

REQUEST FOR PROPOSALS
to
TOWN OF SEABROOK ISLAND

RFP 2021-02

The Town of Seabrook Island will accept sealed Proposals from qualified contractors until the Due Date indicated below for all labor, equipment and materials to provide debris monitoring and oversight services in support of the Town's post-disaster recovery efforts.

A bid package, consisting of (1) General Terms and Conditions, (2) Special Terms and Conditions, (3) Scope of Services, (4) Form of Contract, (5) Insurance Requirements and (6) Non-Collusion Oath, may be obtained at the Seabrook Island Town Hall during normal business hours, or from the Town website at www.townofseabrookisland.org. Except as otherwise specifically noted, the entire bid package must be used in preparing Proposals.

Issue Date: June 8, 2021

Solicitation Number: RFP 2021-02

Description of Services: The Town of Seabrook Island is inviting Proposals from qualified firms to provide on-call debris monitoring and oversight services in support of the Town's post-disaster recovery efforts. The successful Bidder must be knowledgeable of federal and state regulations, guidelines and operating policies relating to emergency management and disaster recovery operations and shall coordinate with the Town and the Town's on-call debris removal contractor(s) to ensure a compliant, well managed and organized approach to debris collection and disposal, consistent with FEMA guidelines.

Bid Security: Not Required

Pre-Bid Conference: Not Required

Due Date: July 2, 2021, 2:00 PM

Opening Date: July 2, 2021, 2:00 PM

Opening Location: Office of the Town Administrator
Town of Seabrook Island, SC
2001 Seabrook Island Road
Seabrook Island, SC 29455

RFP 2021-02
GENERAL TERMS AND CONDITIONS

1. PREPARATION, SUBMISSION AND WITHDRAWAL OF PROPOSALS

- A. There is no standard form of Proposal. Proposals must be typewritten or computer-generated using a word processor or similar program. The information contained in the Proposal should include, but not be limited to:
- (i) the official name, mailing address, email address and telephone number of the individual, firm, or corporation under which the business is conducted, as well as all legal entities which will participate in the provision of goods or services (hereinafter "Bidder" or "Bidders");
 - (ii) the form of organization of the Bidder, whether individual, firm, partnership, corporation, joint venture or other legal entity;
 - (iii) all affiliations, parent-subsidary relationships and corporate identities, including the names of the principals of such legal entities, must be fully disclosed and explained;
 - (iv) a straightforward, concise description of Bidder's qualifications and ability to satisfy the requirements of this Request for Proposals (hereinafter "RFP");
 - (v) an acknowledgement of receipt of the entire Bid Package; and
 - (vi) an hourly fee schedule (by position) that the Bidder will charge for the services provided. The hourly fee schedule for each position shall be inclusive of customary out-of-pocket expenses, such as travel-related expenses, meal allowances, overnight accommodations, vehicle expenses and communications equipment, as applicable. Other expenses, such as equipment, facilities, or infrastructure necessary to carry out each task may be billed at cost with no markup. As an on-call contract, it is anticipated that services will be provided on a task-by-task basis, and the hourly fee schedule contained within the Proposal will serve as the basis for quantifying the total cost of each task based upon the number and type of personnel and the number of hours worked by each person in the performance of each task.

All Proposals must include the RFP solicitation number and must be signed by an official authorized to bind the Bidder.

All Proposal packages must contain one original version, at least five (5) paper copies, and one digital copy (PDF format on a USB drive or CD).

- B. Mailed or hand-delivered Proposals must be submitted in a sealed envelope to the Office of the Town Administrator, Town of Seabrook Island (hereinafter "Town") at 2001 Seabrook Island Road, Seabrook Island, South Carolina 29455. Each sealed envelope containing a Proposal shall be marked on the outside with the Bidders' complete name, address, Request for Proposal number ("RFP 2021-02"), description of services requested by this RFP (viz., "On-Call Debris Monitoring Services), along with the due date and time. Failure to do so may result in premature opening of, or a failure to open, such Proposal.
- C. **Proposals submitted after the "Opening" date and time are considered "Late Proposals." "Late Proposals" will not be considered.**
- D. Proposals may be withdrawn by written request received from the Bidder prior to the time set for the opening of Proposals.
- E. Bidders shall promptly notify the Town Administrator in writing not later than seven (7) days prior to the Due Date, of any ambiguity, inconsistency or error which they may discover upon examination of the RFP documents or the project premises and local conditions.
- F. Bidders requiring clarification or interpretation of the RFP documents shall make a written request which must be received at the Office of the Town Administrator not later than seven (7) days prior to the Due Date.
- G. Any interpretation, correction or change of the RFP documents will be made by the Town and posted on the Town's website as an addendum to the RFP.
- H. No substitutions will be considered after the contract award except by amendment or change order.
- I. The Town seeks a single, qualified company to be responsible for the provision of services described herein (hereinafter "Services") (although the Town reserves the option to award portions of the project to multiple bidders if such is to the advantage of the Town). Therefore, any one Proposal submitted by more than one company will be deemed to be a Proposal for a joint venture between or among the companies so bidding unless the Proposal clearly and unequivocally describes that only one firm proposes to act as principal and the other firm(s) contractual position is clearly defined. The companies submitting as a joint venture will be held jointly and severally responsible for the entire project and will not be permitted to limit their liability to the Town.
- K. The following are included in the Bid Package:
- (i) Attachment A: Special Instructions / Terms and Conditions
 - (ii) Attachment B: Scope of Services/Specifications
 - (iii) Attachment C: Sample Contract
 - (iv) Attachment D: Insurance Requirements

(v) Attachment E: Non-Collusion Oath

2. NON-COLLUSION OATH

Every Proposal must be accompanied by a notarized affidavit of non-collusion, executed by the Bidder or, in the case of a corporation, by a duly authorized representative of said corporation. The Non-Collusion Oath is provided in Attachment E.

3. BIDDER REPRESENTATIONS

By submitting a Proposal, each Bidder represents that:

- A. The Bidder has read and understands this RFP (including all specifications and attachments) and that its Proposal is made in accordance therewith.
- B. The Bidder has reviewed the RFP, has become familiar with the local conditions under which the Services are to be performed, and has correlated personal observations with the requirements of the proposed contract documents.
- C. The Proposal is based on the terms, materials, and equipment required by this RFP, without exception.
- D. The Bidder is qualified to provide the Services and, if awarded the contract, will do so in a professional, timely manner using Bidder's best skill and attention.
- E. If Bidder is awarded the contract, it will execute the formal contract called for herein.
- F. If Bidder is awarded the contract, Bidder agrees that:
 - (i) it will provide the insurance coverage as required in Attachment D, Insurance Requirements, and
 - (ii) if the Services or any part thereof are not completed within the required time period, the Bidder will be liable for all damages in accordance with the terms of the formal contract.
- G. Bidder's staff is knowledgeable about and experienced in performing the Services required in this RFP, and the Bidder warrants that it will use its best skill and attention to provide the Services in a professional and timely manner.

4. BIDDER'S QUALIFICATIONS

Before a Proposal is considered for award, the Bidder may be requested by the Town to submit a statement providing additional information regarding their previous experience in performing comparable Services.

5. AWARD OF CONTRACT

- A. Award of the contract will be made consistent with the criteria in the Town's applicable ordinance, to the lowest responsive and responsible bidder(s) whose Proposal, conforming to the RFP, is most advantageous to the Town, price and other factors considered.
- B. The Town reserves the right to (1) reject any or all Proposals and any part of a Proposal; (2) waive informalities, technical defects, and minor irregularities in Proposals received not involving price; (3) interview Bidders prior to selecting a successful Bidder; and (4) award the Proposal(s) received on the basis of individual items or groups of items or the entire list of items.

6. NOTICE OF AWARD OF CONTRACT

The successful Bidder will be notified of acceptance of Proposal by a written notice of award (hereinafter, "Notice of Award") of the contract. The successful Bidder shall not undertake any Services, and the Town will not be responsible for payment for any Services whatsoever undertaken by successful Bidder prior to issuance of the notice to proceed (hereinafter, "Notice to Proceed".)

The successful Bidder shall be required to submit acceptable insurance certificate(s) and endorsement(s) within five (5) business days after the issuance of the Notice of Award.

7. CONTRACT DOCUMENT

The successful Bidder shall be required to execute a formal contract (the "Contract") within five (5) business days after issuance of a Notice of Award. It is anticipated that the Contract shall be virtually identical in substance and form to the Sample Contract which is attached hereto as Attachment C (Sample Contract). The only anticipated changes from Attachment C (Sample Contract) will be to include additional exhibits, to fill in the blanks to identify the successful Bidder, and terms relating to compensation, or to revise the contract to accommodate corrections, changes in the scope of Services, or changes pursuant to addenda issued prior to the opening of Proposals.

Bidders should raise any questions regarding the terms of the Contract or submit the specific language of any requested change to the terms and conditions of the Contract, together with their submitted Proposal. Any suggested change to the Contract language may affect the Town's consideration of the Proposal. No changes to the Contract will be considered after the Proposal has been accepted.

Because the signed contract will be substantively and substantially derived from Attachment C (Sample Contract), Bidder is urged to seek independent legal counsel as to any questions about the terms, conditions or provisions contained in Attachment C (Sample Contract), before submitting a Proposal. Again, Attachment C (Sample Contract), contains important legal provisions and is considered part and parcel of this RFP. Failure or refusal to sign aforesaid Contract shall be grounds for the Town to revoke any Notice of Award which has been issued, forfeit Proposal security, and award the Contract to another Bidder.

If Bidder generally uses an industry standard form of contract, in lieu of submitting requested changes to the Contract, a copy of the industry standard form of contract proposed by the Bidder should be submitted to the Town with the Bidder's Proposal. The Town reserves the right to accept, accept with modifications, or reject any such standard contracts.

8. NOTICE TO PROCEED

A Notice to Proceed will be issued after the successful Bidder has executed the Contract and has submitted acceptable performance and payment bonds (if applicable) to the Town as well as other submittals specified herein and in the Contract which are required to be delivered before the Notice to Proceed is issued.

The successful Bidder shall not deliver any equipment to the work site or commence work until the successful Bidder has received a written Notice to Proceed from the Town Administrator.

9. STATE AND LOCAL TAXES

Except as otherwise specifically provided for in the Contract, Contract prices shall include all state and local taxes applicable to the Services provided.

The successful Bidder shall calculate, if applicable, that portion of the Contract which is subject to the South Carolina sales and/or use tax, which amount shall be itemized and shown on all invoices and shall be paid to South Carolina Department of Revenue (SCDOR) by the successful Bidder. If the successful Bidder is a non-South Carolina company, the Town will withhold said amount from all invoices and remit payment to the SCDOR, unless successful Bidder furnishes Town with a valid South Carolina Use Tax Registration Certificate Number.

The successful Bidder shall indemnify and hold harmless the Town for any loss, cost, or expense incurred by, levied upon or billed to the Town as a result of the successful Bidder's failure to pay any tax of any type due in connection with this Contract.

The successful Bidder shall ensure that the above sections are included in all subcontracts and sub-subcontracts and shall ensure withholding on out of state sub and sub-subcontractors to which withholding is applicable.

10. PERMITS AND LICENSES

The successful Bidder, and any subcontractor, shall, without additional expense to the Town, be responsible for obtaining and maintaining all necessary licenses and permits required by the State of South Carolina or the Town or any other authority having jurisdiction over the Services. Prior to execution of a contract, the successful Bidder and subcontractor may be required to provide a copy of its current applicable Contractor's Licenses issued by the State of South Carolina and the Town.

11. SUBCONTRACTORS

A. If any subcontractors will be used for this project, the successful Bidder shall provide to the Town Administrator a list of names of any of the intended subcontractors, the

subcontractor's applicable license number(s), and a description of the Services to be done by each subcontractor.

- B. The successful Bidder shall not substitute other subcontractors without the written consent of the Town Administrator.
- C. The successful Bidder shall be responsible for all services performed by a subcontractor as though they had been performed by the successful Bidder. Responsibilities include, but are not limited to, compliance with any applicable licensing regulations.
- D. If at any time the Town Administrator determines that any subcontractor is incompetent or undesirable, he or she shall notify the successful Bidder accordingly, and the successful Bidder shall take immediate steps for cancellation of the subcontract and replacement of the subcontractor.
- E. Nothing contained in any subcontract resulting from this RFP shall create any contractual relationship between any subcontractor of the successful Bidder and the Town.
- F. It shall be the successful Bidder's responsibility to ensure that all terms required in the attached Contract are incorporated into all subcontracts.

12. INSURANCE REQUIREMENTS

The successful Bidder, at its own expense, shall at all times during the term of the Contract, maintain insurance as required in Attachment D (Insurance Requirements), which is attached hereto and incorporated by reference. The Town shall not execute the Contract until the successful Bidder has submitted acceptable Insurance certificate(s) and endorsement(s), which must be submitted within five (5) business days of receipt of the Notice of Award, and which reflect that the required coverages are in place and that all premiums have been paid. Refusal or failure to submit such insurance certificate(s) and endorsement(s) shall constitute grounds for the Town to revoke its Notice of Award, forfeit bid security, and award the Contract to another Bidder. The Town may contact the successful Bidder's insurer(s) or insurer(s)' agent(s) directly at any time regarding the successful Bidder's coverages, coverage amounts, or other such relevant and reasonable issues related to the Contract. The successful Bidder shall also require any subcontractors to carry the same coverages in the same amounts.

Faxed Insurance certificate(s) and endorsement(s) will be accepted if received no later than the time of contract execution and the original documents are received within one (1) business day after receipt of the fax transmittals.

The Town must be advised immediately of any lapses or changes in required coverage.

13. INDEMNIFICATION

Except for expenses or liabilities arising from the negligence or intentional acts of the Town, the successful Bidder shall expressly agree to indemnify, defend and hold the Town harmless against any and all expenses and liabilities arising out of the performance or default hereunder as follows:

The successful Bidder shall expressly agree that to the extent that there is a causal relationship between its negligence, action or inaction, or the negligence, action or inaction of any of its employees or any person, firm or corporation directly or indirectly employed by the successful Bidder and any damage, liability, injury, loss or expense (whether in connection with bodily injury or death or property damage) that is suffered by the Town and/or its officers or employees or by any member of the public, to indemnify, defend and save the Town and its officers and employees harmless from and against any and all liabilities, penalties, demands, claims, lawsuits, losses, damages, costs, and expenses arising directly or indirectly out of the performance of the Contract to be entered into by the parties. Such costs are to include, without limitation, defense, settlement and reasonable attorney's fees incurred by the Town and its employees. This obligation to indemnify shall include, without limitation, bodily injuries or death occurring to the successful Bidder's employees and any person, directly or indirectly employed by the Successful Bidder (including, without limitation, any employee of any subcontractor), the Town's officers or employees, the employees of any other independent contractors, or occurring to any member of the public. When the Town submits notice, the successful Bidder shall promptly defend any aforementioned claim, demand or lawsuit. This obligation shall survive the suspension or termination of the Contract resulting from this RFP. The limits of insurance required in such Contract shall not limit the successful Bidder's obligation of indemnification. The recovery of costs and fees all extend to those incurred in the enforcement of this indemnity.

14. **MATERIALS AND WORKMANSHIP**

If equipment, materials and supplies are to be included as part of the Services provided, all equipment, materials and supplies incorporated in the Services and covered by the RFP and provided by the successful Bidder are to be of the most suitable grade for the purposes intended. When requested, the successful Bidder shall furnish the Town for approval the name of the manufacturer, the model number and other identifying data and information respecting the performance, capacity and rating of the machinery and other mechanical equipment which is incorporated in the Services. Machinery, equipment and materials installed and / or used without the Town's prior approval shall be at risk of rejection.

15. **COMPETITIVE BIDDING & BID SECURITY**

Purchases and/or contracts exceeding \$10,000 shall be made in accordance with the competitive bidding procedures set forth in the Town's ordinances, including the requirements for Bid security. Bid security may be waived provided notice of such is given by the Town when Bids are solicited.

16. **PUBLIC ACCESS TO PROCUREMENT INFORMATION**

Subject to the requirements of the Freedom of Information Act, commercial or financial information obtained in response to this RFP that is deemed privileged and confidential by the Bidder and is so marked in a conspicuous manner will not be disclosed. It is therefore the responsibility of each Bidder to mark as "CONFIDENTIAL" each specific part of the Proposal that it considers to be proprietary and confidential.

17. **NON-DISCRIMINATION**

The successful Bidder shall not discriminate against any individual based upon age, sex, race, disability or religion, and shall abide by the requirements set forth in Executive Order No. 11246, as amended, including specifically the provisions of the equal opportunity clause

18. **DRUG FREE WORKPLACE**

The successful Bidder shall comply with the South Carolina Drug-Free Workplace Act, Section 44-107-10 et. seq., South Carolina Code of Laws, as amended.

19. **INCORPORATION BY REFERENCE**

The contents of this RFP, and any addenda, will become part of the Contract for the Services.

ATTACHMENT A
SPECIAL INSTRUCTIONS/TERMS AND CONDITIONS

1. **PRE-BID CONFERENCE:**

A pre-bid conference is not required.

2. **PROPOSAL SUBMITTAL DEADLINE:**

Proposals will be received until **2:00 PM, on July 2, 2021** (*as indicated on the official clock in the office of the Town Administrator*) after which time all Proposals will be publicly opened and read on the date and in the location specified in the RFP. Bidders are invited, but are not required, to attend the opening of this Proposal at the time stated above.

3. **ADDITIONAL INFORMATION INQUIRIES**

Questions or clarifications concerning this RFP should **only** be directed to:

Joseph Cronin
Town Administrator
Town of Seabrook Island
2001 Seabrook Island Road
Seabrook Island, SC 29455
Phone: (843) 768-9121
Email: jcronin@townofseabrookisland.org

The deadline for the submittal of questions or requests for clarification is 2:00 PM on June 25, 2021.

4. **TERM OF AGREEMENT**

An initial contract term of twenty-seven (27) months is anticipated (September 1, 2021 through December 31, 2023), with three (3) one-year renewal options, subject to an annual review, the satisfactory negotiation of terms and pricing (including days and hours of service and price acceptable to the Town), and the annual appropriation of funds by the Town Council.

5. **QUALIFICATIONS AND EXPERIENCE.**

The Bidder should state the size of the firm, the location of the office from which the Services are to be performed and the number and qualification of the staff to be employed in performance of the Services. The Bidder should identify the principal supervisor and management staff who will be assigned to the Services and indicate any special skills, education, training and experience that would be applicable to the Services. List other related contracts performed in the last three (3) years similar to the proposed Services covered by this RFP. Indicate the date, the name and telephone number of the principal contact.

ATTACHMENT B **SCOPE OF SERVICES**

1. OVERVIEW

The Town of Seabrook Island is a coastal residential community of approximately 6 square miles located in Charleston County, South Carolina. The Town is seeking proposals from qualified and experienced emergency debris removal monitoring firms (the “Contractor”) to provide timely response following a natural disaster or other event that generates debris within the Town.

Services may include, but are not limited to, monitoring the work of debris removal third-party Contractor(s) during the clearing of debris from roads and rights-of-way, debris clean-up, separation, removal, processing, and disposal, sand removal from roads and rights-of-way, beach restoration, project management assistance, and other services as directed by the Town. The Contractor will be responsible and liable for the accurate quantity measurement and completeness of the debris removal activities for the work area(s) identified by the Town.

2. GENERAL REQUIREMENTS

- A. Task Orders. The Town will, on an as-needed basis, issue task orders to the Contractor describing the work required under the Contract (the “Task Order”). A standard form for Task Orders will be established by mutual agreement between the Town and Contractor and may be modified from time to time as necessary. In response to issuance of a Task Order, the Contractor will prepare a scope of work describing the services to be performed and cost estimate which shall become part of the Task Order upon execution by both parties. The Contractor shall perform the services as described in this Scope of Services and as described in the scope of work of the individual Task Orders authorized in writing by the Town. The Contractor’s obligations under this Contract are solely for the benefit of the Town and no other party is intended to benefit or have rights hereunder.
- B. Standard of Care. The Contractor shall perform the professional services under the Contract at the level customary for competent and prudent professionals performing such services at the time and place where the services are provided (the “Standard of Care”) and shall, at no additional cost to the Town, re-perform services which fail to satisfy the foregoing Standard of Care. These services will be provided by licensed engineers and other professionals and individuals skilled in other technical disciplines, as appropriate. The Contractor shall represent and warrant that it has and will continue to maintain in good standing all federal, state and local licenses, permits and approvals required with respect to the conduct of its business, and that it will at all times conduct its business activities in a reputable manner.
- C. Service Instruments. The Contractor shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all instruments of its services including designs, drawings, specifications, reports (the “Service Instruments”) and other services provided under the Contract.

3. COMPLIANCE WITH APPLICABLE LAWS, REQUIREMENTS AND GUIDANCE

All work performed shall comply with all applicable Federal, State, County, and Town laws and regulations, including all Federal Emergency Management Agency (FEMA) requirements and guidance for such work, and including all South Carolina Department of Transportation (SCDOT) requirements and guidance for such work. The Contractor shall be responsible for obtaining and following all applicable and current regulations, requirements, guidance from Federal, State, and County agencies and/or officials for such work before work begins. The Contractor shall be responsible for full payment and satisfaction of all fines and penalties related to the work, including, but not limited to, fines and penalties resulting from the failure to obtain required permits or licenses related to the work.

4. DEBRIS LOAD DOCUMENTATION

The Contractor shall provide preprinted load tickets for all debris collection and removal activities. Each load ticket shall consist of five copy carbonless paper records and must include the following information at a minimum:

- A. Ticket number;
- B. Truck number;
- C. Contractor name and number;
- D. Date;
- E. Departure time from site;
- F. Volume, as estimated or measured following all applicable FEMA guidelines and Requirements;
- G. Debris classification;
- H. Location of debris collection, loading, and dumping; and
- I. Signatures.

5. MONITORING DEBRIS CLEAN-UP AND REMOVAL OPERATIONS

The Contractor shall provide the necessary personnel with sufficient technical abilities and knowledge for monitoring the safety, quality, and efficiency of debris clean-up and removal operations, and providing quantity and volume measurements of debris on trucks. Contractor responsibilities include, but are not limited to:

- A. Coordinate and monitor all debris removal activities with all contractors, Town, Federal, State, and County representatives to effect the timely and efficient clean-up of eligible debris (as defined by the Town of Seabrook Island);
- B. Establish quality control procedures to regularly verify volumes of trucks hauling debris;
- C. Establish safety procedures for all debris collection, processing, and removal contractors and activities;
- D. Establish procedures to monitor and report damage to public and/or private property, and/or illegal dumping, and investigate, report, and follow-up on all such claims;
- E. Establish procedures to verify that only eligible debris is removed;
- F. Establish work schedules and daily meeting and reporting timeline and procedures for all contractors; and
- G. Other activities to comply with all FEMA requirements and guidance for such work.

6. OTHER DOCUMENTATION

The Contractor shall perform activities to collect, compile, and document all debris related clean-up and removal data including, but not limited to:

- A. Tracking locations of debris clean-up and removal operations;
- B. Documenting progress of operations;
- C. Documenting issues, problems, complaints, claims associated with all operations;
- D. Documenting damage to any public or private property;
- E. Daily, Weekly, and Monthly reporting requirements; and
- F. Any other information or documentation required by FEMA, the U.S. Army Corps of Engineers relating to debris clean-up and removal activities.

7. PROJECT MANAGEMENT

The Contractor shall provide administrative and support services to support and fulfill all applicable Federal, State, and County requirements in conjunction with the work. These services include, but are not limited to, reporting, documentation, Federal and State reimbursement efforts, and other technical assistance relating to the response to and recovery from an emergency event.

ATTACHMENT C
FORM OF CONTRACT

STATE OF SOUTH CAROLINA)	<u>CONTRACT</u>
)	
TOWN OF SEABROOK ISLAND)	ON-CALL DEBRIS MONITORING SERVICES

THIS CONTRACT (hereinafter the "Contract") is made and entered into this ____ day of _____, 20__, by and between the **TOWN OF SEABROOK ISLAND**, South Carolina, a public body corporate and politic and political subdivision of the State of South Carolina, (hereinafter the "Town") and _____ (**NAME OF COMPANY/INDIVIDUAL**), a _____ (State Name) Sole Proprietorship/Partnership/Corporation, Limited Liability Corporation (choose one), the address of which is Street, City, State, Zip (hereinafter the "Contractor"), ("Party" as to each; collectively the "Parties").

WITNESSETH:

WHEREAS, the Town wishes to contract for on-call debris monitoring ("Services") more specifically described in Exhibit C (Scope of Services); and

WHEREAS, the Contractor has represented to the Town that its staff is qualified to provide the Services required, and to perform this Contract in a professional and timely manner; and

WHEREAS, the Town has relied upon the above representations by Contractor;

NOW, THEREFORE, for and in consideration of these promises, of the mutual covenants herein set forth, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, and the above-referenced recitals incorporated into this Contract herein by reference, the Parties hereto hereby agree as follows:

SECTION 1. Contract Documents

The Parties agree that the term "Contract Documents" shall include the following, which are attached hereto and incorporated herein by reference as if set out in full:

- Exhibit A: Request for Proposals (RFP) No. 2021-02
- Exhibit B: General Terms and Conditions
- Exhibit C: Scope of Services
- Exhibit D: Insurance Requirements
- Exhibit E: Contractor's Insurance Certificate(s) and Endorsement(s)

SECTION 2. Performance of Services

The Contractor agrees to perform and furnish all labor, supervision, materials, equipment, transportation and supplies necessary for the completion of the Services required under this Contract in

a professional, timely manner, in accord with all applicable laws, rules and regulations.

The Contractor shall provide the Services as specified in the Notice to Proceed, but not before said notice is issued. Coordination of the Services and administration of this Contract shall be by the Town Administrator.

SECTION 3. Term of Contract; Time and Dates of Performance

The initial term of the Contract shall be for a period of twenty-seven (27) months, beginning on September 1, 2021, and terminating on December 31, 2023.

The Town reserves the right to renew the initial contract for up to three (3) additional one-year periods if it determines renewal to be in its best interest. Any request for a price increase must be made in writing at least ninety (90) days prior to the anniversary date of the Contract, or sooner if so requested by the Town. Any request will be evaluated prior to exercising the option to renew. The Town will be the sole judge as to whether any price increase will be approved. If the Town exercises its right of renewal, any changes to Contract Price will be agreed upon in writing and made part of the Contract by addendum.

The Contractor expressly acknowledges that time is of the essence in completion of this Contract and that the time limits and dates herein are critical components of the Contract. The Contractor warrants and represents that it has taken these facts into consideration and has determined that it can complete the Services within these time limits, including time for likely delays caused by weather or from other sources. The Contractor will not be compensated for any delays beyond the time set forth herein. The Contractor's only remedy for delays may be an extension of time to perform the Services. Due consideration will be given to claims for an extension of time due to extraordinary circumstances only.

SECTION 4. Task Orders; Fee Schedule; Payment Terms

The Town will, on an as-needed basis, issue task orders to the Contractor describing the work required under the Contract (hereinafter, the "Task Order"). A standard form for Task Orders will be established by mutual agreement between the Town and Contractor and may be modified from time to time as necessary.

In response to issuance of a Task Order, the Contractor will prepare a scope of work describing the services to be performed and cost estimate which shall become part of the Task Order upon execution by both parties.

The Contractor shall perform the services as described in Exhibit C (Scope of Services) and as described in the scope of work of the individual Task Orders authorized in writing by the Town. The Contractor's obligations under this Contract are solely for the benefit of the Town and no other party is intended to benefit or have rights hereunder.

The Contractor's Fee Schedule (hereinafter, the "Fee Schedule) is provided below:

Position	Hourly Rate
[To Be Included]	[To Be Included]

The Fee Schedule shall be inclusive of customary out-of-pocket expenses, such as travel-related

expenses, meal allowances, overnight accommodations, vehicle expenses and communications equipment, as applicable. Other expenses, such as equipment, facilities, or infrastructure necessary to carry out each task may be billed at cost with no markup.

The Contractor shall invoice the Town for each Payment Amount within five (5) business days following the closing date of each Installment Period. In no event shall the aggregate total of the invoices for Services so submitted exceed the Contract Price.

SECTION 5. Insurance Requirements

The Contractor, at its own expense, shall at all times during the term of the Contract, maintain insurance which meets all of the requirements set forth in Exhibit D (Insurance Requirements), and as included in Exhibit E (Contractor's Insurance Certificate(s) and Endorsement(s)), which are attached hereto and incorporated by reference. The Town may contact the Contractor's insurer(s) or insurer(s)' agent(s) directly at any time regarding the Contractor's coverages, coverage amounts, or other such relevant and reasonable issues related to this Contract. The Contractor shall also require any subcontractors to carry the same coverages in the same amounts.

The Town must be advised immediately of any lapse changes in required coverages.

SECTION 6. Compliance with Legal Requirements

All applicable federal, state and local laws, ordinances, and rules and regulations of any authorities (including, but not limited to, any laws, ordinances or regulations relating to the S.C. Department of Revenue or the S.C. Board of Contractors) shall be binding upon the Contractor throughout the pendency of the provision of Services. The Contractor shall be responsible for compliance with any such law, ordinance, rule or regulation, and shall hold the Town harmless and indemnify same in the event of non-compliance as set forth in the Contract.

By signing a Proposal, the Contractor certifies that it will comply with the applicable requirements of Title 8, Chapter 14 of South Carolina Code of Laws, 1976, as amended, and agrees to provide to the State upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable to the Contractor and its subcontractors or sub-subcontractors; or (b) that the Contractor and its subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14.

The Contractor agrees to include in any contracts with subcontractors, language requiring subcontractors to (a) comply with applicable requirements of Title 8, Chapter 14, and (b) include in its contracts with the subcontractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14.

The Contractor agrees to and shall certify agreement to abide by the requirements under Title VI of the Civil Rights Act of 1964, and other non-discrimination authorities under Federal Executive Order Number 11246, as amended, and specifically the provisions of the equal opportunity clause.

The Contractor shall comply with all federal, state and local laws, ordinances, rules and regulations of any authorities throughout the duration of this Contract. The Contractor shall be responsible for compliance with any such law, ordinance, rule or regulation, and shall hold Town harmless and indemnify same in the event of non-compliance.

SECTION 7. Contractor's Warranties and Representations

The Contractor represents that its staff is knowledgeable about and experienced in performing the Services required in this Contract and warrants that it will use best skill and attention to provide above-described Services in a professional, timely manner. The Contractor is fully qualified to act as the general contractor for the required Services and has, and shall maintain, any and all licenses, permits or other authorizations necessary to act as the general contractor for, and to perform(oversee?, perform?) the Services. The Contractor is familiar with the site at which the Services are to be performed.

The Contractor warrants and represents that it shall be responsible for all subcontractors working directly for it, as well as for their work product, as though Contractor had performed the Services itself. The Town Administrator may, in writing, require the Contractor to remove from the work site any employee or subcontractor the Town Administrator deems incompetent, careless or otherwise objectionable.

If equipment, materials and supplies are to be included as part of the Services provided, all equipment, materials and supplies so included and provided by the Contractor are to be of the most suitable grade for the purposes intended. When requested, the Contractor shall furnish the Town for approval the name of the manufacturer, the model number and other identifying data and information respecting the performance, capacity and rating of the machinery and other mechanical equipment which is incorporated in the Services provided. Machinery, equipment and materials installed and / or used without the prior approval shall be at risk of rejection.

SECTION 8. Retention of Records

The Contractor agrees to maintain for three (3) years from the date of Final Payment, or until the end of any audit or closure of all pending matters under this Contract, whichever is later, all books, documents, papers, and records pertinent to this Contract. The Contractor agrees to provide to the Town, any federal grantor agency, the Comptroller General of the United States, any state grantor agency, any assignee, or any of their duly authorized representatives access to such books, documents, papers, and records for the purpose of examining, auditing, and copying them. The Contractor further agrees to include these provisions in any subcontracts issued in connection with this Contract.

SECTION 9. State and Local Taxes

Except as otherwise specifically provided for in the Contract, the Contract Price shall *include* all applicable state and local taxes.

The successful Bidder shall calculate that portion of the Contract which is subject to the South Carolina sales and/or use tax, which amount shall be itemized and shown on all invoices and shall be paid to South Carolina Department of Revenue (SCDOR) by successful Bidder. If the successful Bidder is a non-South Carolina company, the Town will withhold said amount from all invoices and remit payment to the SCDOR, unless successful Bidder furnishes Town with a valid South Carolina Use Tax Registration Certificate Number.

The Contractor shall indemnify and hold harmless the Town for any loss, cost, or expense incurred by, levied upon or billed to the Town as a result of Contractor's failure to pay any tax of any type due in

connection with this Contract.

The Contractor shall ensure that the above sections are included in all subcontracts and sub-subcontracts and shall ensure withholding on out of state sub and sub-subcontractors to which withholding is applicable.

SECTION 10. Independent Contractor

The Contractor is an independent contractor and shall not be deemed the agent or employee of the Town for any purpose whatsoever. The Contractor shall not hold himself out as an employee of the Town and shall have no power or authority to bind or obligate the Town in any manner, except the Town shall make payment to the Contractor for the Services provided and necessary expenses related thereto as herein provided. The Contractor shall obtain and maintain all licenses and permits required by law for performance of this Contract by him or his employees, agents, and servants. The Contractor shall be liable for and pay all taxes required by local, state or federal governments, including but not limited to social security, Workers' Compensation, employment security, and any other taxes and licenses or insurance premiums required by law. No employee benefits of any kind shall be paid by the Town to or for the benefit of the Contractor or its employees, agents, or servants by reason of this Contract.

SECTION 11. Other Contracts

The Town reserves the right to undertake or award other contracts for additional work or services and may elect to complete portions of the Services included in this Contract using its own forces or through other contracts, and the Contractor shall fully cooperate with such other contractors, Town employees and carefully fit its own work or services to such work or services as may be directed by the Town. The Contractor shall not commit or permit any act by its employees or subcontractors which will interfere with the performance of work or services by any other contractor or by Town employees.

SECTION 12. Permits and Licenses

The successful Bidder, and any subcontractor, shall, without additional expense to the Town, be responsible for obtaining and maintaining all necessary licenses and permits required by the State of South Carolina or the Town or any other authority having jurisdiction over the provided Services. Prior to execution of a contract, the successful Bidder and subcontractor may be required to provide a copy of its current applicable Contractor's Licenses issued by the State of South Carolina and the Town.

SECTION 13. Safety, Health, and Security Precautions

The Contractor shall take proper safety, health and security precautions to protect its workers and the Town's property, workers and the public at all times during the term of this Contract. All materials shall be stored securely, protected from theft or damage.

SECTION 14. Conditions Affecting the Services

The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location where the Services will be provided, and the general and local conditions which can affect the provision of Services or the cost thereof. Any failure by the Contractor to do so will not relieve it from responsibility for successfully performing the Services without additional expense to the Town.

The Town assumes no responsibility for any understandings or representations concerning conditions made by any of its officers or agents prior to the execution of this Contract, unless such understandings or representations by the Town are expressly stated in this Contract.

SECTION 15. Repair of Damages

During the provision of Services, the Contractor will restore or replace, when and as directed by the Town, any public or private property damaged or destroyed by the Contractor's work, equipment or employees to a condition at least equal to that existing immediately prior to the beginning of the Services.

SECTION 16. Damages

The Contractor expressly agrees that if the required Services, or any part thereof, is not performed or completed in a timely or professional manner in accordance with this Contract or any amendment thereto, the Contractor shall be liable to the Town for all damages which relate to the Contractor's failure to perform or complete the Services in the manner described above. If the amount of damages are agreed to by the Town and Contractor or awarded by a Court, the Town shall have the right to deduct from and retain, out of monies which may be then due or which may become due and payable to the Contractor, the amount of such damages; and if the amount so retained by the Town is not sufficient to pay in full such damages, the Contractor and/or its sureties shall pay to the Town the amount necessary to effect payment in full of such damages.

SECTION 17. Suspension of Services

The Town Administrator may order, in writing, the Contractor to suspend, delay, or interrupt all or any provision of Services for such period of time as he may determine to be appropriate for the convenience of the Town. The Town may suspend performance of its obligations under this Contract in good faith for the convenience of the Town or to investigate matters arising out of the performance of Services.

The Town Administrator may order suspension of the Services in whole or in part for such time as he deems necessary because of the failure of the Contractor to comply with any of the requirements of this Contract, and the Contract's completion date shall not be extended on account of any such suspension of the provided Services.

When the Town Administrator orders any suspension of the Services under the paragraph above, the Contractor shall not be entitled to any payment for Services with respect to the period during which such Services are suspended and shall not be entitled to any costs or damages resulting from such suspension.

The rights and remedies of the Town provided in this Section are in addition to any other rights and remedies provided by law or under this Contract.

SECTION 18. Modification of Services

The Town has the right to modify the Services when modification is in the best interest of the Town; provided however, the Contractor shall be given written notice of any such modification by the Town Administrator and the Town shall be responsible for paying Contractor for any additional expenses

reasonably and necessarily incurred by Contractor which relate to the modification. Subject to the above, the Contractor shall immediately notify the Town in writing of any proposed adjustment in its fee. The Contractor is obligated to perform the revised Services when so directed by the Town Administrator and the Town is obligated to pay for the Services performed pursuant to the modification. No claim by the Contractor for an adjustment hereunder shall be allowed if asserted after Final Payment under this Contract.

SECTION 19. Termination

A. For Convenience

The Town Administrator, by advance written notice, may terminate this Contract when it is in the best interests of the Town. If this Contract is so terminated, the Contractor shall be compensated at the rate specified in the Contract for all necessary and reasonable direct costs of performing the Services to the date of termination. The Contractor will not be compensated for any other costs in connection with a termination for convenience. The Contractor will not be entitled to recover any damages in connection with a termination for convenience.

B. For Default

If the Contractor refuses or fails to perform the Services or any separable part thereof in a timely or workmanlike manner in accordance with the Contract Documents, or otherwise fails, in the sole opinion of the Town, to comply with any of the terms and conditions of the Contract Documents deemed, in the sole opinion of the Town, to be material (including, without limitation, the requirement that Contractor obtain and maintain in force all necessary permits), such refusal or failure shall be deemed a default under this Contract.

In the event of a default under this Section, the Town shall have the right to terminate forthwith this Contract by written notice to the Contractor. In the event of such default, advance notice for termination is waived and the Contractor shall not be entitled to any costs or damages resulting from a termination under this section.

Whether or not the Contractor's right to proceed with the Services is terminated, it and its sureties shall be liable for any damage to the Town resulting from Contractor's default. Any wrongful termination for default shall be deemed by the Parties a termination for convenience.

C. Termination for Non-Appropriation of Funds

The Town Administrator, by written advance notice, may terminate this Contract in whole or in part in the event that sufficient appropriation of funds from any source (whether a federal, state, Town or other source) are not made or sufficient funds are otherwise unavailable, in either case, to pay the charges under this Contract. If this Contract is so terminated, the Contractor shall be compensated for all necessary and reasonable direct costs of performing the Services actually provided to the date of such termination. The Contractor will not be compensated for any other costs in connection with a termination

for non-appropriation or unavailability of funds. The Contractor will not be entitled to recover any damages in connection with a termination for non-appropriation or unavailability of funds, including, but not limited to, lost profits.

D. Rights Cumulative

The rights and remedies of the Town provided in this Section are in addition to any other rights and remedies provided by law or under this Contract.

SECTION 20. Indemnification

Except for expenses or liabilities arising directly from the negligence or intentional acts of the Town, the Contractor hereby expressly agrees to indemnify, defend and hold the Town harmless against any and all expenses and liabilities arising out of the performance or default hereunder as follows:

The Contractor expressly agrees that to the extent that there is a causal relationship between (A) its negligence, action or inaction, or the negligence, action or inaction of any of its employees or any person, firm or corporation directly or indirectly employed by the Contractor and (B) any damage, liability, injury, loss or expense (whether in connection with bodily injury or death or property damage) that is suffered by the Town and/or its officers or employees or by any member of the public, it shall indemnify, defend and save the Town and its officers and employees harmless from and against any and all liabilities, penalties, demands, claims, lawsuits, losses, damages, costs, and expenses arising directly or indirectly out of the performance of this Contract. Such costs are to include, without limitation, defense, settlement and reasonable attorney's fees incurred by the Town and its employees. This obligation to indemnify shall include, without limitation, bodily injuries or death occurring to the Contractor's employees and any person, directly or indirectly employed by the Contractor (including, without limitation, any employee of any subcontractor), the Town's officers or employees, the employees of any other independent contractors, or occurring to any member of the public. When the Town submits notice, Contractor shall promptly defend any aforementioned claim, demand or lawsuit. This obligation shall survive the suspension or termination of this Contract. The limits of insurance required in this Contract shall not limit the Contractor's obligation of indemnification under this Section. The recovery of costs and fees all extend to those incurred in the enforcement of this indemnity.

SECTION 21. Gratuities and Kickbacks

- A. **Gratuities.** It shall be unethical for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement of a contract or subcontract, or to any solicitation or Proposal therefore.
- B. **Kickbacks.** It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor, or to hire any subcontractor or any person associated therewith, as an inducement for the

award of a subcontract or order.

C. Any violation of this section may result in Contract termination.

SECTION 22. Labor: Subcontractors

If any subcontractors will be used for this project, the Contractor shall provide to the Town Administrator a list of names of any of the intended subcontractors, the subcontractor's applicable license number(s), and a description of the work to be done by each subcontractor. The Contractor shall not substitute other subcontractors without the written consent of the Town Administrator. The Contractor shall be responsible for all services performed by a subcontractor as though they had been performed by the Contractor. Responsibilities include, but are not limited to, compliance with any applicable licensing regulations. If at any time the Town Administrator determines that any subcontractor is incompetent or undesirable, he or she shall notify the Contractor accordingly, and the Contractor shall take immediate steps for cancellation of the subcontract and replacement. Nothing herein shall create any contractual relationship between any subcontractor and the Town.

It shall be the Contractor's responsibility to ensure that all terms required in the attached Contract are incorporated into all subcontracts

SECTION 23. Confidentiality and Use of Name

Contractor agrees that it will not release any information relating to this Contract including without limitation press releases, advertisements, or marketing materials without the prior written consent of the Town.

SECTION 24. Force Majeure

The Town will not be liable for contract default or delay due to acts beyond its reasonable control. Contractor shall inform the Town in writing whenever it becomes aware of facts or circumstances which may delay or prevent its performance.

SECTION 25. Assignment

The Contractor shall not assign in whole or in part the Contract without the prior written consent of the Town. The Contractor shall not assign any money due or that may become due to it under said Contract without the prior written consent of the Town. Each Party binds itself, its successors, assigns, executors, administrators or other representatives to the other Party hereto and to successors, assigns, executors, administrators or other representatives of such other Party in connection with all terms and conditions of the Contract.

SECTION 26. Controlling Law

This Contract shall be governed by the laws of the State of South Carolina.

SECTION 27. Incorporation by Reference

The Request for Proposals applicable to the Services, together with all addenda, attachments and

exhibits thereto are hereby incorporated herein by reference into this Contract as if set out in full.

SECTION 28. Entire Contract

This Contract constitutes the entire understanding and agreement between the Parties hereto and supersedes all prior and contemporaneous written and oral contracts between the Parties and their predecessors in interest regarding the subject matter of this Contract. This Contract may not be changed, altered, amended, modified, or terminated orally, except as specifically provided, and any such change, alteration, amendment, or modification must be in writing and executed by the Parties hereto.

SECTION 29. Severance

Should any part of this Contract be determined by a Court of competent jurisdiction to be invalid, illegal, or against public policy, said offending Section shall be void and of no effect and shall not render any other Section herein, nor this Contract as a whole, invalid. Any terms which, by their nature, should survive the suspension, termination or expiration hereof shall be deemed to so survive.

SECTION 30. Non-waiver

Any waiver of any default by either Party to this Contract shall not constitute waiver of any subsequent default, nor shall it operate to require either Party to waive, or entitle either Party to a waiver of, any subsequent default hereunder.

SECTION 31. Set-Off

The Town shall at all times have the right to set-off any amounts owing from the Contractor to the Town against any amount owing from the Town to the Contractor. At the Town's option, repayment in lieu of set-off may be required.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract under their several seals the day and year first written above.

Contractor

By: _____

Its: _____

Attest: _____

Town of Seabrook Island

By: _____

Its: _____

Attest: _____

Exhibits to On-Call Debris Monitoring Services Contract

[INSERT] Exhibit A: Request for Proposals (RFP) No. 2021-02

[INSERT] Exhibit B: General Terms and Conditions

[INSERT] Exhibit C: Scope of Services

[INSERT] Exhibit D: Insurance Requirements

[INSERT] Exhibit E: Contractor's Insurance Certificate(s) and Endorsement(s)

ATTACHMENT E
Non-Collusion Oath

CITY/TOWN OF: _____

STATE OF: _____

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

SWORN TO BEFORE ME THIS

_____ DAY OF _____, 20__

Authorized Signature for Bidder

NOTARY PUBLIC FOR THE STATE OF

My Commission Expires: _____

Print Bidder's Name

Print Name: _____

Address: _____

Bidder's Address:

Phone Number: _____

NOTARY SEAL (Required for Out of State Bidders)