

**ANNUAL AGREEMENT FOR
DEBRIS MANAGEMENT SERVICES**

THIS CONTRACT (the “Contract”) is made this the day of, 2014 __, by and between **Insert Contractor Info** (herein referred to as “Contractor”) and the **Town of Nags Head** a political subdivision of the State of North Carolina (herein referred to as “**Town of Nags Head**”).

RECITALS

WHEREAS, it is foreseen that it may be in the public interest to provide for the expedient removal of storm debris within the corporate limits of The **Town of Nags Head** plus recovery technical assistance to the appointed and elected officials resulting from a future storm or manmade event; and

WHEREAS, the **Town of Nags Head** has in the past suffered the full force and effects of major storms and the resulting destruction brought upon **Town of Nags Head** by such storms or manmade disasters; and

WHEREAS, the life, public health and safety of all the citizens will be at serious risk; and

WHEREAS, immediate threats of significant damage to improved public or private property will need to be eliminated; and

WHEREAS, the immediate economical recovery of the **Town of Nags Head** and its citizens is a major concern and the primary priority for recovery; and

WHEREAS, the availability of experienced prime storm debris contractors may be severely limited; and

WHEREAS, Contractor has the experience, equipment, manpower, permits and licenses to perform all storm related debris services; and

WHEREAS, the **Town of Nags Head** and the Contractor have agreed to the scope of services, prices, terms and conditions as set out in this Contract; and

NOW THEREFORE, in consideration of the promises contained herein and acknowledge by both parties, the parties do agree as follows:

1.0 SERVICES

1.0.1 Scope of Contracted Services:

The Contractor shall provide all expertise, personnel, tools, materials, equipment, transportation, supervision and all other services and facilities of any nature necessary to execute, complete and deliver the timely removal and lawful disposal of all *FEMA eligible storm-generated debris (herein referred to as “debris”, unless context requires otherwise)*, including hazardous and industrial waste materials and within the time specified within this Contract. Emergency clearance, debris removal, disposal, and demolition of structures will be limited to:

1) That which is determined to eliminate immediate threats to life, public health, and safety; 2) That which has been determined to eliminate immediate threats of significant damage to improved public or private property; and 3) That which is considered essential to ensure the economic recovery of the affected community to the benefit of the community at large.

These contracted services shall provide for the cost effective and efficient removal and lawful disposal of debris accumulated on all public, residential and commercial properties, streets, roads, other rights-of-way and public school properties, including any other locally owned facility or site as may be directed by the Town of Nags Head. Contracted services will only be performed when requested and as designated by the Town of Nags Head.

1.1.0 Emergency Protective Measures Emergency Road Clearance:

The Contractor may be requested to accomplish the cutting, tossing and/or clearance of debris from the primary transportation routes to allow emergency vehicles to traverse the roadways. The Town of Nags Head will determine route priorities for this clearance. Services under this Contract, if compensated and performed on a the time and materials basis : (1) shall not exceed the first 70 hours of actual work following a disaster event; (2) shall occur only after the Town of Nags Head makes a determination that no other form of contract for the applicable services is suitable; (3) shall be subject to a not-to-exceed ceiling price for such services, which the Contractor shall exceed at its own risk of non-payment (and for which the Contractor shall not be paid unless and to the extent the Town of Nags Head is reimbursed by other Government entities for such services); and (4) shall be done only with the Town of Nags Head's prior written approval.

1.2.0 Right-of-Way (ROW) Removal:

The Contractor shall remove all debris from the public rights of way (ROW) that are located within both the Town of Nags Head and the area designated by the Town of Nags Head, which removal shall only occur following the issuance of a "Notice to Proceed" by the Town of Nags Head. This debris removal work will include 1) examining debris to determine whether or not the debris is FEMA eligible vegetative, construction and demolition or other debris, 2) loading the debris, 3) hauling the debris to an approved dumpsite or landfill, and 4) dumping the debris at the dumpsite or landfill. Debris that is not FEMA eligible will not be loaded, hauled, or dumped under this contract. Mixed loading of different types of debris shall be kept to a minimum. Debris removal shall include all eligible disaster related debris found on the ROW within the area designated by the Town of Nags Head. The Town of Nags Head may specify any eligible debris within the ROW which should not be removed, or which should be removed at a later time or by others. Any eligible debris, such as fallen trees, which extends onto the ROW from private property, shall be cut, by the Contractor, at the point where it enters the ROW, and that part of the debris which lies within the ROW shall be removed. The Contractor shall not enter onto private property during the performance of this Contract without the approval of the Town of Nags Head. The Contractor may be requested by the Town of Nags Head to remove debris from public areas which may include operational facilities, utility facilities and other land owned by the Town of Nags Head. The Contractor shall use reasonable care not to (1) damage any public or private property not already damaged by the storm event; and (2) further damage any public or private property that is already damaged by the storm event. Should any property be damaged due to negligence on the part of the Contractor, the Town of Nags Head may either bill the Contractor for the damages or withhold funds due to the Contractor. Debris removed and delivered to a debris disposal site will be paid based on a cubic yard according to the prices found in the Addendum 1 of this Contract. Debris removed and delivered to an authorized

landfill will be paid based on per cubic yard hauled according with the prices found in Addendum 1 of this Contract.

1.2.1 Geographic Assignment:

The geographic boundary for work by the Contractor's crews shall be directed by the Town of Nags Head and will be limited to properties located within the Town of Nags Head's legal boundaries.

1.2.2 [reserved]

1.2.3 Operation of Equipment:

The Contractor shall operate all trucks, trailers and all other equipment in compliance with any/all applicable federal, state and local rules and regulations. Equipment shall be in good working condition. Contractor should use mechanical equipment to load and reasonably compact debris into trucks and trailers. All loading equipment shall be operated from the road, street or ROW using buckets and/or boom and grapple devices to collect and load debris. No equipment shall be allowed behind the curb or outside of the public ROW unless otherwise directed by the Town of Nags Head.

1.2.4 Certification of Load Carrying Capacity:

The Contractor shall submit to the Town of Nags Head or approved representative a certified report indicating the type of vehicle, make and model, license plate number and/or trailer VIN number, assigned debris hauling number and measured maximum volume, in cubic yards, of the load bed of each piece of equipment to be utilized to haul debris. The measured volume of each piece of equipment shall be calculated from the actual physical measurement performed by the Town of Nags Head or approved representative and Contractor's representative(s). A standard measurement form certifying actual physical measurements of each piece of equipment shall be an attachment to the certified report(s) submitted to the Town of Nags Head or approved representative.

1.2.5 Vehicle Information:

The maximum load capacity of each hauling vehicle will be rounded to the nearest whole cubic yard (CY). (Decimal values of .1 through .4 will be rounded down and decimal values of .5 through .9 will be rounded up.) The measured maximum load capacity (as adjusted) of any vehicle load bed will be the same as shown on the trailer measurement form and identified on each numbered vehicle or piece of equipment used to haul debris. All vehicles or equipment used for hauling will have and use a Contractor approved tailgate and sideboards will be limited to those that protect the load area of the trailer.

1.2.6 Security of Debris During Hauling:

The Contractor shall be responsible for the security of debris on/in each vehicle or piece of equipment utilized to haul debris. Prior to leaving the loading site(s), the Contractor shall ensure that each load is secure and trimmed so that no debris extends horizontally beyond the bed of the equipment in any direction. All loose debris shall be reasonably compacted and secured during transport. The Contractor will survey the primary routes used by the Contractor and, as required, recover fallen or blown debris from the roadway(s).

1.2.7 Traffic Control:

The Contractor shall mitigate impact on local traffic conditions to all extents possible. The

Contractor is responsible for establishing and maintaining appropriate traffic control in accordance with the latest Manual of Uniform Traffic Control Devices. The Contractor shall provide sufficient signing, flagging and barricading to ensure the safety of vehicular and pedestrian traffic at all debris removal, reduction and/or disposal site(s).

1.2.8 Work Days/Hours:

The Contractor may conduct debris removal operations from sunup to sundown, seven days per week as directed by the **Town of Nags Head**. Adjustments to work days and/or work hours shall be as directed by the **Town of Nags Head** following consultation with and notification to the Contractor.

1.2.9 Hazardous and Industrial Wastes:

The Contractor shall set aside and reasonably protect all hazardous or industrial materials encountered during debris removal operations for collection and disposal in accordance with State and Federal Hazardous and Industrial Materials Cleanup and Disposal requirements. The **Town of Nags Head** shall contract with a firm specializing in the management and disposal of such materials and waste.

1.2.10 Stumps:

All stumps that are both hazardous and FEMA eligible debris and are identified by the **Town of Nags Head** will be pulled, loaded, transported, stored, reduced and disposed in accordance with FEMA standards. All such stumps with a diameter of 24 inches or smaller will be documented, invoiced and paid as cubic yard debris in accordance with FEMA Recovery Policy RP9523.11. All stumps with a diameter greater than 24 inches shall remain in place, unless otherwise directed by the Town of Nags Head representative, until FEMA has reviewed the existing conditions and supporting documentation in accordance with FEMA Recovery Policy RP9523.11.

1.2.11 Work Safety:

The Contractor shall provide and enforce a safe work environment as prescribed in the Occupational Safety and Health Act of 1970, as amended. The Contractor will provide such safety equipment, training and supervision as may be required by the **Town of Nags Head** and/or Government (as such term is defined in Section 5.1.0). The Contractor shall ensure that its subcontracts contain a similar safety provision.

1.2.12 Inspection and Testing:

All debris shall be subject to adequate inspection by the **Town of Nags Head** or any public authority in accordance with generally accepted standards to ensure compliance with the Contract and applicable federal, state and local laws. The **Town of Nags Head** will, at all times, have access to all work areas. In addition, authorized representatives and agents of the Government shall be permitted to inspect all work, materials, invoices and other relevant records and documentation.

1.2.13 Monitoring:

The **Town of Nags Head** may assign monitors (Monitors) at the load sites and, if applicable, the debris storage sites to oversee the Contractor's debris operations. Monitors shall verify all information on the load ticket and the Monitor's signature is required to have a valid load ticket.

1.2.14 Accountable Debris Load Tickets:

The **Town of Nags Head** shall accept the serialized copy of the Contractor's debris load ticket(s) as the certified, original source documents to account for the measurement and accumulation of the volume of debris delivered and processed at the reduction and/or disposal site(s). The ticketing system will also be used in the event of additional debris handling for volume reduction and/or the possible requirement for a debris transfer station(s). These tickets shall be used as the basis of any electronic generated billing and/or report(s). They should include the following

- Date
- Preprinted Number
- Hauler's name
- Truck number
- Truck capacity in cubic yards
- Load percentage full, as assigned by the **Town of Nags Head designated Monitor**
- Load amount in billable cubic yards
- Debris classification as burnable, non-burnable, mixed other
- Point of origin for debris collected and time loaded
- Dumpsite location and time dumped
- Monitor's signature

1.2.15 Reports:

The Contractor shall submit periodic, written reports to the **Town of Nags Head**, unless the provision of the applicable periodic report is waived by the **Town of Nags Head**, detailing the progress of debris removal and disposal. These reports may include, but not limited to:

- **Daily Reports:**
The daily reports may detail the location where passes for debris removal were conducted, the quantity of debris (by type) removed and disposed and the total number of personnel crews engaged in debris management operations. The Contractor will also report damages to private property caused by the debris operation or damage claims made by citizens and such other information as may be required to completely describe the daily conduct of the Contractor's operations.
- **Weekly Summaries:**
A summary of all information contained in the daily reports as set out in Daily Report of this Contract or in a format required by the **Town of Nags Head**.
- **Report(s) Delivery:**
The scheduling, point of delivery, and receiving personnel for the debris operations report(s) will be directed by the **Town of Nags Head** in consultation with the Contractor.
- **Final Project Closeout:**
Upon final inspection and/or closeout of the project by the **Town of Nags Head**, the Contractor shall prepare and submit a detailed description of all debris management activities to include, but not limited to the total volume, by type of debris hauled, reduced and/or disposed, plus the total cost of the project invoiced to the **Town of Nags Head**. If requested, any other additional information as may

be necessary to adequately document the conduct of the debris management operations for the Town of Nags Head and/or Government.

Additional Supporting Documentation:

The Contractor shall submit sufficient reports and/or documentation for debris loading, hauling, disposal, and load capacity measurements as may be required by the Town of Nags Head and/or Government to support requests for debris project reimbursement from external funding sources.

1.3.0 Right-of-Entry (ROE) Removal (if implemented by the Town of Nags Head):

The Contractor may be requested by the Town of Nags Head to remove ROE debris, debris located on private property, from private property with due diligence, as directed by the Town of Nags Head. The Contractor also agrees to make reasonable efforts to save from destruction items that the property owners wish to save, (i.e., trees, small buildings, etc.). The Contractor will exercise caution when working around public utilities (i.e., gas, water, electric, etc.). Every effort will be made to mark these utilities but the Town of Nags Head does not warrant that all utilities will be located before debris removal begins. The Town of Nags Head reserves the right to contract ROE clearing services with outside contractors as deemed necessary.

1.4.0 Demolition of Structures (if implemented by the Town of Nags Head):

The Contractor will remove structures designated for removal by and at the direction of the Town of Nags Head. The Contractor agrees to remove in a timely manner all structures as determined, in writing, by the Town of Nags Head and as set out in Section 1.0.1 of this Contract. The Town of Nags Head reserves the right to bid and contract structure demolition under separate contract with contractor or other contractors as deemed necessary.

1.5.0 Private Property Waivers:

The Town of Nags Head will secure all necessary permissions, waivers and right-of-entry agreements from property owners as prescribed by the Government for the removal of debris and/or demolition of structures from residential and/or commercial properties, as set out in Sections 1.3.0 and 1.4.0 above.

1.6.0 Disposal/ Temporary Debris Storage Sites (If Required)

The first part and last part of debris storage operations includes site setup/preparation and site closeout/restoration and, subject to the provisions of Section 1.1.0, may be compensated on a time and materials basis in accordance with the hourly rates provided in Addendum 1. Site set-up/preparation/closeout/restoration includes: clearing, stripping, hauling, fill placement, constructing/deconstructing processing pads, providing lime rock or crushed concrete access roads, and providing any other similar activity necessary to make the debris storage site usable for its intended purposes and to return the site to its original condition as directed by the Town of Nags Head.

The second part of debris storage operations shall consist of managing the operations of a debris storage site(s) and performing debris reduction by air curtain incineration and or grinding of storm generated debris as directed by the Town of Nags Head. The Contractor shall provide equipment, operators, and laborers for debris storage site operations as specified by Town of Nags Head. Unit prices provided in Addendum 1 shall include all labor and materials necessary to fully operate and maintain (including fuel, oil, grease, repairs, operator, mobilization, demobilization, overhead, profit, and insurance and security bonds) all equipment under this Contract. In addition, materials needed for Contractor's site

setup/preparation/closeout/restoration (including rental or construction of the Inspection Towers) are to be included in these unit rates. All rates shall include the cost of protective clothing (to include hardhats and steel-toed boots), fringe benefits, hand tools, supervision, transportation, and any other associated costs.

1.6.1 Types: (If Required)

The **Town of Nags Head** plans to use two (2) types of debris storage sites as needed. Vegetative debris storage sites will be primarily devoted to the reduction of clean woody debris by either burning or grinding. Mixed debris and Construction & Demolition (C&D) debris storage sites will be operated as transfer points. Mixed and C&D debris will be deposited at these sites and then reloaded for final transport to an authorized landfill. Material coming into the vegetative or C&D debris storage site(s) will be measured and paid for by a unit price measurement according to Addendum 1. Materials removed and transported from a C&D debris storage site(s) will be measured and paid by a unit price measurement according to rates found in Addendum 1 of this Contract.

1.6.2 Locations of debris management sites: (If Required)

Locations of all debris storage sites will be provided by the **Town of Nags Head**. The **Town of Nags Head** must approve (i) debris storage site improvement plan before site work can commence and (ii) any costs, other than those found in Addendum 1 of this Contract.

1.6.3 Contractor's Debris Site Management Plan: (If Required)

Once the debris storage site(s) is/are identified by the **Town of Nags Head**, the Contractor will prepare and provide a Site Management Plan for review and approval by the **Town of Nags Head** prior to beginning work.

A minimum of three (3) copies of the plan is required. The plan shall be drawn to a scale of 1" = 50' or greater and address following functions:

- Access to site
- Site management, to include point-of-contact, organizational chart, etc
- Site preparation, - clearing, erosion control, and grading
- Traffic control procedures
- Site Safety
- Site Security
- Site Layout/Segregation of debris
- Hazardous waste material plan
- Location of ash disposal area, hazardous material containment area, contractor work area, and inspection tower (if required)
- Location of incineration operations, grinding operation (if required). Note: All incineration and grinding operations shall be in accordance with Chapter 9 of , the "FEMA 325 Debris Management Guide – July 2007" (or the applicable section of an updated version of such guide), and with NC Division of Solid Waste and Air Quality Control.
- Location of existing structures or sensitive areas requiring protection
- Environmental mitigation plan, including consideration for smoke, dust, noise, traffic, buffer zones, storm water runoff
- All necessary licenses, permits, and fees for the same are the responsibility of the Contractor.

The Contractor shall provide all utilities and sanitation facilities, as required. The Contractor shall protect existing structures and natural resources at the site(s) and repair any damage caused by the Contractor's operations at no additional cost to the **Town of Nags Head** or any other Government entity.

1.6.4 Inspection Tower: (If Required)

The Contractor shall construct an inspection tower at each debris storage site as requested by the **Town of Nags Head**. The tower shall be constructed using pressure treated wood or metal scaffolding. The floor elevation of the tower shall be 10-feet above the existing ground elevation. The floor area shall be a minimum 8' by 8', constructed of 2"x 8" joists, 16" O.C. with 3/4" plywood supported by a minimum of four 6" x 6" posts. A 4-foot high wall constructed of 2" x 4" studs and 1/2" plywood shall protect the perimeter of the floor area. The floor area shall be covered with a roof. The roof shall provide a minimum of 6'-6" of headroom below the support beams. Steps with a handrail shall provide access to the tower. Tower shall be built in accordance with approved **Town of Nags Head** building standards and shall be inspected by the **Town of Nags Head** building inspector's office.

1.6.5 Household Hazardous Waste Issues: (If Required)

The Contractor will be required to construct a Household Hazardous Waste (HHW) containment area at each debris storage site. This containment area will be consisted of an earth berm with a non-permeable soil liner and 4" of sand. This area shall be 30' x 30'. The HHW containment area must be covered at all times with a non-permeable cover.

Any material found that is classified as HHW shall be reported immediately to the **Town of Nags Head**. This material shall be segregated from the remaining debris using a method that will allow the remaining non-HHW debris to be processed. All HHW debris will be moved and placed in the designated HHW containment area. Disposal of HHW debris will be by separate contract.

1.6.6 Contractor HHW Spills: (If Required)

The Contractor shall be responsible for reporting to the **Town of Nags Head** and cleaning up all HHW spills caused by the Contractor's operation at no additional cost to the **Town of Nags Head** or any other Governmental entity. Immediate containment action shall be taken as necessary to minimize effect of any spill or leak. Cleanup shall be in accordance with applicable federal, state, and local laws and regulations.

Spills other than those at the debris storage site shall be reported to the **Town of Nags Head** Representative and to the **Town of Nags Head** for this project immediately following discovery. A written follow-up shall be submitted to the **Town of Nags Head** coordinator not later than seven (7) days after the initial report. The written report shall be in narrative form and as a minimum shall include the following:

- Description of the material spilled (including identity, quantity, manifest number, etc.).
- Determination as to whether or not the amount spilled is EPA/state reportable, and when and to whom it was reported.
- Exact time and location and spill, including description of the area involved.
- Receiving stream or waters.
- Cause of incident and equipment and personnel involved.
- Injuries or property damage.
- Duration of discharge.

- Containment procedures initiated.
- Summary of all communication regarding the applicable spill that the Contractor has had with press, agencies, or Government officials other than the **Town of Nags Head**.
- Description of cleanup procedures employed or to be employed at the site, including disposal location of spill residue.

1.6.7 Operations Requirements:

The Contractor shall supervise and direct the Contractor's operations and work, using skilled labor and proper equipment for all tasks. Safety of the Contractor's personnel and equipment is the responsibility of the Contractor to include maintaining all OSHA safety records and inspections as may be required for this type of service. Additionally, the Contractor shall pay for all materials, personnel, taxes, and fees necessary to perform under the terms of this Contract.

The Contractor shall be responsible for control of pedestrian and vehicular traffic in and around the work area.

The Contractor shall be responsible for installing site security measures and maintaining security for the operation at the debris storage or work sites.

The Contractor shall be responsible for fire protection and shall manage the debris storage and work sites to minimize the risk of fire.

1.6.8 Contractor Temporary Debris Storage Site Foreman (if required):

The debris storage site foreman and/or night foreman is responsible for management of all operations of the debris storage site to include, traffic control, dumping operations, segregation of debris, burning, grinding, and safety. All night operations must be approved by the **Town of Nags Head**, which may be limited primarily to burning if approved by the appropriate authority.

The Contractor's debris storage site foreman will be responsible for monitoring and documenting equipment and labor time and providing the daily operational report to the **Town of Nags Head**.

1.6.9 Debris Storage Site Monitoring: (If Required)

The Contractor and the **Town of Nags Head's** Monitor will inspect each load to verify the contents are in accordance with the accepted definition of FEMA eligible debris as approved by the **Town of Nags Head**. If any load is determined to contain material that does not conform to the definition of FEMA eligible debris, the load will be ordered to be deposited at another landfill or receiving facility and no payment will be allowed for that load and the Contractor will not invoice the **Town of Nags Head** for such loads. The Contractor and the **Town of Nags Head's** Monitor will inspect each load to verify the volume of eligible debris that has been hauled to the debris storage site. The **Town of Nags Head's** Monitor will note on the load ticket the verified debris capacity hauled to the debris storage site. The **Town of Nags Head's** Monitor signature is required on all valid load tickets. If the Contractor is continually not in agreement with the **Town of Nags Head's** Monitor regarding inspections the Contractor should contact the **Town of Nags Head's**, and all unloading of debris should stop until an agreement can be reached.

1.6.10 Inspection and Testing of Debris Site Operations: (If Required)

All debris storage site operations shall be subject to inspections by the **Town of Nags Head** or any public authority in accordance with generally accepted standards to ensure compliance with

the Contract and applicable federal, state and local laws. The **Town of Nags Head** will, at all times, have access to all work areas. In addition, authorized representatives and agents of the Government shall be permitted to inspect all work, materials, invoices and other relevant records and documentation.

1.6.11 Reporting:

The Contractor shall submit a report to the **Town of Nags Head** by close of business each day of the term of the Contract. Each report shall contain, at a minimum, the following information:

Contractor's Name

Contract/Purchase Order Number

Daily and cumulative hours for each piece of equipment, if appropriate

Daily and cumulative hours for personnel, by position, if appropriate

Daily and cumulative totals of debris processed, to include method(s) of processing and disposal location(s)

Any problems encountered or anticipated

Failure to provide audit quality information will subject Contractor to non-payment in each instance at the sole discretion of the **Town of Nags Head**.

2.0 PERFORMANCE OF SERVICES

2.1 Description of Service:

The Contractor agrees to perform the contracted services in a professional and workmanlike manner and in compliance with all applicable laws, ordinances, rules, regulations and permits. Only the highest quality workmanship will be acceptable. Services, equipment and workmanship not conforming to the Contract documents or meeting the approval of the **Town of Nags Head** may be rejected. Replacements and/or rework, as required, will be accomplished at no additional cost to the **Town of Nags Head**.

2.2 Cost of Services:

The Contractor shall bear the costs of performing all contracted services hereunder, as directed by the **Town of Nags Head**, including but not limited to those services which are set out in Section 1.0, plus applicable permit and license fees and all maintenance costs required to maintain its vehicles and other equipment in a condition and manner adequate to accomplish and sustain all contracted services as set out in this Contract.

2.3 Matters Related to Performance:

2.3.1 Subcontractor(s):

The Contractor may utilize the service of subcontractors and shall be responsible for the acts or omissions of its subcontractors to the same extent the Contractor is responsible for the acts and omissions of its employees. Prior to the Contractor engaging any subcontractors, the Contractor and Town of Nags Head shall agree on the percentage of work that the Contractor may perform by subcontract and a list of eligible subcontractors, and the Contractor shall then submit a subcontract plan including a clear description of the percentage of the work the contractor may subcontract out and a list of the eligible subcontractors. The Contractor shall ensure that all its subcontracts enter into contracts with its subcontractors that have and carry the same major provisions of this Contract and that the work of their subcontractors is subject to said provisions. Nothing contained in this Contract shall create any contractual relationship between any

subcontractor and the **Town of Nags Head**. The Contractor shall supply the names and addresses of subcontractors for approval and materials suppliers when requested to do so by the **Town of Nags Head**. The Contractor will be expected to use fully qualified and properly equipped local firms, including Minority/Women Business Enterprises, to maximum extent practicable.

2.3.2 Indemnification:

The Contractor agrees to indemnify, hold harmless and defend the **Town of Nags Head** from and against any and all liabilities, suits, actions, legal proceedings, claims demands, damages, costs and expenses (including attorney's fees) rising out of any act or omission of the Contractor, its agents, subcontractors or employees in the performance of this Contract.

2.3.3 Insurance(s):

The Contractor agrees to keep the following Insurance in full force and effective during the term of this Contract. The Contractor must also name the **Town of Nags Head**, as additional insured, while working within the boundaries of the **Town of Nags Head**.

SAMPLE

2.3.4 Worker's Compensation:

This coverage is required if the Contractor employs individuals on either a full or part-time basis to perform the contracted services.

Minimum \$1,000,000 Coverage Amount

2.3.5 Automobile Liability:

Bodily Injury \$1,000,000 each person \$1,000,000 each accident
Property Damage \$1,000,000 each accident

2.3.6 Comprehensive General Liability:

Bodily Injury \$1,000,000 each person \$1,000,000 aggregate
Property Damage \$1,000,000 each accident \$1,000,000 aggregate

2.3.7 Insurance Cancellation / Renewal:

The Contractor will notify the Town of Nags Head at least thirty (30) days in advance of cancellation, non-renewal or adverse change to the required insurance. New certificates of insurance are to be provided to the Town of Nags Head at least ten (10) days following coverage renewals or changes.

3.0 STANDARDS OF PERFORMANCE

3.1 Contractor Representative:

The Contractor shall have a knowledgeable and responsible "Representative" report to the Town of Nags Head's designated representative within 24 hours following the execution of this Contract. The Contractor Representative shall have the authority to implement all actions required to begin the performance of contracted services as set out in this Contract and the Contractor's general operations plan.

3.2 Mobilization:

When the written Notice to Proceed, issued pursuant to Section 4.2, has been received by the Contractor and/or the on-site Contractor Representative, he/she will make all necessary arrangements to mobilize a minimum of 50% of the required resources within 24 hours and 100% of the required resources within 48 hours to commence and conduct these contracted services.

3.3 Time to Complete:

The Contractor shall complete all directed work as set out in Section 1.0 of this Contract. A completion date will be determined once the extent of damage has been determined and a time frame will be put in place to be followed.

3.4 Completion of Work:

Subject to the provisions of this Contract, the Contractor shall be responsible for removal of debris up to the point where remaining debris can only be described as storm litter and additional collection can only be accomplished by the use of hand labor.

3.5 Extensions (optional):

Time is of the essence with regard to the mobilization and the completion of the services to be provided pursuant to this Contract. The commencement of contracted services will be as set out in Section 3.2. If the completion of this Contract is delayed by actions of the **Town of Nags Head**, then and in such event the time of completion of this Contract shall be extended for such additional time within which to complete the performance of the Contract as is required by such delay. This Contract may be extended by mutual consent of both the **Town of Nags Head** and the Contractor to allow for additional time, additional services and/or additional areas of work.

3.6 Term of Contract:

The term of the Contract shall be for one (1) year beginning on the date of acceptance by and signatures of the **Town of Nags Head** and Contractor, whichever comes later, with an option for (2) additional (1) year extensions, as determined by the Town of Nags Head.

3.7 Contract Termination:

This Agreement may be terminated by the Contractor upon sixty (60) days prior written notice to the **Town of Nags Head** in the event of substantial failure by the **Town of Nags Head** to perform in accordance with the terms of the Agreement through no fault of the Contractor. It may also be terminated, in whole or in part, by the **Town of Nags Head** with or without cause immediately upon written notice to the Contractor. Unless the Contractor is in breach of this Agreement, the Contractor shall be paid for services rendered to the **Town of Nags Head's** satisfaction through the date of termination. After receipt of a termination notice and except as otherwise directed by the **Town of Nags Head**, the Contractor shall:

- a) Stop work on the date and to the extent specified.
- b) Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- c) Transfer all work in process, completed work, and other material related to the terminated work to the **Town of Nags Head**.
- d) Continue and complete all parts of the work that have not been terminated.

4.0 GENERAL RESPONSIBILITIES

4.1 Other Agreements:

The **Town of Nags Head** may be required to enter into agreements with Federal and/or State or County agencies for disaster relief. The Contractor shall be bound by the terms and conditions of such agreements.

4.2 Town of Nags Head Obligations:

The **Town of Nags Head** shall furnish all information and documents necessary for the commencement of contracted services, to include a valid written "Notice To Proceed", and services under this Agreement shall not begin until the issuance of such Notice to Proceed. Said Notice To Proceed shall contain a time limit as to when the Contractor shall complete the applicable work and shall contain a maximum payment amount (i.e. a total non-to-exceed ceiling price) for services performed or to be performed on a on time and materials basis, if any, which

time and materials work shall be subject to the provisions of Section 1.1.0. A representative will be designated by the **Town of Nags Head** to be the primary point of contact for inspecting the work and answering any on site questions prior to and after activation of this Contract via a written "Notice To Proceed". The **Town of Nags Head** is responsible for issuing all Public Service Announcements (PSA) to advise citizens and agencies of the available debris services. The Contractor may assist the **Town of Nags Head** with the development of debris-based PSA(s), if requested.

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

4.3 Conduct of Work:

The Contractor shall be responsible for planning and conducting all operations in a satisfactory workmanship manner. The Contractor shall exhibit respect for the citizens and their individual private properties. All operations shall be conducted under the review of the **Town of Nags Head**. The Contractor shall have and require strict compliance with a written Code of Ethics.

4.4 Supervision:

The Contractor will supervise and/or direct all contracted services. The Contractor is solely responsible for the means, methods, techniques, safety program and procedures. The Contractor will employ and maintain on each work site a qualified supervisor who shall have full authority to act on behalf of the Contractor and all communications given to the said supervisor by the **Town of Nags Head** shall be as binding as if given to the Contractor.

4.5 Damages:

The Contractor shall be responsible for conducting operations in such a manner as to cause the minimum damage possible to existing public, private and commercial property and/or infrastructure. Contractor shall also be responsible for any damages due to the negligence of its employees and subcontractors.

4.6 Other Contractor(s):

The Contractor shall acknowledge the presence of other contractors involved in disaster response and recovery activities by the federal, state and local Government and of any private utility, and shall not interfere with their work.

4.7 Ownership of Debris (optional):

Except as otherwise provided herein, all debris, including regulated hazardous waste, that the

Contractor removes pursuant to the provisions of this Contract shall, to the extent the **Town of Nags Head** has rights in the said debris, become the property of the Contractor for removal and lawful disposal purposes. The debris may consist of, but not limited to vegetative, construction and demolition, discarded household appliances (white goods), and household solid waste. Disposal plans of this debris must still be given to the **Town of Nags Head** and all debris must be disposed of in accordance with all applicable laws.

5.0 GENERAL TERMS AND CONDITIONS

The Contractor shall, to every extent possible, give priority to utilizing resources within the **Town of Nags Head**. Such local preferences will include, but not be limited to, procurement of services, supplies and equipment, plus awarding service subcontracts and employment to the local work force.

5.1.0 Other Agencies:

The term "Government" as used in this Contract refers to those governmental agencies, which may have a regulatory or funding interest in this Contract.

5.2.0 Cost, Prices, and Payments:

5.2.1 Price for Emergency Push / Road Clearance:

The Contractor will invoice the Town of Nags Head and be paid for this contracted service in accordance with the rates as set out in Addendum 1.

5.2.2 Unit Price for Debris:

The unit price per cubic yard includes all costs for mobilization, loading, transportation, storage, reduction, disposal, overall project management and de-mobilization (plus ROE site work, if applicable) as directed by the Town of Nags Head in accordance with the rates as set out in the Addendum 1.

5.2.3 Billing Cycle:

The Contractor shall invoice the Town of Nags Head on a 30 day basis reflecting the close of business on the last working day of the billing period. Serialized debris reporting tickets and disposal site verification of the actual cubic yardage for each load of debris or itemized stumps will support all invoices.

5.2.4 Payment & Performance Bond:

As security for faithful performance of this Contract and simultaneously with his delivery of the executed contract, the Contractor shall furnish the Town of Nags Head an executed bond in the amount of **\$40,000**, as security for faithful performance of the Contract in accordance with the plans, specifications, and conditions of the Contract.

A payment bond in the amount of **\$40,000**, conditioned upon the prompt payment for all labor or materials for which a contractor or subcontractor is liable, is also required.

The performance bond and the payment bond shall be executed by one or more surety companies legally authorized to do business in the State of North Carolina and shall become effective upon the execution of the Contract. The Town of Nags Head may increase the amount of each of the said performance bond and the payment bond if, in the Town of Nags Head's reasonable discretion, the Contract amount will exceed, or is reasonably likely to exceed, \$40,000. The Contractor agrees to promptly provide any such increased bond amounts, the provision of which may be required before the issuance of any Notice To Proceed.

5.2.5 Payment Responsibility:

The Town of Nags Head agrees to accept the Contractor's invoice(s) and supporting documentation as set out in this Contract and process said invoices for payment promptly. The Town of Nags Head will advise the Contractor of receiving any debris service invoice that requires additional information for approval to process for payment.

5.2.6 Tipping Fees:

All tipping fees paid by the Contractor will be reimbursed at cost to the Contractor by the Town of Nags Head upon submittal of receipts in the billing period as stated as set out in Sections 5.2.3 and 5.2.5 above. These fees should not be reflected in the unit price(s) of this Contract.

5.2.7 Ineligible Work:

The Contractor will not be paid for the removal, transportation, storage, reduction and/or

disposal of any material or stumps as may be determined by the **Town of Nags Head** and/or Government as ineligible debris.

SAMPLE

5.2.8 Price/Service Negotiations:

Unknown and/or unforeseen events or conditions may require an adjustment to the stated prices of this Contract, which adjustments shall be agreed to in writing by the Contractor and the **Town of Nags Head** before they become effective. Any amendments, extensions or changes to the scope of contracted services or prices are subject to full negotiation(s) between the **Town of Nags Head** and the Contractor and subject to the review and, if applicable, approval of the Government. Any amendments, extensions or changes to this Contract shall be put in writing, signed by both parties, and dated, before it becomes effective.

5.2.9 Specialized Services:

The Contractor may invoice the **Town of Nags Head** for costs incurred to mobilize and demobilize specialized equipment required to perform services in addition to those specified under Section 1.0 of this Contract. Additional specialized services will only be performed if/when directed by the **Town of Nags Head**. The rate for specialized mobilization and demobilization shall be fair and reasonable as determined by the **Town of Nags Head**. Specialized equipment and specialized mobilization and demobilization rates shall not apply for equipment that is listed on Addendum 1.

5.2.10 Confidentiality:

No reports, information, computer programs, documentation, and/or data given to, or prepared or assembled by the Contractor under this Agreement shall be made available to any individual or organization by the Contractor without prior written approval of the **Town of Nags Head**.

5.2.11 Dispute Resolution:

The Town and Contractor shall attempt to resolve conflicts or disputes under this Agreement in a fair and reasonable manner and agree that if an informal resolution cannot be achieved to attempt to mediate the conflict by a professional mediator. If mediation does not settle any dispute or action which arises under this Agreement or which relates in any way to this Agreement or the subject matter of this Agreement within ninety (90) days after either requests mediation, then either party may file such action or actions as it deems appropriate to protect its interests.

6.0 MISCELLANEOUS

6.1 Notice:

Whenever in this Contract it is necessary to give notice or demand by either party to the other, such notice or demand shall be given in writing and forwarded by certified or registered mail and addressed to the address set forth below the parties respective signatures.

Contractor

Town of Nags Head

P.O. Box 99

Nags Head, NC 27959

6.2 Applicable Law:

The laws of the State of North Carolina shall govern this Contract.

6.3 Entire Contract:

This Contract (including any schedules or exhibits attached hereto) constitutes the entire Contract and understanding between the parties with respect to the matters contained herein. This Contract supersedes any prior contracts and/or understandings relating to the subject matter hereof. This Contract may be modified, amended or extended by a written instrument executed by both parties.

6.4 Waiver:

In the event one of the parties waives a default by the other, such a waiver shall not be construed or deemed to be a continuing waiver of any subsequent breach or default of the other provisions of this Contract, by either party.

6.5 Severability:

If any provision of this Contract is deemed or becomes invalid, illegal or unenforceable under the applicable laws or regulations of any jurisdiction, such provision will be deemed amended to the extent necessary to conform to applicable laws or regulations. If it cannot be so amended without materially altering the intention of the parties, it will be stricken and the remainder of this Contract will remain in full force and effect.

6.6 Non-Assignment:

Except as may explicitly provided in this Contract, assignment of this Contract or of the Contractor's obligations under this Contract shall not occur without the prior written consent of the **Town of Nags Head**.

IN WITNESS WHEREOF, the Contractor has caused this Contract to be signed in its corporate name by its authorized representative and the **Town of Nags Head** has caused this Contract to be signed in its legal corporate name by persons authorized to execute said Contract as of the day and year first written above on page one

CONTRACTOR:

TOWN OF NAGS HEAD NAME:

BY: _____

BY: _____

Title: _____

Title: _____

ATTEST:

ATTEST:

Name – Title

Name – Title

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

For the Contractor :

For the Town:

David Ryan, P.E.
Town of Nags Head Department of Public Works
P.O. Box 99
Nags Head, NC 27959

