

REQUEST FOR PROPOSALS



RFP No. 2020-003

Bid Title:

Disaster Debris Removal Monitoring Services

Date of Issue: June 23, 2020

Proposal Deadline: July 17, 2020

Time: 4:00 pm (EST)

**Issued By:
The Town of Newport**

From:
The Offices of Finance and Public Works
200 Howard Blvd.
Newport, N.C. 28570
(252) 223-4749

June 23, 2020

RE: **Request for Proposals (RFP)**
Disaster Debris Removal Monitoring Services
RFP No. 2020-003

To Whom It May Concern:

The Town of Newport, North Carolina, Town Council is seeking qualified firms to provide Disaster Debris Removal Monitoring Services for the Town in the event of a natural disaster.

Attached you will find a "Request for Proposal", which identifies the project to be undertaken.

In order to be considered, all Proposal packages must be submitted in writing no later than **4:00 PM (EST) on Friday, July 17, 2020**. Firms mailing proposal packages should allow delivery time to ensure timely receipt of their proposal. The responsibility for getting the proposal to the Town of Newport Finance Department on or before the specified time and date is solely and strictly the responsibility of the proposing firm. The Town will in no way be responsible for delays caused by any occurrence. Proposals may be hand carried or mailed to:

Town of Newport Finance Department
Attention: Betsy R. Brothers, Purchasing Officer
200 Howard Blvd.
Newport, N.C. 28570

Hours of Operation: 8:00 a.m. - 5:00 p.m. (EST)
Monday through Friday
Phone: (252) 223-4749
Fax: (252) 223-5382
Email: bbrothers@townofnewport.com

Firms providing Proposal packages shall be responsible for complying with North Carolina Laws and local ordinances.

The Town of Newport Council reserves the right to waive any formalities, to reject any and all Requests for Proposals, and to accept any request which in its opinion may be in the best interest of Town of Newport.

No Request for Proposal will be received or accepted after **4:00 PM (EST), Friday, July 17, 2020**. Late Proposal Packages will be deemed invalid and returned unopened to the firm.

Thank you,

Betsy R. Brothers
Purchasing Officer

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TOWN OF NEWPORT

REQUEST FOR PROPOSAL

1. Purpose and General Information

The Town of Newport is requesting proposals from qualified firms to provide Disaster Debris Removal Monitoring Services in the event of a natural disaster within the area.

Newport is a close-knit community that maintains its small town charm with a population of about 4,800 + residents. Many of the residents are military families connected to the Cherry Point Marine Corps Air Station just 7 miles away in Havelock. Since Newport is a mere 5 mile drive to Morehead City along Highway 70, it is an attractive destination for those wanting seeking a family friendly community and easy driving distance to the beach.

The Town is seeking to enter into a three (3) year contractual agreement with a firm to provide the services contained within this RFP. This is a single jurisdiction solicitation and will only be pertained to the entire city limits of the Town.

2. Scope of Services

The scope of services *may include* disaster management, recovery, services to support the oversight and management of debris recovery. As such, the CONTRACTOR should be capable of providing a range of related services including, debris monitoring and other services as needed and requested by the Town. Other services may include, but not limited to, facilitating communication with FEMA, FHWA, the State of North Carolina and other state and federal agencies, coordination with state or Town insurance representatives, and reimbursement services.

A. Debris Monitoring Services

The selected firm will be expected to provide debris monitoring services to include debris generated from the public rights-of-way, private property, drainage areas/canals, waterways, and other public, eligible, or designated areas. Specific services may include:

- a. Coordinating daily briefings, work progress, staffing, and other key items with the Town Staff.
- b. Scheduling work for all team members and CONTRACTORS on a daily basis.
- c. Hiring, scheduling, and managing field staff.
- d. Monitoring recovery CONTRACTOR operations and making/implementing recommendations to improve efficiency and speed up recovery work.
- e. Certifying CONTRACTOR vehicles for debris removal and maintain a truck certification list utilizing FEMA guidance.
- f. Entering load tickets into a database application.

- g. Digitization of source documentation (such as load tickets).
- h. Developing daily operational reports to keep the Town informed of work progress and debris volumes.
- i. Development of maps, GIS applications, etc. as necessary.
- j. Meet with Town Officials, in person, once a week to update the Town on the dollar amount and volume of debris being picked up by the hauling CONTRACTOR. In addition, invoices may be reviewed at this time.
- k. Comprehensive review, reconciliation, and validation of debris removal CONTRACTOR(s) invoices prior to submission to the Town for processing. Invoices shall be submitted every two weeks.
- l. Project Worksheet and other pertinent report preparation required for reimbursement by FEMA, FHWA and any other applicable agency for disaster recovery efforts by Town Staff and designated debris removal CONTRACTORS.
- m. Final report and appeal preparation and assistance.

3. **Desired Timetable**

A.	RFP Issued	June 23, 2020
B.	Written Questions due	July 6, 2020 by 12:00 noon (EST)
C.	Responses to questions	July 10, 2020
D.	Submittals due	July 17, 2020 by 4:00 pm (EST)
E.	Evaluation period	July 20 – July 22, 2020
F.	Anticipated Contract Award	July 23, 2020

4. **Inquiries**

All questions pertaining to this RFP must be submitted **in writing** no later than 12:00 PM (EST) on **July 6, 2020**. Written questions should be emailed to: bbrothers@townofnewport.com

Only written questions will be considered formal. **Any information given by telephone will be considered informal.** Any questions that the Town feels are pertinent to all proposers' will be distributed as an addendum. Responses to questions will be issued in the form of an Addendum no later than July 10, 2020.

5. **Submission Requirements**

In order to evaluate responses efficiently and equitably, responses must be tabbed as identified below. Failure to submit this information may render your proposal non-responsive.

Tab 1: Introduction: Company Information (Weight 10 points)

Each respondent shall provide the following company information:

- Firm's name and business address, including telephone, email address, website address.

- The type of firm (individual, partnership, corporation, etc.) and list the names of all partners, principals, etc.
- Year established. Include former firm/company name(s) and year(s) established, if applicable.
- The name, title, address, and telephone number of the firm's authorized negotiator. The person identified must be empowered to make binding commitments for the firm.
- A copy of the most recently audited financial statement or Dun and Bradstreet statement if sole proprietor. This page should be marked as "Confidential"
- Provide a general discussion of the proposing firm's technical approach to the project to include startup procedures/requirements, debris estimate methodology, analysis of debris recovery operations and management of the debris recovery CONTRACTORS, billing/invoices reporting procedures to FEMA and the Town.

Tab 2: Proposals of the Firm (Weight 15 points)

- Provide an organizational chart, resumes, and summary of staff Proposals. Key project staff (management staff including, but not limited to: project manager, collection and disposal operations managers, FEMA reimbursement specialist, data manager, etc.) must be full time employees of the proposing firm.
- List any professional training and experience, especially in relation to the type and magnitude of work required for the particular scope of services.

Tab 3: Past Experience (Weight 25 points)

- Experience demonstrating **current capacity** and **current expertise** in debris removal, solid waste and hazardous waste management and disposal. The proposer must demonstrate experience managing debris monitoring for *government entities* involving a minimum of 150,000 cubic yards of debris for each client.
- Documented knowledge and experience of federal, state and local emergency agencies, state and federal programs, funding sources and reimbursement processes.
- Experience with special disaster recovery program management services including private property/right-of-entry (ROE) work, waterways clean-up and reimbursement, FEMA appeals processing, hauler invoice reconciliation and contracting.
- Experience managing coastal disaster recovery operations including, but not limited to: Right-or-Entry debris removal, and C&D debris separation and removal.

Tab 4: Delivery Schedule (Weight 10 points)

- Provide a time line detailing the pre-event planning (based on hours/days after contract award).

Tab 5: References: Past Performance (Weight 15 points)

- Provide references for which the firm has performed services within the past ten (5) years that are similar to the requirements in the Scope of Services. It is preferred that references be from government entities for debris monitoring experience involving a minimum of 150,000 cubic yards of debris. Provide the reference contact name, address, e-mail address, telephone number(s), date of the contract, and amount of contract.

Tab 6: Hourly Rates (Weight 20 points)

Tab 7: Other Requirements (Weight 5 points)

- Information concerning any pending, ongoing, or prior litigation within the last 10 years.

Tab 7: Other Requirements – Continued

- Any and all exceptions/deviations to the required Scope of Services and/or the Sample Agreement shall be documented on a separate page.

6. Submission of Proposals

- A. **Deadline:** Mail one (1) original hardcopy and submit one (1) electronic copy (pdf format) by email to bbrothers@townofnewport.com . Proposals shall be sealed and marked “**RFP No. 2020-003, Disaster Debris Removal Monitoring Services.**” Sealed proposals must be received by **4:00 PM EST, on July 17, 2020**, at the Office of Finance, 200 Howard Blvd., Newport, N.C. 28570. The original hardcopy submittal and the electronic version must be received by the time and date stated above.
- B. **Addenda:** Each Proposer is responsible for determining that all addenda issued by Town of Newport has been received before submitting a proposal.
- C. **Identification:** The outside of the envelope should be marked “*RFP No. 2020-003, Disaster Debris Removal Monitoring Services.*”
- D. **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 firm 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.
- E. **Preparation of Response:** The firm’s proposal should be prepared simply and economically and should provide all the information which it considers pertinent to its proposal and Proposals for the work to be performed. Emphasis should be placed on completeness of services offered and clarity of content. **The response should be limited to forty (40) pages.**

- F. **Propriety 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, offeror, or 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.

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 firms only mark the necessary confidential pages.

- G. **Binding:** Submittals must include the proposer's bid certification form (contained within) signed by an authorized representative of the company/firm to legally bind the offer. All proposals submitted without such signature may be deemed non-responsive.
- H. **Miscellaneous:** Nothing herein is intended to exclude any responsibilities or in any way restrain or restrict competition. All firms are encouraged to submit proposals. The Town of Newport reserves the right to waive any informalities, 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.

7. General

- A. **Time for Consideration:** The Town shall have a period of ninety (90) calendar days from due date of the proposals in which to award the contract. The Proposer shall be bound by their proposal during that time. A firm may withdraw a proposal by written request prior to the date and time of the proposal opening or after the 90-day time for consideration if a contract has not been awarded.
- B. **Contract Term:** It is the intent of the Town to enter into a three (3) year contract.
- C. **Evaluation of Submittals:** Evaluation factors have been identified Section 5. "*Submission 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.

The evaluation committee will be comprised of Town personnel to include the Town Manager, Assistant Town Manager, Purchasing Officer and Public Works Director.

The Town is not required to hold interviews; however, depending on the number of responses and the information contained in the responses, the Town may decide to conduct interviews with firms that the committee believes have demonstrated within their proposal the required experience and Proposals of the firm. In addition, the firm's experience, references, and past performance on public contracts will be considered.

- D. **Contract Award.** The contract shall be awarded to the lowest responsive responsible bidder possessing the ability to perform successfully under the terms and conditions of the contract. Consideration shall also be given to the company's integrity, compliance with public policy, record of past performance, references, and financial and technical resources.

- E. **Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms:** The Town of Newport 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 allow and encourages such businesses to respond;
 - e. Use service and assistance from such organization as SBA, minority business development agency of the Dept. of Commerce;
- F. **Activation of Contract.** Should the contract be activated, fees will be estimated based off the initial assessment of damages occurred.
- G. **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 firm shall comply with all applicable federal laws, regulations, executive orders, FEMA requirements and the terms and conditions of the funding award.
- H. **Compliance by Awarded CONTRACTOR:** The awarded CONTRACTOR shall comply with all applicable federal laws, regulations, executive orders, FEMA requirements and the terms and conditions of the funding award. In addition, firms providing submittals shall be responsible for complying with state law and local ordinances.
- I. **Certification of Proposer Regarding Debarment.** By submitting a proposal under this solicitation, the Proposer or offeror certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

NON-COLLUSION AFFIDAVIT

State of North Carolina Town of Newport
RFP No. 2020-003

_____, being first duly sworn, deposes and says that:

1. He/She is the _____ of _____, 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 or sham 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 or sham 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 Newport 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

Printed Name: _____

Title: _____

Date: _____

Subscribed and Sworn to Before Me,

This _____ day of _____, 2020

Notary Public _____

My Commission Expires: _____

CERTIFICATION REGARDING LOBBYING

“Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)”

This certification requirement applies to all FEMA grant and cooperative agreement programs. CONTRACTORS that apply or bid for an award of \$100,000 or more shall file the required certification required by 49 C.F.R. part 20, “New Restrictions on Lobbying.” Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose the name of any registrant under the Lobby Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the Town.

The offeror, by signing its offer, hereby certifies, to the best of his or her knowledge and belief that:

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

contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

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

Signature of CONTRACTOR's Authorized Official
Authorized Official

Printed Name and Title of CONTRACTOR's

Date: _____, 2020

PROPOSER'S BID CERTIFICATION FORM

To Whom It May Concern:

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

I hereby propose the following hourly rates. Hourly rates shall include all costs associated with the required services. I agree that my proposal will remain firm a period of up to 90 days in order to allow the Town adequate time to evaluate the proposals.

NOTE: Proposers bid certification form must be notarized – see next page.

POSITIONS	HOURLY RATES
Project Manager	\$_____
Operations Managers	\$_____
Schedule/Expeditors	\$_____
GIS Analyst	\$_____
Field Supervisors	\$_____
Debris Site/Tower Monitors	\$_____
Environmental Specialist	\$_____
Project Inspectors	\$_____
(citizen drop-off site monitors)	
Load Ticket Data Entry Clerks	\$_____
Billing/Invoice Analysts	\$_____
Administrative Assistants	\$_____
Field Coordinators (crew monitors)	\$_____

Other Required Positions

(please specify) \$ _____

(please specify) \$ _____

(please specify) \$ _____

Proposer may include other positions, with hourly rates and attach job description for each position.

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 firm as its act and deed and that the firm 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 Newport 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, FEMA policies, procedures, and directives.

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

NAME OF FIRM

AUTHORIZED SIGNATURE

NAME & TITLE, TYPED OR PRINTED

MAILING ADDRESS

CITY, STATE and ZIP CODE

Federal Tax ID: _____

Phone: _____

Fax: _____

Email: _____

Subscribed and sworn to before me

this _____ day of _____, 2020

Notary Public

My Commission expires: _____

(SEAL)

THIS FORM MUST BE NOTARIZED

Sample Agreement

**The awarded firm will be required to enter into a contract issued by the Town .
Any exceptions to the terms of this Agreement or additional terms must be included as
requested in TAB 7.**

NORTH CAROLINA

**CONTRACTOR
CONTRACT**

TOWN OF NEWPORT

THIS CONTRACT is made, and entered into this the ____ day of _____, by and between the **Town of Newport**, a political subdivision of the State of North Carolina, (hereinafter referred to as “**TOWN**”), and _____, (hereinafter referred to as “**CONTRACTOR**”).

For and in consideration of mutual promises to each as herein after set forth, the parties hereto do mutually agree as follows:

WHEREAS, _____, acting as an independent , is a Contractor with extensive experience in providing disaster management and recovery services and shall provide said services in a professional manner in accordance with the terms and conditions of this Agreement and the standard of care practiced by professionals performing similar services; and

WHEREAS, the services provided include, but are not limited to, Disaster Debris Removal Monitoring Services; and

WHEREAS, the Town wishes to enter into a contractual agreement with **CONTRACTOR** to provide professional consulting services in accordance with Town of Newport Request for Proposal number 2020-003 issued June 23, 2020

NOW, THEREFORE, in consideration of the promises herein and for other good and valuable consideration, the parties agree as follows:

SCOPE OF SERVICES. **CONTRACTOR** hereby agrees to provide the services and/or materials under this Contract pursuant to the provisions and specifications identified in Request for Proposal 2020-003 issued June 23, 2020 and Attachment 1 “Scope of Services” (hereinafter collectively referred to as “Services”) and Attachment 2 “Federal Contracting Requirements” Request for Proposal known as RFP No. 2020-003A. Attachment1 and Attachment 2 are hereby incorporated herein and made a part of this Contract. **Work will commence only upon a Town issued Notice to Proceed** in the event of a natural disaster. Time is of the essence with respect to all provisions of this Contract that specify a time for performance.

Authorizations for Services shall be referred to as “Task Orders.” Each Task Order form shall set forth a specific Scope of Services, amount of compensation and completion date.

1. TERM OF CONTRACT. The Term of this Contract for services is from July 23, 2020 to July 23, 2023, unless sooner terminated as provided herein.

This Contract is subject to the availability of funds to purchase the specified services and may be terminated at any time during the term upon thirty (30) days’ notice if such funds become unavailable.

2. ACTIVATION OF CONTRACT. Should activation of a contract become necessary, the TOWN and CONTRACTOR will negotiate a "Fixed Price" amount for the services required within this Agreement. This Contract is deemed activated upon the agreement of fixed price and execution of this Contract.

3. COMPENSATION. CONTRACTOR shall receive from TOWN an amount not to exceed _____ (\$ _____) as full compensation for the provision of Services. TOWN agrees to pay CONTRACTOR at the rates specified for Services performed to the satisfaction of the TOWN, in accordance with this Contract, and Attachment 1. Unless otherwise specified, CONTRACTOR shall submit an itemized invoice to TOWN by the end of the month during which Services are performed. A Purchase Order number may be assigned to encumber the funds associated with this Contract and must appear on all invoices and correspondence mailed to Purchaser. Payment will be processed promptly upon receipt and approval of the invoice by TOWN.

4. TIME FOR COMPLETION. Time is of the essence and the CONTRACTOR shall begin work immediately following issuance of a written Task Order. All services shall be completed in accordance with the project schedule associated with each Task Order.

5. INVOICES. CONTRACTOR shall submit invoices every two weeks (14 days) for services rendered. Invoices shall include a statement of progress and appropriate detail to satisfy Town and current FEMA requirements. Invoices must reference the Purchase Order number.

All invoices shall be delivered to:

Attn: Finance Department
Town of Newport
P.O. Box 1869
Newport, N.C. 28570

6. RETAINAGE. The TOWN may retain five percent (5%) of the value of each Task Order until such time as the project deliverables, as defined in the Task Order, are completed to reasonable professional standards and all sub-CONTRACTORS and material suppliers verify receipt of all payment for which they are entitled under the terms of the CONTRACTOR's contract with the sub-CONTRACTOR.

7. INDEPENDENT CONTRACTOR. TOWN and CONTRACTOR agree that CONTRACTOR is an independent CONTRACTOR and shall not represent itself as an agent or employee of TOWN for any purpose in the performance of CONTRACTOR's duties under this Contract. Accordingly, CONTRACTOR shall be responsible for payment of all federal, state and local taxes as well as business license fees arising out of CONTRACTOR's activities in accordance with this Contract. For purposes of this Contract taxes shall include, but not be limited to, Federal and State Income, Social Security and Unemployment Insurance taxes.

CONTRACTOR, as an independent CONTRACTOR, shall perform the Services required hereunder in a professional manner and in accordance with the standards of applicable professional organizations and licensing agencies.

8. STANDARD OF CARE. CONTRACTOR will perform services under this Agreement with the degree of skill and diligence normally practiced by professional CONTRACTORS performing the same or similar services and CONTRACTOR shall, at no additional cost to the TOWN, re-perform services which fail to satisfy the foregoing standard of care.

9. THE CONTRACTOR will represent that all services be performed by competent personnel. The CONTRACTOR hereby represents that it has and will continue to maintain all licenses and approvals required to conduct its business and

perform all Services under this Agreement, and that it will at all times conduct its business activities in accordance with this contract. Except as may be otherwise provided for in this Agreement, CONTRACTOR shall be responsible for obtaining, at its own expense, all permits and approvals necessary to perform the Services under this Agreement for each project.

The CONTRACTOR acknowledges that a portion of its fees may be reimbursed to TOWN by state or federal governments and CONTRACTOR and TOWN agree to work together to modify or alter billing procedures as may be necessary to satisfy state or federal payment regulations or requirements.

10. TERMINATION OF CONTRACT. Termination of this Contract shall be in accordance with the Termination Clause contained in Attachment 2.

11. INDEMNITY AND INSURANCE. To the fullest extent permitted by laws and regulations, the CONTRACTOR shall indemnify and hold harmless the TOWN and its officials, agents, and employees from and against all claims, damages, losses, and expenses, direct, indirect, or consequential (including but not limited to fees and charges of engineers or architects, attorneys, and other professionals and costs related to court action or arbitration) arising out of or resulting from the performance of this Contract or the actions of the CONTRACTOR or its officials, employees, or CONTRACTORS under this Contract or under the contracts entered into by the CONTRACTOR in connection with this Contract. This indemnification shall survive the termination of this Contract.

In addition, CONTRACTOR shall comply with the North Carolina Workers' Compensation Act and shall provide for the payment of workers' compensation to its employees in the manner and to the extent required by such Act.

The VENFOR shall secure and maintain during the duration of the *activated* contract, at his/her sole expense, the following types and limits of insurance described below:

- A. Workers' Compensation - The CONTRACTOR shall provide coverage for its employees with statutory workers' compensation limits, and no less than \$1,000,000.00 for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the Town and its agents, employees and officials.
- B. Commercial General Liability - The CONTRACTOR shall provide coverage for all operations including, but not limited to Contractual, Products and Completed Operations, and Personal Injury. The limits shall be not less than \$1,000,000.00, per occurrence, with a \$2,000,000.00 aggregate.
- C. Business Automobile Liability - The CONTRACTOR shall provide coverage for all owned, non-owned and hired vehicles with limits of not less than \$1,000,000.00, per occurrence, Combined Single Limits (CSL) or its equivalent.
- D. Professional Liability (Errors & Omissions) - The CONTRACTOR shall provide coverage for all claims arising out of the services performed with limits not less than \$1,000,000.00 per claim. The aggregate limit shall either apply separately to this contract or shall be at least twice the required per claim limit.

Insurance policies, except Workers' Compensation, shall be endorsed (1) to show Town of Newport as an additional insured, as their interests may appear, and (2) to amend cancellation notice to 45 days, pursuant to North Carolina Law.

CONTRACTOR, upon execution of this Contract, shall furnish to the TOWN a Certificate of Insurance reflecting the

minimum limits stated above. The Certificate shall provide for thirty-(30) days advance written notice in the event of a decrease, termination or cancellation of coverage. Providing and maintaining adequate insurance coverage is a material obligation of the CONTRACTOR. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The CONTRACTOR shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Contract. The limits of coverage under each insurance policy maintained by the CONTRACTOR shall not be interpreted as limiting the CONTRACTOR's liability and obligations under the Contract.

Copies or originals of certificates, endorsements, or other items pertaining to insurance shall be sent to:

Town of Newport, Attention Finance Department, P.O. Box 1869, Newport, N.C. 28570

12. NONDISCRIMINATION IN EMPLOYMENT. CONTRACTOR shall not discriminate against any employee or applicant for employment because of age, sex, race, creed, national origin, or disability. CONTRACTOR shall take affirmative action to ensure that applicants are employed and that employees are treated fairly and legally during employment with regard to their age, sex, race, creed, national origin, or disability. In the event CONTRACTOR is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Contract may be canceled, terminated or suspended in whole or in part by TOWN, and CONTRACTOR may be declared ineligible for further TOWN contracts.

13. OWNERSHIP OF WORK. All Work and any documents prepared by the CONTRACTOR for or on account of this Contract shall be the owned by the TOWN, and the TOWN shall have all common law, statutory and other reserved rights, including copyright.

Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the project is not to be construed as publication in derogation of the TOWN's reserved rights.

14. SUCCESSORS AND ASSIGNS. CONTRACTOR shall not assign its interest in this Contract without the written consent of the TOWN.

15. COMPLIANCE WITH LAWS. CONTRACTOR represents that it is in compliance with all Federal, State, and local laws, regulations or orders including, Executive Order 11246, as amended or supplemented, which is hereby incorporated by reference. The implementation of this Contract will be carried out in strict compliance with all Federal, State, or local laws regarding discrimination in employment.

16. GOVERNING LAW. Unless otherwise specified, this contract shall be governed by the laws of the State of North Carolina. All litigation arising out of this contract shall be commenced in the appropriate division of the General Court of Justice in Town of Newport, North Carolina.

17. DISPUTE RESOLUTION. CONTRACTOR and TOWN shall attempt to resolve conflicts or disputes under this Agreement in a fair and reasonable manner. If an informal resolution cannot be achieved to attempt to mediate the conflict between the CONTRACTOR and the TOWN, all litigation shall be commenced in the appropriate division of the General Court of Justice in Carteret County, North Carolina.

18. E-VERIFY. As a condition of payment for services rendered under this agreement, CONTRACTOR shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Further, if CONTRACTOR provides the services to the Town utilizing a sub-CONTRACTOR, CONTRACTOR shall require the sub-CONTRACTOR to comply with the

requirements of Article 2 of Chapter 64 of the General Statutes as well. CONTRACTOR shall verify, by affidavit, compliance of the terms of this section upon request by the Town.

19. IRAN DIVESTMENT ACT. CONTRACTOR certifies that they are not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 143-6A-4. Individuals or companies on the Final Divestment List are ineligible to contract or subcontract with Local Government Units. (G.S. 143C-6A-6(a).) It is the responsibility of each CONTRACTOR to monitor compliance with this restriction. Contracts valued at less than \$1,000.00 are exempt from this restriction.

20. DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL. The CONTRACTOR certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. 147-86.81. It is the responsibility of each CONTRACTOR to monitor compliance with this restriction. Contracts valued at less than \$1,000.00 are exempt from this restriction.

21. GOOD STANDING WITH TOWN. CONTRACTOR certifies that it is not delinquent on any taxes, fees, or other debt owed by CONTRACTOR to TOWN. CONTRACTOR covenants and agrees to remain current on any taxes, fees, or other debt owed by CONTRACTOR to TOWN during the Term of this Contract.

22. NOTICES. All notices which may be required by this contract or any rule of law shall be effective when received by certified mail as follows:

Attn: Bryan R. Chadwick, Town Manager

23. ACCESS AND AUDIT RIGHTS. CONTRACTOR shall maintain adequate financial and program records to justify all charges, expenses, and costs incurred in estimating and performing the work under this Agreement for at least five (5) years following final payment to the TOWN as Federal Emergency Management Agency sub-grantee as required by FEMA's 322 Public Assistance Guide, as amended, or any similar regulation, policy, or document adopted by FEMA subsequent to the execution of this Agreement. The TOWN shall have access to all records, documents and information collected and/or maintained by others in the course of the administration of the Agreement. This information shall be made accessible at the CONTRACTORS place of business to the TOWN, including the Finance Office and/or its designees, for purposes of inspection, reproduction and audit without restriction.

24. ANNUAL APPROPRIATIONS AND FUNDING. This Agreement may be subject to the annual appropriation of funds by the Town of Newport Commissioners. Notwithstanding any provision herein to the contrary, in the event that funds are not appropriated for this Agreement, then Town shall be entitled to immediately terminate this Agreement, without penalty or liability, except the payment of all contract fees due under this Agreement up to and through the last day of service. 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 firm shall comply with all applicable federal laws, regulations, executive orders, FEMA requirements and the terms and conditions of the funding award.

25. SAFETY. CONTRACTOR and its employees will observe the posted safety requirements of the TOWN and those required by law. CONTRACTOR is responsible for the safety of its employees at all times while on the TOWN's premises.

26. TOWN NOT RESPONSIBLE FOR EXPENSES. TOWN shall not be liable to CONTRACTOR for any expenses paid or incurred by CONTRACTOR unless otherwise agreed in writing.

27. EQUIPMENT. CONTRACTOR shall supply, at its sole expense, all equipment, tools, materials, and/or supplies required to provide contracted services unless otherwise agreed in writing.

28. ENTIRE CONTRACT. This Contract, including Attachment 1 and Attachment 2, shall constitute the entire understanding between TOWN and CONTRACTOR and shall supersede all prior understandings and agreements relating to the subject matter hereof and may be amended only by written mutual agreement of the parties.

29. HEADINGS. The subject headings of the paragraphs are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This contract shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.

30. EXISTENCE. CONTRACTOR warrants that It is a corporation duly organized, validly existing, and in good standing under the laws of the State of North Carolina and is duly qualified to do business in the State of North Carolina and has full power and authority to enter into and fulfill all the terms and conditions of this Contract.

31. CORPORATE AUTHORITY. By execution hereof, the person signing for CONTRACTOR below certifies that he/she has read this Contract and that he/she is duly authorized to execute this Contract on behalf of the CONTRACTOR.

IN TESTIMONY WHEREOF, the parties have expressed their agreement to these terms by causing this Consulting Contract to be executed by their duly authorized office or agent.

Reviewed by Department Head

Date Reviewed: _____

CONTRACTOR

By: _____

Printed Name: _____

Title: _____

TOWN OF NEWPORT

By: _____

Dennis Barber, Mayor
Town Council

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

Town of Newport Finance Director

ATTACHMENTS 1 and 2 to follow

ATTACHMENT 1

Scope of Services

Town of Newport Request for Proposals No. 2020-003 “Disaster Debris Removal Monitoring Services” issued June 23, 2020 and Request for Proposal No. 2020-003A dated June 23, 2020 are made a part of this contract as if fully set forth.

To the extent there is a conflict between the terms of the Town’s Request for Proposal and the CONTRACTOR’s proposal, the terms within the Town’s Request for Proposal shall control.

ATTACHMENT 2

Federal Contracting Requirements

This *Attachment 2* is incorporated into the Service Contract between the Town and the CONTRACTOR. Capitalized terms not defined in this Attachment shall have the meanings assigned to such terms in the Contract. All references to the “CONTRACTOR” or “Company” or “Contractor” or “Provider” shall be deemed to mean the CONTRACTOR.

This Contract will be funded in whole or in part with federal funding. As such, federal laws, regulations, policies and related administrative practices apply to this Contract. The most recent of such federal requirements, including any amendments made after the execution of this Contract shall govern the Contract, unless the federal government determines otherwise. This *Attachment 2* identifies the federal requirements that may be applicable to this contract. The CONTRACTOR is responsible for complying with all applicable provisions, updates or modifications that occur in the future relating to these clauses.

To the extent possible, the federal requirements contained in the most recent version of the Uniform Administrative Requirements for federal awards (Uniform Rules) codified at 2.C.F.R., Part 200, including any certifications and contractual provisions required by any federal statutes or regulation referenced therein to be included in this contract are deemed incorporated into this contract by reference and shall be incorporated into any subagreement or subcontract executed by the CONTRACTOR pursuant to its obligations under this Contract. The CONTRACTOR and its sub-CONTRACTORS, if any, hereby represent and covenant that they have complied and shall comply in the future with the applicable provisions of the original contract then in effect and with all applicable federal, state, and local laws, regulations, and rules and local policies and procedures, as amended from time to time, relating to Work to be performed under this contract.

Drug Free Workplace Requirements

Drug-free workplace requirements in accordance with Drug Free Workplace Act of 1988 (Pub 100-690, Title V, Subtitle D). All CONTRACTORS entering into federal funded contracts over \$100,000 must comply with Federal Drug Free workplace requirements as Drug Free Workplace Act of 1988.

CONTRACTOR Compliance

The CONTRACTOR shall comply with all uniform administrative requirements, cost principles, and audit requirement for federal awards.

Conflict of Interest

The CONTRACTOR must disclose in writing any potential conflict of interest to the Town of Newport or pass through entity in accordance with federal policy.

Mandatory Disclosures

The CONTRACTOR must disclose in writing all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award.

Energy Conservation

The CONTRACTOR and Sub-CONTRACTORS agree to comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. § 6321, et seq.

Federal Water Pollution Control Act

For contracts in excess of \$150,000, 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 Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to Federal Emergency Management Agency, 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.”

Clean Air Act

For contracts in excess of \$150,000, 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. and the Federal Water Pollution Act as amended (33 USC § 1251-1387).

The CONTRACTOR agrees to report any violation to the Town immediately upon discovery. The CONTRACTOR understands and agrees that the Town will, in turn, report each violation as required to assure notification to the Town, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency (EPA) Regional Office. CONTRACTOR must include this requirement in all subcontracts that exceed \$100,000.

The CONTRACTOR agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

Access to Records and Reports

The CONTRACTOR must maintain an acceptable cost accounting system. The CONTRACTOR agrees to provide the Town, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

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.

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.

All CONTRACTORS and their successors, transferees, assignees, and sub-CONTRACTORS acknowledge and agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities, and staff.

No Obligation by Federal Government

The Town and the CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Town, the CONTRACTOR, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The CONTRACTOR agrees to include the above clause in each subcontract financed in whole or in part with federal assistance. It is further agreed that the clause shall not be modified, except to identify the sub-CONTRACTOR who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts

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. Upon execution of the underlying contract, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the Federally assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the CONTRACTOR to the extent the Federal Government deems appropriate.

The CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the CONTRACTOR, to the extent the Federal Government deems appropriate.

The CONTRACTOR agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clauses shall not be modified, except to identify the sub-CONTRACTOR who will be subject to the provisions.

Changes

Any change in the contract cost, modification, change order, or constructive change must be allowable, allocable, within the scope of its funding, grant or cooperative agreement, and reasonable for the completion of project scope. All changes and/or amendments to the contract will be outlined in detail, formalized in writing, and signed by the authorized representative of each party. CONTRACTORs failure to do so shall constitute a material breach of the contract.

Termination

Termination Without Cause. The Town may immediately terminate this Agreement at any time without cause by giving written notice to the CONTRACTOR.

Termination for Default by Either Party. By giving written notice to the other party, either party may terminate this Agreement upon the occurrence of one or more of the following events:

The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in this Agreement, provided that, unless otherwise stated in this Agreement, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such default is reasonably susceptible to cure; and (ii) the other party cures such default within thirty (30) days of receipt of written notice of default from the non-defaulting party; or

The other party attempts to assign, terminate or cancel this Agreement contrary to the terms hereof; or

The other party ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Agreement shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of other party's assets or properties.

Any notice of default pursuant to this Section shall identify and state the party's intent to terminate this Agreement if the default is not cured within the specified period.

Additional Grounds for Default Termination by the Town. By giving written notice to the CONTRACTOR, the Town may also terminate this Agreement upon the occurrence of one or more of the following events (which shall each constitute grounds for termination without a cure period and without the occurrence of any of the other events of default previously listed):

The CONTRACTOR makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Agreement, CONTRACTOR's Proposal, or any covenant, agreement, obligation, term or condition contained in this Agreement; or

The CONTRACTOR takes or fails to take any action which constitutes grounds for immediate termination under the terms of this Agreement, including but not limited to failure to obtain or maintain the insurance

policies and endorsements as required by this Agreement, or failure to provide the proof of insurance as required by this Agreement.

Cancellation of Orders and Subcontracts. In the event this Agreement is terminated by the Town for any reason prior to the end of the term, the CONTRACTOR shall upon termination immediately discontinue all service in connection with this Agreement and promptly cancel all existing orders and subcontracts, which are chargeable to this Agreement. As soon as practicable after receipt of notice of termination, the CONTRACTOR shall submit a statement to the Town showing in detail the services performed under this Agreement to the date of termination.

No Effect on Taxes, Fees, Charges, or Reports. Any termination of the Agreement shall not relieve the CONTRACTOR of the obligation to pay any fees, taxes or other charges then due to the Town, nor relieve the CONTRACTOR of the obligation to file any daily, monthly, quarterly or annual reports covering the period to termination nor relieve the CONTRACTOR from any claim for damages previously accrued or then accruing against the CONTRACTOR.

Obligations Upon Expiration or Termination. Upon expiration or termination of this Agreement, the CONTRACTOR shall promptly (a) return to the Town all computer programs, files, documentation, data, media, related material and any other recording devices, information, or compact discs that are owned by the Town ; (b) deliver to the Town all Work Product; (c) allow the Town or a new Contractor access to the systems, software, infrastructure, or processes of the CONTRACTOR that are necessary to migrate the Services to a new Contractor; and (d) refund to the Town all pre-paid sums for Products or Services that have been cancelled and will not be delivered.

No Suspension. In the event that the Town disputes in good faith an allegation of default by the CONTRACTOR, notwithstanding anything to the contrary in this Agreement, the CONTRACTOR agrees that it will not terminate this Agreement or suspend or limit the delivery of Products or Services or any warranties or repossess, disable or render unusable any Software supplied by the CONTRACTOR, unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise.

Authority to Terminate. The Town Manager or their designee is authorized to terminate this Agreement on behalf of the Town.

Audit. During the term of the Agreement and for a period of one (1) year after termination or expiration of this Agreement for any reason, the Town shall have the right to audit, either itself or through a third party, all books and records (including but not limited to the technical records) and facilities of the CONTRACTOR necessary to evaluate CONTRACTOR's compliance with the terms and conditions of the Agreement or the Town's payment obligations. The Town shall pay its own expenses, relating to such audits, but shall not have to pay any expenses or additional costs of the CONTRACTOR. However, if non-compliance is found that would have cost the Town in excess of \$5,000 but for the audit, then the CONTRACTOR shall be required to reimburse the Town for the cost of the audit.

Remedies

Liquidated Damages: The Town and the CONTRACTOR acknowledge and agree that the Town may incur costs if the CONTRACTOR fails to meet the delivery times set forth in the Request for Proposal for the Products and Services. The parties further acknowledge and agree that: (a) the Town may be damaged by such failures, including loss of goodwill and administrative costs; but that (b) the costs that the Town might reasonably be anticipated to accrue as a result of such failures are difficult to ascertain due to their indefiniteness and uncertainty. Accordingly, the CONTRACTOR agrees to pay liquidated damages at the rates set forth in the Request for Proposal (if applicable). The parties agree that the liquidated damages set forth in the Request for Proposal shall be the Town's exclusive remedy for loss of goodwill and administrative costs, attributable to a failure by the CONTRACTOR to meet such delivery times but shall not be the remedy for the cost to cover or other direct damages.

Right to Cover: If the CONTRACTOR fails to meet any completion date or resolution time set forth in this Agreement (including the Exhibits), and it fails to cure such default within one (1) business day after receiving written notice from the Town of such failure, the Town may take any of the following actions with or without terminating this Agreement, and in addition to and without limiting any other remedies it may have:

Employ such means as it may reasonably deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and the CONTRACTOR is again able to resume performance under this Agreement; and

Deduct any and all reasonable expenses incurred by the Town in obtaining or performing the Services from any money then due or to become due the CONTRACTOR and, should the Town's reasonable cost of obtaining or performing the services exceed the amount due the CONTRACTOR, collect the difference from the CONTRACTOR.

Right to Withhold Payment. If the CONTRACTOR materially breaches any provision of this Agreement, the Town shall have a right to withhold all payments due to the CONTRACTOR with respect to the services that are the subject of such breach until such breach has been fully cured.

Specific Performance and Injunctive Relief. The CONTRACTOR agrees that due to the potential impact on public health, monetary damages may not be an adequate remedy for the CONTRACTOR's failure to provide the Services required by this Agreement, and monetary damages may not be the equivalent of the performance of such obligation. Accordingly, the CONTRACTOR hereby agrees that the Town may seek an order granting specific performance of such obligations of the CONTRACTOR in a court of competent jurisdiction within the State of North Carolina. The CONTRACTOR further consents to the Town seeking injunctive relief (including a temporary restraining order) to assure performance in the event the CONTRACTOR breaches the Agreement in any material respect.

Setoff. Each party shall be entitled to setoff and deduct from any amounts owed to the other party pursuant to this Agreement all damages and expenses incurred as a result of the other party's breach of this Agreement, following any applicable cure periods, and provided such party has given notice of its intention to apply a setoff prior to making the payment deduction, together with documentary evidence demonstrating that such party has actually incurred the damages and/or expenses being setoff.

Other Remedies. Except as specifically set forth in the main body of this Agreement, the remedies set forth above shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy

Debarment and Suspension

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

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 that none of the CONTRACTOR, its 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 is required to comply with 2 C.F.R. Part 180, Subpart C and 2 C.F.R. pt. 3000, Subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies that:

This certification in this clause is a material representation of fact relied upon by the Town. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available by the Town, 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 may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

Equal Employment Opportunity

During the performance of this contract, the CONTRACTOR agrees as follows:

1. The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, 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, 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 considerations for employment without regard to race, color, religion, sex, or national origin.
3. 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.
4. The CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by executive Order 11375, and with the rules, regulations, and relevant orders of the Secretary of Labor.
5. 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.
6. 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 as 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.
7. The CONTRACTOR will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) 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 Contractor. 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 Contractor 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.

Davis-Bacon Requirements

If applicable to this contract, the CONTRACTOR agrees to comply with all provisions of the Davis Bacon Act as amended (40 U.S.C. 3141-348).

1. Minimum Wages.

- (i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll

deductions as are permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the CONTRACTOR and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided* that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the CONTRACTOR and its sub-CONTRACTORS at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination;

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the CONTRACTOR and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the CONTRACTOR, the laborers, or mechanics to be employed in the classification, or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the CONTRACTOR shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the CONTRACTOR does not make payments to a trustee or other third person, the CONTRACTOR may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program: *Provided* that the Secretary of Labor has found, upon the written request of the CONTRACTOR, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the CONTRACTOR to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. *Withholding.*

The Town 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 the CONTRACTOR under this contract or any other Federal contract with the same prime CONTRACTOR, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime CONTRACTOR, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the CONTRACTOR or any sub-CONTRACTOR the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work, all or part of the wages required by the contract, the Sponsor may, after written notice to the CONTRACTOR, Sponsor, Applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. *Payrolls and Basic Records.*

(i) Payrolls and basic records relating thereto shall be maintained by the CONTRACTOR during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon

Act); daily and weekly number of hours worked; deductions made; and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the CONTRACTOR shall maintain records that show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and that show the costs anticipated or the actual costs incurred in providing such benefits. CONTRACTORs employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The CONTRACTOR shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Sponsor if the agency is a party to the contract, but if the agency is not such a party, the CONTRACTOR will submit the payrolls to the applicant, Sponsor, or Owner, as the case may be, for transmission to the Sponsor. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (*e.g.* the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at www.dol.gov/whd/forms/wh347instr.htm or its successor site. The prime CONTRACTOR is responsible for the submission of copies of payrolls by all sub-CONTRACTORs. CONTRACTORs and sub-CONTRACTORs shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the Sponsor if the agency is a party to the contract, but if the agency is not such a party, the CONTRACTOR will submit them to the applicant, sponsor, or Owner, as the case may be, for transmission to the Sponsor, the CONTRACTOR, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime CONTRACTOR to require a sub-CONTRACTOR to provide addresses and social security numbers to the prime CONTRACTOR for its own records, without weekly submission to the sponsoring government agency (or the applicant, Sponsor, or Owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the CONTRACTOR or subCONTRACTOR or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) The payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i), and that such information is correct and complete;

(2) Each laborer and mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations 29 CFR Part 3;

(3) Each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the CONTRACTOR or sub-CONTRACTOR to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The CONTRACTOR or sub-CONTRACTOR shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the sponsor, the Sponsor, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the CONTRACTOR or sub-CONTRACTOR fails to submit the required records or to make them available, the Federal agency may, after written notice to the CONTRACTOR, Sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the CONTRACTOR as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a CONTRACTOR is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the CONTRACTOR's or sub-CONTRACTOR's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails

for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the CONTRACTOR will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the CONTRACTOR will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act Requirements.

The CONTRACTOR shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

6. Subcontracts.

The CONTRACTOR or sub-CONTRACTOR shall insert in any subcontracts the clauses contained in 29 CFR Part 5.5(a)(1) through (10) and such other clauses as the Sponsor may by appropriate instructions require, and also a clause requiring the sub-CONTRACTORS to include these clauses in any lower tier subcontracts. The prime CONTRACTOR shall be responsible for the compliance by any sub-CONTRACTOR or lower tier sub-CONTRACTOR with all the contract clauses in 29 CFR Part 5.5.

7. *Contract Termination: Debarment.*

A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a CONTRACTOR and a sub-CONTRACTOR as provided in 29 CFR 5.12.

8. *Compliance with Davis-Bacon and Related Act Requirements.*

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. *Disputes Concerning Labor Standards.*

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the CONTRACTOR (or any of its sub-CONTRACTORS) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. *Certification of Eligibility.*

(i) By entering into this contract, the CONTRACTOR certifies that neither it (nor he or she) nor any person or firm who has an interest in the CONTRACTOR's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC 1001.

Copeland "Anti-Kickback" Act

CONTRACTOR. The CONTRACTOR must comply with the requirements of the Copeland "Anti-Kickback" Act (18 U.S.C. § 874 and 40 U.S.C. § 3145) and the requirements of 29 C.F.R. Part 3 *as may be applicable*, which are incorporated by reference into this contract.

CONTRACTOR and sub-CONTRACTORS are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The CONTRACTOR and each Sub-CONTRACTOR must submit to the Owner, a weekly statement on the wages paid to each employee performing on covered work during the prior week

Subcontracts. The CONTRACTOR or sub-CONTRACTOR shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the sub-CONTRACTORS to include these clauses in any lower tier subcontracts. The prime CONTRACTOR shall be responsible for the compliance by any sub-CONTRACTOR or lower tier sub-CONTRACTOR with all of these contract clauses.

Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a CONTRACTOR and sub-CONTRACTOR as provided in 29 C.F.R. § 5.12.”

Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)

Where applicable, all contracts awarded in excess of \$100,000 that involve the employment of mechanics or laborers must be in compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5).

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 (1) of this section the CONTRACTOR and any sub-CONTRACTOR responsible therefor shall be liable for the unpaid wages. In addition, such CONTRACTOR and sub-CONTRACTOR 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 (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
3. Withholding for unpaid wages and liquidated damages. The Owner 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 sub-CONTRACTOR 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 (2) of this section.
4. Sub-CONTRACTORS. The CONTRACTOR or sub-CONTRACTOR shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the sub-CONTRACTORS to include these clauses in any lower tier subcontracts. The prime CONTRACTOR shall be responsible for compliance by any sub-CONTRACTOR or lower tier sub-CONTRACTOR with the clauses set forth in paragraphs (1) through (4) of this section.”

Rights to Inventions Made Under a Contract or Agreement

Patent and Rights in Data

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

Rights in Data - The following requirements apply to each contract involving experimental, developmental or research work:

The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

Except for its own internal use, the Purchaser or CONTRACTOR may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or CONTRACTOR authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)(i) and (2)(b)(ii) of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

Any subject data developed under that contract, whether or not a copyright has been obtained; and

Any rights of copyright purchased by the Purchaser or CONTRACTOR using Federal assistance in whole or in part.

When federal assistance is awarded for experimental, developmental, or research work, it is the general intention to increase knowledge available to the public rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless determined otherwise, the Purchaser and the CONTRACTOR performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agree to make available to the public, either the license in the copyright to any subject data developed in the course of that contract or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject

of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or CONTRACTOR's use whose costs are financed in whole or in part with Federal assistance.

Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the CONTRACTOR agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or CONTRACTOR of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the CONTRACTOR shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

Nothing contained in this clause regarding rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

Data developed by the Purchaser or CONTRACTOR and financed entirely without the use of Federal assistance that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or CONTRACTOR identifies that data in writing at the time of delivery of the contract work.

Unless determined otherwise, the CONTRACTOR agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

Unless the Federal Government later makes a contrary determination in writing, irrespective of the CONTRACTOR's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the CONTRACTOR agree to take the necessary actions to provide those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

The CONTRACTOR also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

Patent Rights - The following requirements apply to each contract involving experimental, developmental, or research work:

General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser

and CONTRACTOR agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier.

Unless the Federal Government later makes a contrary determination in writing, irrespective of the CONTRACTOR's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the CONTRACTOR agree to take the necessary actions to provide those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

The CONTRACTOR also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

Procurement of Recovered Materials

CONTRACTOR and sub-CONTRACTOR must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the CONTRACTOR and sub-CONTRACTORS are to use products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

1. The contract requires procurement of \$10,000 or more of a designated item during the fiscal year; or
2. The CONTRACTOR has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

Section 6002(c) establishes exceptions to the preferences for recovery EPA-Designed products if the CONTRACTOR can demonstrate the item is:

- Not reasonably available within a timeframe providing for compliance with the contract performance schedule;
- Fails to meet reasonable contract performance requirements; or
- Is only available at an unreasonable price.

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

Safeguarding Personal Identifiable Information:

CONTRACTOR will take reasonable measures to safeguard protected personally identifiable information and other information designated as sensitive by the awarding agency or is considered sensitive consistent with applicable federal, state, and/or local laws regarding privacy and obligations of confidentiality.

DHS Seal, Logo, and Flags

The CONTRACTOR shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without pre-approval by the specific federal agency.