal and qualifications for the work to be performed. Proposals shall be submitted on the forms included with the bid documents. Any additions, alterations or erasures must be initialized by the signer of the proposal.

**E. TIME IS OF THE ESSENCE:** Any proposal received after the announced time and date for submittal, whether by mail or otherwise, will be rejected. It is the sole responsibility of the contractor for ensuring that their proposal is received by the Purchasing Department personnel before the deadline indicated above. The Town will in no way be responsible for delays caused by any occurrence.

### F. PROPOSAL SUBMISSION:

All proposals must be received in an appropriately marked and sealed envelope or package in the Office of the Town Clerk, Nags Head Town Hall, 5401 S. Croatan Highway, Nags Head, North Carolina 27959 prior to June 23, 2020, 2:00 P.M. local time. Proposals in the form of telegrams, telephone calls, facsimiles or telex messages will not be accepted. Each proposal shall be signed by an official authorized to bind the vendor and shall contain a statement that the proposal is firm for the ninety (90) days immediately following the date of opening of the sealed proposals. At the end of the 90-day period, the proposal may be withdrawn at the written request of the vendor. If the proposal is not withdrawn, it will remain in effect until an award is made by each Town or the solicitation is canceled.

**Identification:** The outside of the envelope should be marked as follows:

- Bid Enclosed: Debris Removal Monitoring Services
- The envelope shall be marked on its face with the name of the person, firm or corporation submitting the proposal.

**Contents of proposal submission:** Proposers shall submit and one (1) electronic copy and two (2) original hardcopies of the proposal in a sealed opaque envelope marked as noted above and may be submitted in person or by mail.

Each proposal shall also provide the following general information:

1. The name of every company bearing an interest in the proposed services;
2. The name, title, address, and telephone number of individuals with authority to contractually bind the offeror; and
3. A designated person(s) who can be contacted for information during the period of evaluation and for

prompt contract administration upon award of the Contract. This information shall include the person's name, title, address, and telephone number, (additional proposal requirements are listed in Section 4).

The signer of the proposal must declare that all persons, companies or parties interested in the Contract as principals are named therein; that the proposal is made without collusion with any other person, persons, company or parties submitting a proposal; that it is in all respects fair and in good faith without collusion or fraud; and that the signer of the proposal has authority to contractually bind the vendor.

Any proposal submitted on forms other than the Proposed Form contained in this RFP may be considered non-responsive. If it is questionable that the Postal Service can deliver your proposal on time, we suggest that it be hand delivered. TELEPHONE PROPOSALS AND/OR FAXED PROPOSALS WILL NOT BE ACCEPTED. All proposals submitted must be typed or written in ink signed by the Proposer's designated representative.

**G. PROPRIETARY INFORMATION:** Trade secrets or proprietary information submitted by a proposer, in connection with a procurement transaction shall not be subject to the public disclosure under the Freedom of Information Act. However, the proposer or offeror must invoke the protection of this section prior to or upon submission of the data or other materials and must identify the data on other materials to be protected and state the reasons why protection is necessary. An all-inclusive statement that the entire proposal is proprietary is unacceptable and will be disregarded. A statement that costs are to be protected is unacceptable and will not be honored.

**Each individual page shall be identified in boldface at the top as "CONFIDENTIAL" in a font size of 14 or larger.** Any section of the proposal that is to remain confidential shall also be so marked in boldface on the title page of that section along with each individual page within that section. Cost information and any other public information may not be deemed confidential; therefore, it is requested that only the necessary confidential pages be marked.

**H. BINDING:** Submittals must include the proposer's bid certification form (contained within) signed by an authorized representative of the company to legally bind the offer. All proposals submitted without such signature may be deemed non-responsive.

**I. MISCELLANEOUS:** Nothing herein is intended to exclude any responsibilities or in any way restrain or restrict competition. All contractors are encouraged to submit proposals. The Town reserves the right to waive any informalities and to reject any and/or all proposals. In addition, the Town reserves the right to cancel a solicitation at any time prior to the award of a contract.

**J. BONDS:** In accordance with to 2 CFR 200.325, bonding requirements are as follows:

~~**Bid Bond:** A bid guarantee equivalent to five percent (5%) of the bid price is required from each Respondent. The "bid guarantee" can be in the form of an **original bid bond** or a **certified check** payable to the Town of Nags Head. Bid bonds shall be submitted with the proposal in the amount of five (5%) percent of the total proposed bid amount based on Schedule 1. Failure to submit a bid bond in the amount of 5% will deem the bid invalid.~~

~~Failure of the successful proposer to execute a contract and furnish evidence of appropriate insurance coverage, as provided herein, within 15 days after written notice of award has been given, shall be just cause for the annulment of the award and the forfeiture of the bid bond to the Town, which forfeiture shall be considered, not as a penalty, but as liquidation of damages sustained.~~

**Performance & Payment Bond:** Awarded Contractor(s) will be required to furnish a performance and payment bond in an amount of 100% of the contract cost within ten (10) days after the contract has been activated and a Notice to Proceed has been issued by the Town. The contract amount will be determined at the time of the event due to the severity of the storm. The amount of the bond shall be increased at such times as the contract amount is increased in order to ensure that the amount of the bond corresponds with the contract amount at all times. The

performance and payment bond shall continue throughout the Services and for one year after the full scope of work is completed. Bonds shall be submitted to each of the Towns project representative(s).

The Performance Bond and the Payment Bond shall be executed by one or more surety companies legally authorized to do business in the State of North Carolina and shall become effective upon activation of contract and issuance of a Notice to Proceed by the Town. The surety bonds must be in the form set forth in N.C.G.S. 44A-33 without any variations there from or in any other form authorized by N.C.G.S. The Contractor will be solely responsible for any costs associated with obtaining bonds; bond premiums will not be reimbursed by the Town.

In addition, the successful proposer(s) will be required to submit a verification letter annually from the surety confirming that the contractor is able to provide a payment and performance bond.

**K. ACCURACY OF PROPOSAL INFORMATION:**

Any proposer, which submits in its proposal to each of the Town(s) any information, which is determined to be substantially inaccurate, misleading, exaggerated, or incorrect, shall be disqualified from consideration. Each Town reserves the right to contact the proposer to verify any information it deems necessary to provide for a fair and equitable evaluation of the proposal.

**L. DISPOSITION OF PROPOSALS:**

All materials submitted in response to this RFP will become the property of each of the Towns. One (1) copy of each proposal shall be retained for official files and will become a public record after the award and open to public inspection. It is understood that the proposal will become a part of the official file on this matter without obligation on the part of the Town except as to the disclosure restrictions contained in Section G, "Proprietary Information."

**M. COST INCURRED IN RESPONDING:**

This solicitation does not commit any of the Towns to pay any costs incurred in the preparation and submission of proposals or in making necessary studies or designs for the preparation thereof, nor to procure or contract for services.

**N. PRIME VENDOR RESPONSIBILITIES:**

Offerors may propose services that are provided by others, but any services proposed must meet all of the requirements of this RFP, contract and accompanying information. If the successful offeror's proposal includes services provided by others, the vendor will be required to act as the prime vendor for all such items and must assume full responsibility for the procurement, delivery and quality of such services. The successful offeror will be considered the primary point of contact with regard to issues arising under the Contract, including payment of all charges and the meeting of all requirements of this RFP.

**O. LAWS AND REGULATIONS:**

This procurement shall be governed by the North Carolina General Statutes and the Code of Ordinances for the applicable Town. Venue shall be in the applicable Town.

**P. PROPOSAL WITHDRAWAL:** Any proposal may be withdrawn without prejudice prior to the official proposal opening time or any publicized postponement thereof by notifying the Town in writing. Proposers may withdraw their proposals in person or through an authorized representative. Proposers and authorized representatives must disclose their identity and provide a signed receipt for the proposal. Proposals may also be withdrawn in accordance with N.C.G.S. 143-129.1

Bidders are required to verify compliance with the requested items noted in this RFP *and include with the bid proposal those items as requested or be prepared to furnish at a later date as specified. Lack of compliance may result in the proposal as being considered non-responsive.*

### SECTION 3 – REVIEW AND AWARD OF PROPOSALS

**A. EVALUATION OF SUBMISSIONS:** Evaluation factors have been identified Section 4. “*Proposal Requirements.*” Proposals will only be evaluated on the factors included within this RFP. A committee will evaluate all responses received by scoring them on the weighted system provided.

**B. CONTRACT AWARD:**

Each Town intends to enter into a contract as soon as practicable after receipt and acceptance of offeror’s proposals. The award of a contract shall be at the sole discretion of each Town. The Town intends to enter into two (2) separate agreements: one with a contractor as selected through this RFP and the other via an inter-local Agreement with Dare County to utilize their approved debris monitoring contractor. It is anticipated that this agreement with Dare County will be maintained and will have available to it one or more of these contractors, and would make a decision regarding which one to utilize based on the severity of the event, and the quantity of debris generated, as deemed appropriate.

The contracts shall be awarded to the highest ranked contractor based upon the criteria noted herein and possessing the ability to perform successfully under the terms and conditions of the contract.

Award shall be made to the contractors whose qualifications are determined to be the most advantageous to the Town, taking into consideration the contractor’s qualifications, experience, mobilization and operational plans, and the rate schedule as described in the evaluation factors set forth in Section 4. Estimated quantities (determined by the Town) will be used in the evaluation of the unit rate price schedule.

Consideration shall also be given to the company’s integrity, compliance with public policy, record of past performance, references, and financial and technical resources. Terms of the final contract prevail should the contract be activated.

Each Town reserves the right to accept or reject any or all proposals in whole or in part and to waive informalities. The Town further reserves the right to issue an award of a contract without further discussion of the proposals submitted. Therefore, the proposals should be submitted initially on the most favorable terms which the offeror can propose with respect to both price and technical capability. The contents of the proposal of the selected vendor will become part of the agreement when the award is made. Proposals will be initially evaluated on the basis of the written material provided, with clarification as needed through telephone calls to vendors. Based on this initial evaluation, the Town may select Offerors whose services most closely meet the Town's needs to make an oral presentation. Any agreement proposed for the Town’s execution shall be included with the proposal.

**C. CONTRACT TERM:** The contracts shall be for a base period of one (1) year with an option to renew for up to (3) three additional one-year periods, upon written mutual consent of all parties. This contract shall only be used on an “as needed” basis as determined solely by the Town.

**D. CONTRACT FORM:** Upon the Town’s acceptance of an Offeror’s bid, the Town and Offeror shall enter into a Contract evidencing their agreement, which contract shall be substantially in the form, and shall contain such terms and conditions, as shown in the accompanying “Annual Agreement for Debris Removal Monitoring Services” (the “Sample Contract”); provided, however, the provisions of the Sample Contract may be revised and/or amended to the extent reasonably necessary to conform to FEMA requirements.

**E. CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN’S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA COMPANIES:** The Town encourages all businesses, including minority, women-owned businesses to respond to all Request for Proposals. In addition, if subcontracts are let, the awarded contractor must ensure that the necessary affirmative steps are taken:

- a. Place qualified small, minority, and woman-owned businesses on solicitations lists;
- b. Assure that such businesses are solicited when they are potential sources;
- c. Divide total requirement, when economically feasible, into smaller tasks or quantities to permit maximum participation by such businesses;



- d. Establish delivery schedules, where requirements permit, which encourage such businesses to respond;
- e. Use service and assistance from such organization as SBA, minority business development agency of the Dept. of Commerce;

Contractors shall include these special provisions in all subcontracts for this contract. Failure on the part of the Contractor to carry out the requirements set forth in the special provision may constitute a breach of contract and after proper notification may result in termination of the contract or other appropriate remedy.

**E. ACTIVATION OF CONTRACT.** Prior to the contract(s) being activated, the awarded contractor(s) will meet with the Town representatives to determine the estimated volume of debris. Fees will be estimated based off the assessment of damages occurred.

**F. FUNDING SOURCE:** Payment for services under contract by this solicitation will be paid with federal funding. Funding is contingent upon compliance with all terms and conditions of funding award. The selected Contractor(s) shall comply with all applicable federal laws, regulations, executive orders, FEMA requirements and the terms and conditions of the funding award.

**G. COMPLIANCE BY AWARDED CONTRACTOR:** The awarded contractors shall comply with all applicable federal laws, regulations, executive orders, FEMA requirements, specifically 2 CFR, Part 200, and the terms and conditions of the funding award. In addition, contractors providing submittals shall be responsible for complying with state law and local ordinances.

**H. Certification of Proposer Regarding Debarment.** By submitting a proposal under this solicitation, the Contractor certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

**I. ANTI-COLLUSION STATEMENT:**

Collusion or restraint of free competition, direct or indirect, is prohibited. By executing the Bid Form, attached herein, offerors are certifying that the Bidder has not engaged in corrupt, fraudulent, collusive or coercive practices in competing for the Contract.

**J. NONDISCRIMINATION:**

The successful offeror agrees that it will not discriminate on any basis prohibited by applicable State or Federal law and shall take the necessary affirmative steps to ensure that applicants do not discriminate based upon these provisions. A statement to this effect will be incorporated into any Contract.

**K. INDEMNIFICATION AND INSURANCE REQUIREMENTS**

**INSURANCE AND INDEMNIFICATION REQUIREMENTS:**

1. The Offeror who has been awarded a Contract (the "Contractor"), shall defend, indemnify, and hold harmless the Town, its officers, employees, agents, and representatives from any and all liability or loss of any nature whatsoever arising out of or relating to the Contractor's operations under the Scope of Work and any Contract entered into including, without limiting the generality of the foregoing coverage, any act or omission of the Contractor, its agents, servants, employees, or invitees in the execution of performance of said Contract.
2. The Offeror who has been awarded a Contract shall maintain the minimum insurance policy amounts in accordance with the Sample Contract (defined within this RFP).

**L. INSTRUCTIONS TO BIDDERS:**

A separate set of instructions to bidders is contained herein.

## SECTION 4 –PROPOSAL REQUIREMENTS

In order to evaluate responses efficiently and equitably, responses must be submitted as identified below. Failure to submit this information may render your proposal non-responsive. Each respondent shall provide the following company information:

### **Section 1: Introduction: Company Information**

- Company name and main business address, including telephone, email address, website address.
- The type of company (individual, partnership, corporation, etc.) and list the names of all partners, principals, etc.
- Year established. Include former company name(s) and year(s) established, if applicable.
- The name, title, address, and telephone number of the company's authorized negotiator. The person identified must be empowered to make binding commitments for the company.
- Federal Employer ID Number
- A transmittal letter referencing this solicitation.
- Geographical location of the offeror's key offices, staff, subcontractors or partners and all other related resources for successful completion of the services listed in this RFP.
- General description of work performed by the firm.

### **~~Section 2: Bonding~~**

- ~~• Original Bid Bond or Certified Check~~

### **Section 3: Technical experience (\*Weighted)**

- This section shall include contractor's understanding of the project and proposed approach to providing services.

### **Section 4: Qualifications: Training and professional experience (\*Weighted)**

- List any professional training and experience, especially in relation to the type and magnitude of work required for the particular scope of services. This shall include the offeror's firm and subcontractors key staff qualifications and experience. Staff qualifications should be limited to staff expected to be assigned to work on any future contract for the generation of subcontracts and teaming arrangements.
- Provide a copy of contractor's safety program. This may be provided under separate cover or provide a link to access this information.
- A short qualification statement of the offeror's firm, subcontractor and partner abilities to complete the tasks outlined in the contract and similar experiences.
- List all similar projects, scope and role to include dollar level and amount of debris removal operations monitored during the last five (5) years in support of large scale land/debris clearing or other work similar required by this project (Example: Hurricane Florence). The PROPOSER must identify similar projects that he/she successfully completed, including date and location, nature of work, value of the contract, and the name and telephone number of the customer's point of contact for reference purposes.
- Description of overall experience performing large-scale disaster recovery monitoring operations as a prime contractor. This shall identify disaster recovery monitoring projects that he/she successfully completed, including date and location, nature of work, value of the contract, and the name and telephone number of the customer's point of contact for reference purposes. Description needs to include any experience in dealing with FEMA, especially regarding debris removal in a declared disaster.
- Provide a description of most recent experience in mobilizing large workforces under routine and emergency conditions.
- Provide a description outlining the services to be performed. Such description should, at minimum, provide understanding of the project; objectives of the project; scope of the project (e.g., parameters of services to be provided by the offerors) and proposed approach to providing the services.

**Section 5: Existing Contracts**

- Provide a list of all **existing** debris removal monitoring contracts

**Section 6: References (\*Weighted)**

- References from existing contracts and/or past clients (must include references from the successful monitoring of three (3) debris removal projects in excess of 150,000 cu yds. The name, telephone, address, email and cellular number of both the technical point of contact and the procurement point of contact, as applicable.

**Section 7: Financial Resources (\*Weighted)**

- A copy of the most recently audited financial statement or Dun and Bradstreet statement if sole proprietor. **This page should be marked as “Confidential”**

**Section 8: Resources (\*Weighted)**

- Detailed listing of Contractor’s equipment and resources
- A debris monitoring and response plan (mobilization and operations plan)

**Section 9: Forms**

- Schedule1 – Hourly Rate Price Schedule (on provided forms)
- Non-Collusion Affidavit (on provided form) **MUST BE NOTARIZED**
- Proposer’s Bid Certification Form (on provided form) **MUST BE NOTARIZED**
- Certification Regarding Debarment and Suspension (on provided form) **MUST BE NOTARIZED**
- Certification Regarding Lobbying (on provided form)

**Section 10: Exceptions (\*Weighted)**

- **Exceptions to the *Sample Service Agreement*.** Attached is a sample service agreement that describes the Town(s) contractual terms and conditions. Each successful contractor will be required to enter into a service agreement. Any exceptions to the terms and conditions of the Service Agreement **must be documented** and submitted in this Section.
- **Exceptions to the Scope of Services.** Any and all exceptions/deviations to the required Scope of Services shall be documented on a separate page and submitted in this Section.
- **Litigation.** Information concerning any pending, ongoing, or prior litigation within the last 10 years.

**Section 11: Other Requirements (\*Weighted)**

- A statement of the contractor’s familiarity and experience with FEMA’s Public Assistance Program including all Alternative Procedures Pilot Program’s for Debris Removal and applicable laws, rules, and regulations.
- Shall outline the contractor’s willingness and ability to utilize local contractors and their general requirements for doing so. This includes the contractor’s use of women and minority owned businesses to provide services.
- Document and submit good faith efforts and reasonable steps for participation of minority businesses, women’s business enterprises, and labor surplus area companies.

**CRITERIA FOR EVALUATION AND AWARD**

The successful Proposer will be selected based upon the best overall proposal offered to the Town taking into consideration price, qualifications, technical experience, and other factors such as, but not limited to, past experience working with FEMA’s Public Assistance Program, financial standing, references, and any Exceptions to the Scope of Work and Contract terms. The Town will use the following criteria and weight to determine the best response.

<b>CRITERIA</b>	<b>WEIGHT</b>
Price (Schedule 1)	50%
Qualifications/Resources	30%
Technical	10%
Other Weighted	10%

## SECTION 5 - STATEMENT OF WORK

### PROJECT DESCRIPTION AND REQUIREMENTS:

This document constitutes a Request for Proposals (RFP) for the Town of Nags Head, North Carolina, for experienced firms to monitor the removal and disposal of disaster-generated debris (other than hazardous materials and household putrescible garbage from established debris sites) and the preparation, response, recovery, and mitigation phases immediately after a hurricane or other disaster events requiring such services.

This RFP shall include disaster-generated debris from each Town's public right-of-ways and NCDOT public right-of-ways, as applicable and permitted pursuant to the provisions of the executed NCDOT Local Agreement. It is the intent to utilize the North Carolina Department of Transportation (DOT) for debris removal from US-designated, NC-designated and Secondary road public rights-of-way. In a significant disaster, these resources may be insufficient to perform the clearance activities in a timely manner and the Contractor may be directed to perform them in accordance with the executed NCDOT Local Agreement. However, this portion of the operation will be accomplished with the authorization of each Town.

The objective of the RFP and subsequent contracting activity is to secure the services of an experienced contractor who is capable of efficiently monitoring large volumes of disaster-generated debris from a large area in a timely and cost-effective manner and lawfully disposing of all debris. The successful Offeror (contractor) must be capable of assembling, directing, and managing a work force, to include all necessary equipment that can complete the debris monitoring operations.

The contract will be for a one (1) year term, with an option to extend for up to three (3), additional one (1) year terms with the approval of each Town's Governing Board. While intended to cover debris monitoring needs in any major disaster scenario, the primary focus is on the threat of hurricane damage to the Town.

### BACKGROUND:

- A. The Town of Nags Head, NC is a major tourist destination in Dare County on the Outer Banks of North Carolina. The Town is located in the northeastern portion of North Carolina, 3-½ hours east of Raleigh and approximately 2 hours south of Norfolk and Virginia Beach, Virginia. Dare County consists of 800 square miles of area with an annual average population of 37,000 year round residents. The Town of Nags Head is bordered on the south by the Cape Hatteras National Seashore and the Township of Kill Devil Hills to the north. The Town is bordered by the Atlantic Ocean to the east and the Roanoke Sound to the west.
- B. The Town of Nags Head's Department of Public Services provides the main oversight through its Sanitation and Public Facilities Maintenance divisions, for clean-up and debris removal of the Town's rights-of-way and public properties in prior storm events. In preparation for future manmade or natural disasters, the Town is seeking to obtain contract services for assistance in the planning, management, inspection and administration of the clean-up activities.
- C. The Town of Nags Head and has an active agreement with DRC Emergency Services, LLC, of Galveston, TX. In addition, the Town has entered into an Inter-local Agreement with Dare County to utilize their approved debris removal contractor. It is anticipated that this agreement with Dare County will be maintained and will have available to it one or more of these contractors, and would make a decision regarding which one to utilize based on the severity of the event, and the quantity of debris generated, as deemed appropriate.
- D. The Town has developed a Disaster Debris Management Plan that describes the general needs and approaches for handling and monitoring large volumes of debris after a major disaster. It provides general information on debris classifications, local hauling, and disposal capabilities and capacities, and considerations for temporary debris management sites. The plan will provide general guidance for the Contractor and can be provided upon request.

- E. The Contractor must have the capacity to manage a major workforce with subcontractors and to cover the expenses associated with a major recovery operation prior to each initial Town payment and between, as well as the capacity to provide the necessary bonds and insurance. The Contractor must also have an established management team, an established network of resources to provide to the necessary equipment and personnel, comprehensive debris removal monitoring operations plans, and demonstrate experience in major disaster recovery projects.
- F. The Contract to be awarded under this RFP will be a contract that will be activated only upon declaration of an emergency via a "Notice to Proceed". As such, no compensation will be accrued to the Contractor unless and until the contract is activated either in anticipation of a natural disaster or immediately after such disaster.
- G. Offerors are solely responsible for their own costs of developing the proposal associated with the RFP. In addition, a Contractor who receives a contract issued under this RFP for the work may be required to participate in certain Town directed disaster recovery training and/or exercises, 1 to 2 days each year, at no cost to the Town.

**PLANNING STANDARD FOR DEBRIS REMOVAL AND DISPOSAL:**

- A. The Town may have available up to two (2) separate standby agreements, (1) pursuant to this RFP and (1) per the inter-local agreement with Dare County's debris monitoring contractor for the performance of this work. The standby agreements will be activated as needed. The number of Contracts that are activated will be based on the magnitude and complexity of each Town's post disaster needs.
- B. When a major disaster occurs or is imminent, each Town will contract the firm(s) holding debris monitoring contracts to advise them of each Town's intent to activate the contract(s). Debris removal will generally be limited to debris in, upon municipal properties, facilities, and other public sites. Public streets and roads right-of-ways, debris removal will be accomplished under a separate contract. Debris removal from private streets may be included with advance authorization by each Town and FEMA. NCDOT will provide the services for debris removal on NCDOT maintained public streets, roads, and right-of-ways, unless the CONTRACTOR is otherwise directed to do so.
- C. The Contractor will be responsible for determining the method and manner of monitoring debris removal and lawful disposal operations, consistent with each Town's plan. Disposal of debris will be at a Town approved temporary debris management sites or County landfill sites. The Contractor will be responsible for monitoring the lawful disposal of all debris and debris-reduction by-products generated at all debris management sites.
- D. When a major disaster occurs or is imminent, the Town will initially send out an Alert to the selected CONTRACTOR (S). This Alert will serve to activate the lines of communication between the CONTRACTOR representative and the Town. Subsequently, the Town will issue the first Task Order which will authorize the CONTRACTOR to send an Operations Manager to the Town within 24 hours of receiving such Task Order to begin planning for the operations and mobilizing the personnel and equipment as necessary to perform the stipulated work. The CONTRACTOR should anticipate receiving this first Task Order 24 to 72 hours before projected landfall of a hurricane.
- E. The Town will identify the debris management site to be established and opened. Additional debris management sites will be identified as needed.

**TOWN CONSULTANT:** The Town may contract with an independent firm to provide professional consulting services in disaster management, monitoring and recovery.

**GENERAL REQUIREMENTS:**

- A. Each Town will utilize the services of the successful offeror to provide support to the Town for the expertise, personnel, tools, materials, equipment, transportation, supervision and all other services and facilities of any nature necessary to execute, complete and deliver the monitoring of removal and lawful disposal of all *FEMA eligible storm-generated debris* under each proposed Work Order issued. The Town will define the level of service and response to be provided for each debris generating event. The successful offeror will be requested to provide cost, volume,

resource and staffing estimates to the Town for consideration in making that determination.

- B. Project initiation would start immediately after the debris generating event, upon the issuance of a Notice to Proceed pursuant to the terms of this RFP and the resulting Contract and received by the Contractor and/or the on-site Contractor Representative, he/she will make all necessary arrangements to mobilize a minimum of 50% of the required resources within 24 hours and 100% of the required resources within 48 hours to commence and conduct these contracted services.
- C. Specific work authorizations by each Town will be through written Task Order. Task Orders will define the job to be accomplished, location of job, time frame for completion, rates to be used, etc. Any job with requirements or rates not covered by this Proposal will be negotiated. The Town reserves the right to extend operations on a weekly basis. Each Town may issue additional Task Orders to define more precisely the work to be accomplished or to authorize additional work. The CONTRACTOR shall perform in accordance with each Task Order in all designated areas established by the Town. Each Task Order will be uniquely and sequentially numbered and shall include name of disaster for accountability and record purposes.
- D. The CONTRACTOR is authorized to work during daylight hours only, 7 days per week in its collection operations. Any deviations from this schedule will require Town approval. Procession of debris, such as grinding and burning, at management sites and transfer of processed debris to ultimate disposal sites may be done at other times with prior Town approval which will not be unreasonably withheld but subject to any restrictions on these operations by government agencies. Burning operations will be twenty-four (24) hours a day if permitted by appropriate authorities.
- E. The CONTRACTOR must be duly licensed, if applicable, to perform the work in accordance with the State of North Carolina statutory requirements. The CONTRACTOR shall obtain all permits necessary to complete the work. The CONTRACTOR shall be responsible for determining what permits are necessary to perform under the contract within seventy-two (72) hours or sooner of issuance of the first Task Order.
- F. The CONTRACTOR shall be responsible for correcting any notices of violations issued as a result of the contractor's or any subcontractor's actions or operations during the performance of the contract. Corrections for any such violations shall be at no additional cost to the Town.
- G. The CONTRACTOR shall conduct the work so as not to interfere with the disaster response and recovery activities of federal, state or local governments or agencies, or of any public utilities or other private contractor.
- H. The selected Offeror will be required to provide the services as described herein and upon such terms as are provided in the Sample Contract.

## SECTION 6 – BID FORM

### Estimated Quantities – For Bidding Purposes Only

While intended for debris removal after any disaster, the primary focus for this work is debris generated by tropical weather (storms/hurricanes). To provide a non-committal estimate of potential contract scope, the U. S. Army Corps of Engineers “Hurricane Debris Estimating Model” found in Appendix B to FEMA 325, Public Assistance Debris Management Guide (<http://www.fema.gov/pdf/government/grant/pa/demagde.pdf>), was used to predict debris amounts for a Category 3 hurricane. The model found 72,500 cubic yards (CY) of debris could be generated. The variables used in the model to solve for “CY of debris generated (Q)” were; 4,950 as the “Number of Households (H)”, a “Hurricane Category (C )” factor of 26 CY for a Category 3 storm, a “Vegetative Cover (V)” multiplier of Medium/1.3, a “Commercial Density (B)” multiplier of Light/1.0, and a “Precipitation Characteristic (S)” multiplier of Medium to Heavy/1.3. The Model defines (H) as number of households derived from the total population divided by 3 people per household. Due to the seasonal nature of Dare County’s population, the number of “housing units” across all Dare County municipalities and unincorporated areas, as reported by the U.S. Census Bureau in 2013, was used as (H). This approach more accurately reflects the number of households that could be impacted. Debris hurricane category estimates are referenced from recent contracted debris removal services utilized post-Hurricane IRENE a Category 3 storm (2003) and Hurricane ISABEL a Category 2 (2011).

Bid Assumptions: 214,629 c.y. of debris consisting of approximately 150,241 c.y. of C & D debris and approximately 64,389 c.y. of vegetative debris. All Temporary Debris Management Sites are within ten miles of a pickup point. Material densities are assumed to be 333 pounds per cubic yard for vegetation, 500 pounds per cubic yard for mulch, and 700 pounds for mixed debris. Volume reduction assumed to be ~75% for grinding and ~90% for burning.

Additional debris estimates are provided for reference.

Category One Hurricane Estimates: 4,953 c.y. vegetative/ 11,557 c.y. C & D

Category Two Hurricane Estimates: 19,812 c.y. vegetative/ 42,228 c.y. C & D

Category Four Hurricane Estimates: 123,825 c.y. vegetative/ 228,924 c.y. C & D

Category Five Hurricane Estimates: 198,119 c.y. vegetative/462,279 c.y. C & D

### Travel Distances from municipality to Final Disposal Site

- Town of Nags Head- 25 miles- (one-way travel distance)

*Unit prices, unless otherwise indicated, shall include all labor (operators, laborers, supervisors) and materials including but not limited to: supplies, equipment maintenance, repairs, repair parts, fuels, lubricants, cellular phones, transportation, and housing, if required, necessary to accomplish the project. The quantities and distributions are estimated for the purpose of making an award, locations of sites, debris quantities, destinations, material densities, etc. may differ substantially in an actual disaster.*



## Schedule 1 – Hourly Labor Price Schedule - Page 1 of 1

The hourly labor rate provided below **shall include the cost of labor for each personnel description item.**

Personnel Description	Paper-Based Hourly Ticketing Rate	Automated Hourly Ticketing Rate
Project Manager		
Field Supervisor		
Emergency Operations Manager		
Environmental Specialists		
Billing/Invoicing/Data Managers		
Project Coordinators		
Load Ticket Data Entry Clerks		
Collection Crew Monitors		
Tower Monitors		
Residential Drop-Off Monitors		
Automated Ticketing Specialist		
Senior Grant Management Consultant		
Grant Management Consultant		
GIS Analyst/ Mapping Coordinator		
Administrative Assistant		
Senior Planner		
Planner		
Training and Assistance- Sessions shall be for key Town personnel, monitoring contractor personnel, and assistance in all disaster debris recovery monitoring efforts as requested	Price Included	

**Comments:**

The prices indicated above are all-inclusive of overhead, administrative costs, per diem costs, transportation costs, and all other direct or indirect costs or charges. Proposer may include other positions, with hourly rates, as recommended or required.

Other Positions Required:

**PROPOSER'S BID CERTIFICATION FORM**

To Whom It May Concern:

I have carefully examined the Request for Proposal and any other documents accompanying or make a part of this Request for Proposal.

I hereby propose to perform the following Services as specified in this Request for Proposal at the rates described on **SCHEDULE 1 – HOURLY LABOR PRICE SCHEDULE.**

I certify that all information contained in this 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 act and deed and that the company is ready, willing and able to perform if awarded the contract.

I further certify, under oath, that this proposal is made without prior understanding, agreement, connection, discussion, or collusion with any other person, firm or corporation submitting a proposal for the same product or service; no officer employee or agent of the Town of Nags Head or any other proposer is interested in said proposal; and that the undersigned executed this Proposer’s Certification with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The Contractor will comply with all applicable federal laws regulations, executive orders, and the latest version of FEMA policies, procedures, and directives.

It is distinctly understood that the Town reserves the right to reject any or all proposals.

\_\_\_\_\_  
Company Name

Federal Tax ID: \_\_\_\_\_

\_\_\_\_\_  
Authorized Signature

Phone: \_\_\_\_\_

\_\_\_\_\_  
Printed or Typed Name and Title

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

\_\_\_\_\_  
Mailing Address

**NOTARIZE**  
Subscribed and sworn to before me this \_\_\_\_\_  
day of \_\_\_\_\_, 2023

\_\_\_\_\_  
City/State/Zip Code

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

My Commission expires: \_\_\_\_\_

(SEAL, if Corporation)

**NON-COLLUSION AFFIDAVIT**

State of North Carolina

County of Dare

\_\_\_\_\_ (name of individual), being first duly sworn, deposes and says that:

1. He/She is the \_\_\_\_\_ (title) of \_\_\_\_\_ (company name), the proposer that has submitted the attached proposal;
2. He/She is fully informed respecting the preparation and contents of the attached proposal and of all pertinent circumstances respecting such proposal;
3. Such proposal is genuine and is not a collusive proposal;
4. Neither the said proposer nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other proposer firm or Person to submit a collusive proposal in connection with the contract for which the attached proposal has been submitted or to refrain from proposing in connection with such contract, or has in any manner, directly or indirectly sought by agreement or collusion of communication or conference with any other proposer, firm or person to fix the price or prices in the attached proposal or of any other proposers, or to fix any overhead, profit or cost element of the proposal price of the proposal of any other proposer or to secure through collusion, conspiracy, connivance or unlawful agreement any advantage against the Town of Nags Head or any person interested in the proposed contract; and
5. The price or prices quoted in the attached proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the proposer or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

Date: \_\_\_\_\_

Seal  
if  
Corporation

**This form must be notarized**

SUBSCRIBED AND SWORN TO BEFORE ME,  
This \_\_\_\_\_ day of \_\_\_\_\_, 2023

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

My Commission Expires: \_\_\_\_\_

**DEBARMENT AND SUSPENSION CERTIFICATION**

The Use of any Contractor that has been declared debarred by the office of Federal Contract Compliance Programs (OFCCP) is prohibited. Further the use of subcontractor(s) that has been declared debarred by OFCCP is prohibited. A complete list of federally disbarred contractors can be found at [www.sam.gov](http://www.sam.gov). It is the sole responsibility of the Contractor to ensure that subcontractor(s) are in good standing with the OFCCP and not on the disbarment list.

The undersigned applicant certifies to the best of his or her knowledge and belief, that he applicant and its principals:

- (a) are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal Department or agency;
- (b) have not within a 3-year period preceding this proposal been convicted of or had a valid judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) are not presently indicted or otherwise criminally or civilly charged by a governmental entitle (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- (d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

Should the applicant not be able to provide this certification, an explanation as to why should be placed after the assurances page in the application package.

The applicant agrees by submitting the proposal that it will include, without modification, the clause titled "Certification Regarding Debarment, Suspension, in eligibility, and Voluntary Exclusion-Lower Tier Covered Transactions" in all lower tier covered transactions (i.e., transactions with sub-grantees and/or contractors) and in all solicitations for lower tier covered transactions.

\_\_\_\_\_ (Seal if Corporation )  
 Signature  
 \_\_\_\_\_  
 Title  
 Date: \_\_\_\_\_

**NOTARIZE**

SUBSCRIBED AND SWORN TO BEFORE ME,

This \_\_\_\_\_ day of \_\_\_\_\_, 2023

NOTARY PUBLIC \_\_\_\_\_

**ANNUAL AGREEMENT FOR  
DEBRIS MONITORING AND RECOVERY SERVICES**

THIS AGREEMENT (the "Agreement"), made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between Town of Nags Head, existing under the laws of the State of North Carolina, hereinafter referred to as the "Town" and \_\_\_\_\_, hereinafter referred to as the "Contractor", for the term specified herein, and the Town and Contractor agree as follows:

**I. SCOPE**

The Contractor is to perform the work as defined in the "Request for Proposal" and any related addenda and as set form in this Agreement and amendments, if any, the Request for Proposal is hereby incorporated by reference herein and made a part thereof as fully as if herein set forth.

Unless otherwise specified herein, the Contractor is to furnish all materials, tools, equipment, manpower, and consumables to complete the work.

The Contractor's response to the recovery process must be immediate, rapid, and efficient, with acceptable cost controls, accountability procedures, with written reports and submittals in place, to assure that the Town will have the means to be reimbursed for all eligible disaster recovery costs from appropriate Federal and State agencies.

**II. ORDER OF PRECEDENCE**

For the resolution and interpretation of any inconsistencies in this Agreement and/or the documents attached hereto and included herein by reference, the precedence of these documents shall be given in the following order:

1. This Agreement with any exhibits, attachments, including addendum(s) and amendment(s) hereto;
2. If applicable, negotiated amendments or clarification to the Contractor's Proposal which have been incorporated by reference into the final Agreement;
3. Town's Request for Proposal pursuant to which this Contract was executed;
4. Contractor's Proposal to the Town's Request for Proposal ("Contractor's Proposal")

**III. TERM OF AGREEMENT**

The period of this Agreement shall be for one (1) year, beginning on or before \_\_\_\_\_, and ending on \_\_\_\_\_. This Agreement may be extended annually under its existing terms, conditions, and rates, in the Town's sole discretion, for up to four (3) additional one (1) year periods.

#### IV. COMPENSATION

The Contractor agrees to provide services and materials as specified in the Contractor's Proposal to the Town plus applicable permit and license fees and all maintenance costs required to maintain its vehicles and other equipment in a condition and manner adequate to accomplish and perform all services under this Agreement at the cost specified in said proposal and amendments, if any; the Contractor's Proposal and any amendments thereto are incorporated by reference herein and made a part hereof as if fully herein set forth.

Compensation for services that are not Disaster Debris Monitoring Services is not part of this Agreement and may be negotiated as a time and materials, not to exceed, price basis on a per-project basis, on each individual Task Order. Invoices must reference the Task Order number.

Prior written approval for any work/cost increase must be obtained from the Town before becoming effective. Authorization for such increases, if approved by the Town, shall be accomplished by execution of a change order. No such increased work or work at increased cost shall be performed prior to the execution of said change order.

#### V. PAYMENT

Except as otherwise provided in this Agreement, all invoices received by the Town are payable within THIRTY (30) days from receipt, provided they have first been approved by the Town and the Town has accepted the work. Work performed under this Agreement is subject to the availability of funds and may be terminated at any time if such funds become unavailable.

All invoices shall be directed to:  
Town of Nags Head  
Attn: \_\_\_\_\_  
P.O. Box 99  
Nags Head, NC 27959

#### VI. GENERAL CONDITIONS

##### A. Termination

- This Agreement and the performance of work under this Agreement may be terminated immediately by the Town in whole or in part, in writing, at the convenience of the Town for any reason or no reason.
- The Town has the right to immediately terminate this Agreement and the performance of work under this Agreement, for default, whenever the Town shall determine that the Contractor has failed to meet its performance requirements under this Agreement, including, but not limited to, failing to make delivery of the supplies, perform the work, or perform any other provisions required pursuant to this Agreement.

- Upon the Town's termination of this Agreement, unless the Contractor is in breach of this Agreement, the Contractor shall be paid for services rendered to the Town of Nags Head's satisfaction through the date of termination. After receipt of a termination notice and except as otherwise directed by the Town of Nags Head, the Contractor shall: (i) stop work on the date and to the extent specified; (ii) terminate and settle all orders and subcontracts relating to the performance of the terminated work; (iii) transfer all work in process, completed work, and other material related to the terminated work to the Town of Nags Head; and (iv) continue and complete all parts of the work that have not been terminated.

B. Performance Requirements and Services

- The Contractor shall provide: constant and consistent documented inspections of the debris removal work being done for the Town under a contract for disaster generated debris removal; communications to the Town of any and all incorrect applications of guidance as specified by FEMA publication 325 or the Stafford Act; and documentation of the debris removal process that withstands all local, State, and Federal audits. Accordingly, the Contractor shall provide such work as may be required and pursuant to FEMA publication 327, including, but not limited to, the provision of, as needed, debris monitors and supervisors as set forth herein and in FEMA publication 327.
- The Contractor shall provide written daily reports denoting areas worked, quantities of debris removed, quantity of equipment in service, quantity of monitors in service, weather report, problems and issues noted, problems and issues corrected. On a weekly basis, the Town will identify to both the debris removal contractor and the Contractor strategic targets for the following week and an evaluation of compliance of last week's targets, and accounting protocols to include a bi monthly reconciliation of records with the Town, debris removal contractor, and Contractor so that errors and omissions are handled expediently and that the quality of the accounting is established and reviewed.
- The Contractor shall perform work so as not to interfere with the normal operations of the Town or other government entities or functions and so as not to violate applicable ordinances, regulations or laws.
- The Contractor shall develop and have in place planning and training standards which shall be consistent with the Town Comprehensive Emergency Operations Plan, and applicable State and Federal programs and

plans. All plans and training will be conducted in compliance with the National Incident Management System (NIMS).

- As security for faithful performance of this Agreement and prior to the issuance of any "Notice To Proceed", the Contractor shall furnish the Town with: (1) an executed performance bond in the amount of one hundred percent (100%) of the value of the work to be performed under this Agreement, as security for faithful performance of the Agreement in accordance with the plans, specifications, and conditions of the Agreement; and (2) an executed payment bond in an amount equal to one hundred percent (100%) of the value of the work to be performed under this Agreement, as security for and conditioned upon the prompt payment for all labor or materials for which a contractor or subcontractor is liable.

The Notice to Proceed from the Town will include the value of the work to be performed, and the value of the required bond amount. The Town understands that until these values are provided, Contractor is unable to secure both payment and performance bonds as the value of the work and the required bond amount is required for bond issuance.

The Town may increase the amount of the said performance bond and of the said payment bond if, in the Town's reasonable discretion, the total cost of services provided pursuant to this Agreement will exceed, or are reasonably likely to exceed, the bond amounts. The Contractor agrees to promptly provide any such increased bond amounts.

The performance bond and the payment bond shall be executed by one or more surety companies legally authorized to do business in the State of North Carolina and shall come effective upon the execution of the contract. In advance of the execution of the Contract, the Contractor shall provide a notarized Letter of Good Standing from its Surety Company confirming that the Contractor is bondable.

C. Indemnification, Insurance, and Liquidated Damages

1. Indemnity

The Contractor hereby agrees to indemnify and hold harmless the Town, its officers, agents, and employees, from and against any and all liability, claims, damages, demands, expenses, fees, fines, penalties, suits, proceedings, actions, and costs of actions, including attorney's fees for trial and on appeal, and for the preparation of same arising out of the Contractor's, its officers', agents', subcontractors, and employees' acts or omissions associated with this Agreement or the performance or non-performance of work under this Agreement.



2. Insurance Requirements

The Contractor, at its own expense, shall keep in force and at all times maintain during this Agreement:

(a.) Commercial General Liability Insurance

Commercial General Liability Insurance, issued by responsible insurance companies and in a form acceptable to the Town, with coverage limits of not less than One Million Dollars (\$1,000,000) per occurrence for Bodily Injury and Property Damage.

(b.) Automobile Liability Insurance

Automobile Liability coverage shall be in the minimum amount of One Million Dollars (\$1,000,000) per occurrence.

(c.) Workers' Compensation Coverage

Full and complete Workers' Compensation Coverage, as required by North Carolina state law, shall be provided.

(d.) Insurance Certificates

Following the notice of award, the Contractor shall provide the Town with certificate(s) of Insurance on all the policies of insurance and renewals thereof in a form(s) acceptable to the Town. Said Commercial General Liability policy shall provide that the Town be an additional named insured. The Town shall be notified in writing of any reduction, cancellation or substantial change of policy or policies at least thirty (30) days prior to the effective date of said action. All insurance policies shall be issued by responsible companies who are acceptable to the Town and licensed and authorized to do business under the laws of North Carolina.

3. Liquidated Damages

After the Town issues a Notice to Proceed to the Contractor as provided in Section VII.B. of this Agreement, should the Contractor fail to meet its mobilization obligations, as provided in Section VII.B., the Town will be damaged thereby, and because the amount of the Town's damages is difficult if not impossible to definitely ascertain and prove, it is hereby agreed that the amount of such damages shall be liquidated damages of five hundred dollars (\$500.00) per calendar day for each day in which Contractor fails to meet its mobilization obligations of Section VII.B. Contractor hereby agrees that said sum shall be deducted from monies due the Contractor, and if no money is due the Contractor, the Contractor hereby agrees to pay to the Town as liquidated damages, and

not by way of penalty, such total sum as shall be due pursuant to this paragraph.

D. Acceptance of Work

The Town will be deemed to have accepted the work after the Contractor is notified by the Town Manager or his designee of its satisfaction that the work is completed.

E. Correction of Work

The Contractor shall promptly correct all work rejected by the Town as failing to conform to this Agreement. The Contractor shall bear all costs of correcting such rejected work or work that was not authorized by the Town representative. Rejected work shall consist of, but not be limited to, work which is deemed FEMA ineligible or ineligible by the Town's representative.

F. Right to Audit Records

The Town shall be entitled to audit the books and records of the Contractor or any sub-contractor to the extent that such books and records relate to the performance of this Agreement of any sub-contract to this Agreement. **(Such books and records shall be maintained by the Contractor for a period of three (3) years from the date of final payment under this Agreement.)**

G. Time is of the Essence

The parties agree that time is of the essence in the completion of the work called for under this Agreement. The Contractor agrees that all work shall be executed regularly, diligently, and uninterrupted at such a rate of progress as will ensure full completion thereof within the time specified.

VII. SPECIFIC PROVISIONS

A. The Contractor shall, pursuant to this Agreement, provide the Town with professional debris removal contract monitoring to assist the Town through debris removal following a debris generating event such as a hurricane, storm, or other event which also requires debris management expertise. The function of the contract monitors is to ensure compliance, assuring reimbursement in accordance with FEMA 325, dated July 2007, and FEMA 327, dated October 2010, or more current editions.

B. The Town shall furnish all information and documents necessary for the commencement of contracted services, to include a valid written "Notice To Proceed", and services under this Agreement shall not begin until the issuance of

such Notice To Proceed. Said Notice To Proceed shall contain a time limit as to when the Contractor shall complete the applicable work, and shall contain a “not to exceed” total price for services to be performed pursuant to this Agreement. A representative will be designated by the Town of Nags Head to be the primary point of contact for answering any questions prior to and after activation of this Agreement via a written "Notice To Proceed". The Contractor must have a representative present in the Town’s office or Emergency Operations Center within twenty-four (24) hours of the issuance of a Notice To Proceed and be able to mobilize equipment and personnel to the designated location within forty-eight (48) hours of the issuance of a Notice To Proceed. If necessary, the Contractor may need to pre-stage in the region. The Contractor ensures that an adequate number of professionals and qualified personnel to monitor all debris loading sites and debris management sites along with associated roving debris monitors. The Contractor will be required to increase its staffing from this point depending on the severity of the debris generating event. At the discretion of the Town, the Contractor may be required to replace any debris monitor.

Due the uncertainty of the severity of events which may cause the need for services described in this Agreement, the Town may enter into multiple contracts, each with a different person or entity, to obtain services similar or identical to those identified in this Agreement. Depending on the nature of services needed, the Town may, in its sole discretion, deem it necessary to have one of those other providers provide services similar or identical to the services described in this Agreement prior to, in addition to, or in lieu of having Contractor perform services identified in this Agreement. Notwithstanding any other provision of this Agreement to the contrary, the Town is under no obligation to issue a Notice To Proceed to Contractor or to have Contractor provide any services pursuant to this Agreement. The Town may engage or coordinate with any other person or entity to perform services similar or identical to those identified in this Agreement, and the Town shall not be liable to the Contractor if the Town does engage one or more other person or entity, in addition to or in lieu of Contractor, to perform services similar or identical to those identified in this Agreement.

The Contractor ensures that all debris monitors will have appropriate personal protective equipment to include, but not be limited to, eye protection, hearing protection, safety shoes, safety vests, hard hats, and wet and cold weather clothing, to comply with all federal, state and local requirements.

The Contractor ensures that debris monitors will have the means to communicate (cell phones, satellite phones, radio, etc.) with their supervisors or the Town as may be necessary. Contractor supervisors are responsible for resolving issues with truck drivers and contractor’s personnel.

The Contractor will provide temporary office space and temporary sanitary facilities as necessary.

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with work performed under this Agreement. The Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees from the work and other persons who may be affected thereby.

- C. To the extent possible, the Contractor shall use qualified local sub-contractors to perform work to be performed under this Agreement and that is subcontracted out.
- D. **LOADING SITE MONITORING SERVICES**

The primary function of the "Loading Site Monitors" is to issue correctly completed debris load tickets for FEMA eligible debris cleared and removed at locations designated by the Town.

Contractor will, within 48 hours of the issuance of a Notice To Proceed, be prepared to provide qualified on site personnel to monitor debris removal operations at up to three (3) debris loading sites located throughout the Town. Additional sites may be added as debris removal efforts increase. Each loading site will operate, at a minimum, approximately 12 -14 hours per day, 7 days per week. Exact number and location of loading sites will be determined by the Town in coordination with the debris removal Contractor.

Monitoring Sites: Contractor may have Loading Site Monitors stationed at designated "Control Points" chosen by the debris removal Contractor and coordinated with the Town the day before beginning the work. The "Control Points" must be kept to a minimum and be located at a safe site along the primary haul road to the designated debris management site. The Contractor must be prepared to provide a minimum of two Loading Site Monitors to be stationed at each "Control Point." Each truck driver will be given a load ticket that validates where the material originated and that it is eligible for pickup. Load tickets will be issued in accordance with established procedures and as a minimum must contain either a street address or the nearest intersection to be valid. The volume of debris hauled will be estimated at the debris management site by the Debris Management Site Monitor.

Contractor shall provide all management, supervision, labor, transportation, mobile communications equipment, all safety equipment, digital cameras, video cameras, and other equipment necessary to provide debris load tickets to document the removal of FEMA eligible debris from public access roadways, public rights-of-way, and public property within the Town.

Contractor must be prepared to provide a minimum of two Loading Site Monitors per site per day at a minimum of a 12-14 hour shift. Contractor ensures personnel will have transportation to and from the loading site(s), mobile communications

equipment necessary to remain in contact with dispatch and supervisor(s) at all times, and all logistic support.

All Loading Site Monitors must speak English, be a minimum of 18 years of age and have a valid driver's license issued in the United States and be capable of working in an outside environment and able to climb a 10 foot ladder. Previous or similar monitoring or inspection experience is required of all management staff.

Supervisors and all identified Loading Site Monitors must attend a 1/2 day debris monitor training session to be conducted at a location specified by the Debris Manager before the start of the first shift. Training will be the responsibility of the Contractor and must be approved by the Town.

E. DEBRIS MANAGEMENT SITE (TDSR's) MONITORING SERVICES (As Required)

The primary function of the Debris Management Site Monitors is to complete the load ticket and estimate volumes that have been transported to the debris management site for processing, storage, and disposal and to report safety violations occurring at the debris management site.

Contractor ensures that Debris Management Site Monitors will have transportation to and from the debris management sites and mobile communications equipment necessary to remain in contact with dispatch and supervisor(s) at all times, logistic support, and all safety equipment, digital cameras, video cameras, and other equipment necessary to safely perform the site monitoring functions.

Supervisors must have previous debris monitoring experience.

All identified Debris Management Site Monitors and Supervisors must attend a debris monitor training session which covers the deliverables and expectations which will be conducted at a location specified by the Debris Manager before the start of the first shift. Training will be the responsibility of the Contractor and must be approved by the Town.

F. ROVING DEBRIS MONITOR SERVICES (As required)

The function of the Roving Debris Monitors is to verify that only FEMA eligible debris is being removed from designated public rights-of-way and public property within assigned debris pickup zones in the Town. The designated areas may be expanded to cover private streets upon advance authorization from the Town and FEMA.

Contractor ensures at least one monitor for each debris pickup zone to monitor and verify FEMA eligible debris removal from designated public access roads within the debris pickup zone. The Roving Debris Monitor(s) must be prepared to operate minimum of 12 to 14 hours per day, 7 days per week.

Contractor ensures that Roving Debris Monitors will have transportation, mobile communications equipment, all safety equipment, digital cameras, video cameras, and other equipment necessary to perform the roving debris monitoring functions.

All identified Debris Management Site Monitors and Supervisors must attend a debris monitor training session which covers the deliverables and expectations which will be conducted at a location specified by the Town before the start of the first shift. Roving monitors shall receive additional training on eligibility issues and procedures required for compliance with the latest version of FEMA 325. Training will be the responsibility of the Contractor and must be approved by the Town.

Contractor shall provide all management, supervision, and labor. Contractor ensures transportation, and equipment necessary to monitor the operations of the debris removal and disposal Contractor.

- G. [reserved]
- H. The Contractor shall work with the Town to develop a FEMA approved Debris Management Plan consistent with the Town's Emergency Operations Plan.
- I. The Contractor shall operate within the requirements of the Occupational Safety and Health Act, and all other applicable federal and state laws, rules, and regulations.
- J. REPORTING

The Loading Site Monitor will turn in their copy of the load ticket to their supervisor at the end of each shift. The Contractor's supervisor will ensure that the load tickets and log are submitted to the Debris Management Center not later than 9 a.m. the following day. Also by 9 a.m. the contractor will provide reports concerning progress in a format designated by the Town.

The Loading Site Monitors will also maintain a log that contains the following information:

- a) Debris "Control Point" or loading site location
- b) Loading Site Monitors' Name
- c) Supervisor's Name
- d) Number of Load Tickets issued during the shift
- e) Starting load ticket number \_\_\_\_\_ Ending load ticket number
- f) Any problems encountered or anticipated \_\_\_\_\_

The Debris Management Site Monitor will turn in their copy of the load ticket to their supervisor at the end of each shift. The Contractor's supervisor will ensure that the load tickets and log are submitted to the Debris Management Center not later than 9 a.m. the following day.

The Debris Management Site Monitors will maintain a log that contains the following information:

- a) Debris management site location
- b) Debris Management Site Monitors' Name
- c) Supervisor's Name
- d) Truck/trailer number and volume of debris hauled into the site
- e) Cumulative total of debris delivered at the site during the shift
- f) Any problems encountered or anticipated
- g) Grids cleared and number of passes

The Roving Debris Monitor(s) will be responsible for completing the Debris Loading Site Monitoring Checklist provided by the Debris Management Center. Report will be submitted to immediate supervisor on a daily basis.

The Roving Debris Monitor(s) will report any serious or safety related discrepancies observed to their supervisor. Supervisor will keep Town informed of situations that impact the execution of the debris removal contract.

The supervisor will collect all written reports and provide them to the Debris Management Center by 9 a.m. the following day.

The Contractor ensures debris monitors will have the means to communicate (cell phone, satellite phones, radio, etc.) to communicate with their supervisor or the Debris Management Center as may be necessary. Contractor supervision is responsible for resolving issues with truck drivers and other contractors' personnel.

The load tickets are to be compiled daily into a daily report that accesses all information gathered on each load ticket, all incorrect or unclear items on any ticket render it invalid until corrected. Corrections must have an initial and date. The original load tickets become the basis of payment to the debris contractor and the combined sum of all tickets become the basis of reimbursement from FEMA and the State and as such, the quality, consistency, accuracy of the individual ticket and the reporting of the data contained upon these tickets and collected by the monitors are the primary deliverable for which the debris removal contract will be let.

- K. The Contractor may not hire as a monitor any employee or affiliate of the debris removal contractor.
- L. Where applicable, the debris removal contractor shall construct monitoring towers pursuant to the terms of the debris removal contract, which towers shall be used by the monitors to monitor the debris removal operations.

## VIII. MISCELLANEOUS PROVISIONS

- A. Assignment of this Agreement shall not be made without the advance written consent of the Town.
- B. The Contractor shall comply with all applicable federal, state and local laws, ordinances, rules and regulations pertaining to the performance of work under this Agreement.
- C. No waiver, alterations, consent or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by the Town.
- D. The Contractor is to procure all permits, licenses, and certificates, or any such approvals of plans or specifications as may be required by federal, state and local laws, ordinances, rules, and regulations, for proper execution and completion of the work under this Agreement.
- E. This Agreement is deemed to be under and shall be governed by, and construed according to laws of North Carolina.
- F. [deleted]
- G. Any litigation arising out of this Agreement shall be had in the Courts of Dare County, North Carolina.
- H. The undersigned hereby certifies that this Agreement is made without prior understanding, agreement or connection with any corporation, firm or person who submitted bids for the work covered by this Agreement and is in all respects fair and without collusion or fraud. As to Contractor, the undersigned hereby warrants and certifies that they are authorized to enter into this Agreement and to execute same on behalf of the Contractor as the act of the said Contractor.
- I. The Contractor shall act as an independent contractor and shall not represent itself as an agent or employee of the Town for any purpose in the performance of the Contractor's duties. Accordingly, the Contractor shall be responsible for payment of all Federal, State and local taxes arising out of the Contractor's activities in accordance with this Agreement, including by way of illustration by not limitation, Federal and State income tax, Social Security tax, Unemployment Insurance taxes, and any other taxes or business license fees as required. In performing the services, the Contractor is acting as an independent contractor and shall perform services in accordance with currently approved methods and practice in the Contractor's professional capacity and in accordance with the standards of applicable professional organizations and licensing agencies.



J. E-VERIFICATION OF EMPLOYEES

The Contractor represents and warrants that it has ensured and will ensure for itself and each subcontractor that it uses to perform obligations under this Agreement, that either:

- a. The Contractor or subcontractor employs less than 25 employees who are employed for 9 months or more during a 12-consecutive-month period; or
- b. The Contractor or subcontractor: (a) employs 25 or more employees who are employed for 9 months or more during a 12-consecutive-month period; and (b) has used the E-Verify program, which program is operated by the United States Department of Homeland Security and is defined in N.C. Gen. Stat. § 64-25 (5), to verify the work authorization of each employee.

K. IRAN DIVESTMENT ACT CERTIFICATION. By placing a bid pursuant to the Request for Proposal from with this Agreement originated, and by acceptance of this Agreement, Contractor, in each instance, affirms that it is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C. Gen. Stat. ' 147-86.58.

L. FEDERAL CONTRACT PROVISIONS. The provisions of Exhibit A are hereby incorporated in this Agreement by reference and are binding upon the Town and/or Contractor as set forth in the said Exhibit A. Except as context may otherwise require, for the purposes of Exhibit A, the term: “contract” shall be deemed to refer to this Agreement; “contractor” shall be deemed to refer to the Contractor; and “contracting agency” shall be deemed to refer to the Town.

M. This Agreement, including any Exhibits hereto, contains all the terms and conditions agreed upon by the parties. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either party hereto.

*[signatures appear on the following page(s)]*

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the date first written above

TOWN OF NAGS HEAD	_____
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____
Address: _____	Address: _____

\_\_\_\_\_  
 Witnessed or Attested By:

\_\_\_\_\_  
 Witnessed or Attested By:

Corporate Seal:

Unless otherwise stated, all official correspondence and contact shall be addressed to:

For the Town:	For the Contractor:
Town of Nags Head Public Services c/o David Ryan, P.E. P.O. Box 99 Nags Head, NC 27959 Email: david.ryan@nagsheadnc.gov	

“This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.”

\_\_\_\_\_  
 Finance Officer

APPROVED AS TO FORM AND LEGAL SUFFICIENCY.

\_\_\_\_\_

## Exhibit A – FEDERAL AND FEMA CONTRACT PROVISIONS (2 C.F.R. § 200.327)

In the event of a conflict between the provisions of the Contract to which this Exhibit A applies and this Exhibit A, the provisions of this Exhibit A shall control.

For the purposes of this Exhibit A, the term “Owner” refers to \_\_\_\_\_.

### **A. REMEDIES** (see: 2 C.F.R. Pt. 200, App.II(A); FEMA Contract Provisions Guide (June 2021)).

*The provisions of this Section A shall apply to all contracts for more than the Simplified Acquisition Threshold (which amount is subject to inflation adjustment but is set at \$250,000 as of October 1, 2020) that are funded by a Federal award (including a FEMA grant or cooperative agreement program).*

In addition to any remedies set forth in the Contract, and except as otherwise limited in the Contract, upon the breach of the Contract by Contractor, the Owner shall have such administrative, contractual, and legal remedies as are available to it pursuant to applicable law.

### **B. TERMINATION FOR CAUSE AND CONVENIENCE** (see: 2 C.F.R. Pt. 200, App.II(B); FEMA Contract Provisions Guide (June 2021)).

*The provisions of this Section B shall apply to all contracts in excess of \$10,000 that are funded by a Federal award (including a FEMA grant or cooperative agreement program).*

In addition to the termination provisions provided in the Contract, the Owner may terminate the Contract for cause and/or for convenience as follows:

(1) The Contract and the performance of work under the Contract may be terminated immediately by the Owner in whole or in part, in writing, at the convenience of the Owner for any reason or no reason.

(2) The Owner has the right to immediately terminate the Contract and the performance of work under the Contract, for default, whenever the Owner shall determine that the Contractor has failed to meet its performance requirements under the Contract, including, but not limited to, failing to make delivery of supplies, perform work, or perform any other provisions required pursuant to the Contract.

(3) Upon the Owner’s termination of the Contract, unless the Contractor is in breach of the Contract, the Contractor shall be paid for services rendered to the Owner’s satisfaction through the date of termination. After receipt of a termination notice and except as otherwise directed by the Owner, the Contractor shall: (i) stop work on the date and to the extent specified; (ii) use its best efforts to mitigate the cost of terminating the applicable work; (iii) terminate and settle all orders and subcontracts relating to the performance of the terminated work; (iv) transfer all work in process, completed work, and other material related to the terminated work to the Owner; and (v) continue and complete all parts of the work that have not been terminated.

**C. EQUAL EMPLOYMENT OPPORTUNITY** (see: 2 C.F.R. Pt. 200, App.II(C); 41 C.F.R. §§ 60-1.3 and 60-1.4; FEMA Contract Provisions Guide (June 2021)).

*The provisions of this Section C shall apply to all “federally assisted construction contracts” (as such phrase is defined in 41 C.F.R. § 60-1.3) that are funded by a Federal award (including a FEMA grant or cooperative agreement program).*

For the purposes of this Section C, definitions provided in 41 C.F.R. § 60-1.3, as the same shall be updated or amended from time to time, shall apply. As of July 29, 2021, those definitions include the following:

(a) “Applicant” means an applicant for Federal assistance involving a construction contract, or other participant in a program involving a construction contract as determined by regulation of an administering agency. The term also includes such persons after they become recipients of such Federal assistance.

(b) “Construction work” means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

(c) “Federally assisted construction contract” means any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

During the performance of this Contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work:

Provided, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.<sup>1</sup>

As required by 41 C.F.R. § 60-1.4(c), each nonexempt prime contractor or subcontractor shall include the above equal opportunity clauses in each of its nonexempt subcontracts.

**D. DAVIS-BACON ACT and COPELAND "ANTI-KICKBACK" ACT** (see: 2 C.F.R. Pt. 200, App.II (D); 29 C.F.R. Pt. 3 and §§ 5.1, 5.2, and 5.5; FEMA Contract Provisions Guide (June 2021)).

*The Davis-Bacon Act and the Copeland "Anti-Kickback" Act, and thus this Section D, only apply to prime construction contracts in excess of \$2,000 that are funded by the following Programs: Emergency Management Performance Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, Transit Security Grant*

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<sup>1</sup> Language from FEMA Contract Provisions Guide (June 2021).

*Program, Intercity Passenger Rail Program, and Rehabilitation of High Hazard Potential Dams Program. Unless otherwise stated in a program's authorizing statute, it does not apply to other FEMA grant and cooperative agreement programs, including FEMA's Public Assistance (PA) Program.*

To comply with the Davis-Bacon Act and Copeland "Anti-Kickback" Act, if applicable, the provisions of 29 C.F.R. § 5.5(a)(1)-(10) are hereby incorporated into the Contract<sup>2</sup>, and the following apply:

1. Contractors shall 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.
2. The Owner shall 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.
3. The Owner must report all suspected or reported violations to the Federal awarding agency.<sup>3</sup>

**E. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT** (see: 2 C.F.R. Pt. 200, App.II(E); 29 C.F.R. §§ 5.1 and 5.5; FEMA Contract Provisions Guide (June 2021)).

*The provisions of this Section E shall apply to all contracts in excess of \$100,000 that are funded by a Federal award (including a FEMA grant or cooperative agreement program) and that involve the employment of mechanics, laborers, and construction work. This Section E does not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.*

(b)(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$29 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours

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<sup>2</sup> Language from FEMA Contract Provisions Guide (June 2021).

<sup>3</sup> Language from 2 C.F.R. Pt. 200, App.II(D).

without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The applicable federal agency or the loan or grant recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.<sup>4</sup>

If the Contract is only subject to Contract Work Hours and Safety Standards Act and is not subject to the other statutes in 29 C.F.R. § 5.1 where an additional contract provision is required, the following provisions apply:

Further Compliance with the Contract Work Hours and Safety Standards Act:

(1) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.<sup>5</sup>

**F. RIGHTS TO INVENTIONS** (see 2 C.F.R. Pt. 200, App.II(F); FEMA Contract Provisions Guide (June 2021)).

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<sup>4</sup> Language from 29 C.F.R. § 5.5(b)(1)-(4) and FEMA Contract Provisions Guide (June 2021).

<sup>5</sup> Language from FEMA Contract Provisions Guide (June 2021).



*This Section F applies to any contract where the applicable federal funding meets definition of a “funding agreement” (defined below). This Section F does not apply to all FEMA grant and cooperative agreement programs. Non-federal entities should refer to applicable Notice of Funding Opportunity or other program guidance or contact their applicable FEMA grant representative to determine if this provision is required for the procurement. However, the Rights to Inventions Made Under a Contract or Agreement clause is not required for procurements under FEMA’s Public Assistance (PA) Program.*

Pursuant to 37 C.F.R. § 401.2(a), the term the term “funding agreement” means any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

If the award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity 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 non-Federal entity must comply with the requirements of 37 C.F.R. 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 applicable Federal agency.<sup>6</sup>

**G. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT** (see 2 C.F.R. Pt. 200, App.II(G); FEMA Contract Provisions Guide (June 2021)).

*The provisions of this Section G apply to all contracts that are funded by a Federal award (including a FEMA grant or cooperative agreement program) for amounts in excess of \$150,000. Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency.*

I. Clean Air Act:

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

The Contractor agrees to report each violation to the Owner and understands and agrees that the Owner will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

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<sup>6</sup> Language from 2 C.F.R. Pt. 200, App.II(F).

II. Federal Water Pollution Control Act:

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.

The Contractor agrees to report each violation to the Owner and understands and agrees that the Owner will, in turn, report each violation as required to assure notification to the pass-through entity, if applicable, Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.<sup>7</sup>

**H. SUSPENSION AND DEBARMENT** (see: 2 C.F.R. Pt. 200, App.II(H); 2 C.F.R., Pt. 180 (particularly § 180.200 and Appendix to Part 180); FEMA Contract Provisions Guide (June 2021)).

*This Section H applies to contracts that are “covered transactions” at either a primary or secondary tier and that arise under any contract funded by a Federal award (including a FEMA grant or cooperative agreement program).*

For the purposes of this Section H, the term “covered transaction” includes the following contracts for goods or services: (1) the contract is at least \$25,000; (b) the contract requires the approval of FEMA, regardless of amount; (3) the contract is for federally required audit services; (4) the contract is a subcontract for \$25,000 or more.

If this Section H applies, then the following provisions are incorporated into the Contract:

This Contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the Contractor is required to verify, and by entering into this Contract it does verify, that none of the Contractor’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by the Owner. If it is later determined that the Contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to (insert name of recipient/subrecipient/applicant), the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that

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<sup>7</sup> Language from FEMA Contract Provisions Guide (June 2021).

may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.<sup>8</sup>

**I. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352** (see: 2 C.F.R. Pt. 200, App.II(I); 31 U.S.C. § 1352; FEMA Contract Provisions Guide (June 2021)).

*This Section I applies to all contracts that are funded by a Federal award (including a FEMA grant or cooperative agreement program).*

All contractors and subcontractors are prohibited from the use of federal appropriated funds to influence officers or employees of the federal government. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification regarding lobbying. 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 employee of a federal agency, a Member of Congress, an employee of Congress, or an employee of a Member of Congress in connection with receiving any federal contract, grant, or other award covered by 31 U.S.C. § 1352. The required certification form is found in FEMA regulations. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal funding. These disclosures are forwarded from tier to tier, all the way up to the federal awarding agency.<sup>9</sup>

See Appendix A to this Exhibit A for a sample certification.

**J. PROCUREMENT OF RECOVERED MATERIALS** (see: 2 C.F.R. Pt. 200, App.II(J); 2 C.F.R. § 200.323; FEMA Contract Provisions Guide (June 2021)).

*This Section J applies to all procurements over \$10,000 made by the Owner or the Contractor under a Contract that is funded by a Federal award (including a FEMA grant or cooperative agreement program).*

In the performance of this Contract[, where the purchase price of the item is greater than \$10,000, or the value of the amount of items purchased in the preceding fiscal year was greater than \$10,000], the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- (a) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (b) Meeting contract performance requirements; or
- (c) At a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines webpage: <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

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<sup>8</sup> Language from FEMA Contract Provisions Guide (June 2021).

<sup>9</sup> Language from FEMA Contract Provisions Guide (June 2021).

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.<sup>10</sup>

**K. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.** (see: 2 C.F.R. Pt. 200, App.II(K); 2 C.F.R. § 200.216; FEMA Contract Provisions Guide (June 2021)).

*This Section K applies to all Contracts that are funded by a Federal award (including a FEMA grant or cooperative agreement program).*

Prohibition on Contracting for Covered Telecommunications Equipment or Services:

(a) Definitions. As used in this Section K, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim).

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

(i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications

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<sup>10</sup> Language from FEMA Contract Provisions Guide (June 2021).

equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing—

(i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

(i) Covered telecommunications equipment or services that:

i. Are not used as a substantial or essential component of any system; and

ii. Are not used as critical technology of any system.

(ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission

of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.<sup>11</sup>

**L. DOMESTIC PREFERENCES FOR PROCUREMENT.** (see: 2 C.F.R. Pt. 200, App.II(I); 2 C.F.R. § 200.322; FEMA Contract Provisions Guide (June 2021)).

*This Section L applies to all Contracts that are funded by a Federal award (including a FEMA grant or cooperative agreement program). All FEMA recipients and subrecipients are required to include in all contracts and purchase orders for work or products a contract provision encouraging domestic preference for procurements.*

Domestic Preference for Procurements:

As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this Section L:

*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.

*Manufactured products* mean 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.<sup>12</sup>

**M. ADDITIONAL FEMA PROVISIONS** (FEMA Contract Provisions Guide (June 2021)).

*The provisions of this Section M shall apply to any contract that is funded by FEMA, a FEMA grant, or FEMA financial assistance.*

(1) Access to Records. The following access to records requirements apply to this Contract:

(a) The Contractor agrees to provide the Owner, the applicable state agency or local government entity, if different from Owner, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and

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<sup>11</sup> Language from FEMA Contract Provisions Guide (June 2021).

<sup>12</sup> Language from FEMA Contract Provisions Guide (June 2021).

records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(b) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(c) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(d) In compliance with section 1225 of the Disaster Recovery Reform Act of 2018, the Owner and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.<sup>13</sup>

(2) Logos. The Contractor shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. The Contractor shall include this provision in any subcontracts.”<sup>14</sup>

(3) Compliance with Federal Laws, Regulations, and Executive Orders. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the Contract. The Contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.<sup>15</sup>

(4) No Obligation by Federal Government. The federal government is not a party to this Contract and is not subject to any obligations or liabilities to the non-federal entity, contractor, or any other party pertaining to any matter resulting from the Contract.<sup>16</sup>

(5) Program Fraud. The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor’s actions pertaining to this Contract.

(6) Affirmative Socioeconomic Steps. If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women’s business enterprises, and labor surplus area firms are used when possible.<sup>17</sup>

(7) Copyrights and Data Rights. The Contractor grants to the Owner, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this Contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the Contract but not first produced in the performance of this Contract, the Contractor will identify such data and grant to

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<sup>13</sup> Language from FEMA Contract Provisions Guide (June 2021).

<sup>14</sup> Language from FEMA Contract Provisions Guide (June 2021).

<sup>15</sup> Language from FEMA Contract Provisions Guide (June 2021).

<sup>16</sup> Language from FEMA Contract Provisions Guide (June 2021).

<sup>17</sup> Language from FEMA Contract Provisions Guide (June 2021).

the Owner or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the Owner data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the Owner.<sup>18</sup>

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<sup>18</sup> Language from FEMA Contract Provisions Guide (June 2021).



**Appendix A**

Certification Regarding Lobbying

*[the following page]*

Certification for Contracts, Grants, Loans, and Cooperative Agreements  
(To be submitted with each bid or offer exceeding \$100,000)

The undersigned \_\_\_\_\_ [insert name of Contractor] certifies, to the best of his or her knowledge, that:

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.

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.

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 section 1352, Title 31, U.S.C. 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, \_\_\_\_\_ [insert name of 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. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

\_\_\_\_\_ [Insert name of Contractor]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_