

Between _____ and _____

This is a non-exclusive contract **Agreement** effective as of _____, 2018 between *Town of Summerville* [CLIENT], having its principal office at 200 South Main Street and _____ [CONSULTANT], having its principal place of business at _____.

The CLIENT requires the services of a qualified firm to perform certain professional services for the CLIENT's projects at various locations.

The CLIENT intends to engage CONSULTANT to perform certain professional services related to disaster debris monitoring and Public Assistance support services.

The Assignment will have the following characteristics: On an as-needed basis, the CLIENT will issue Task Orders to CONSULTANT describing the work required under this Agreement. In response, CONSULTANT will prepare a scope of work and cost estimate which shall become part of the Task Order upon execution by both parties.

In consideration of the mutual promises herein, CONSULTANT and the CLIENT agree that the terms and conditions of this Agreement are the following:

1. BASIC SERVICES

Scope. CONSULTANT shall provide the Basic Services as described in individual Task Orders authorized in writing by the CLIENT. A sample Task Order form is provided in Schedule A. The Task Order format may be modified from time to time. CONSULTANT's obligations under this Agreement are solely for the benefit of the CLIENT and no other party is intended to benefit or have rights hereunder.

- 1.1. **Standard of Care.** CONSULTANT shall perform the professional services under this Agreement at the level customary for competent and prudent professionals performing such services at the time and place where the services are provided [**Standard of Care**]. These services will be provided by CONSULTANT's debris management professionals and other professionals and individuals skilled in other technical disciplines, as appropriate.
- 1.2. **Instruments of Service.** CONSULTANT is responsible for the professional quality, technical accuracy, timely completion, and the coordination of all instruments of its services including designs, drawings, specifications, reports [collectively called **Service Instruments**] and other services provided under this Agreement.
- 1.3. **End-Users Software License.** RESERVED
- 1.4. **Applicable Codes.** The Service Instruments will conform to the generally accepted codes and regulations applicable to the Project at the time of performance.
- 1.5. **Subcontractors.** Any subcontractors and outside associates of CONSULTANT to be engaged by CONSULTANT under this Agreement are limited to those identified in executed Task Orders or as the CLIENT specifically approves during the performance of a Task Order.
- 1.6. **Title to Hazardous Materials.** The CLIENT and CONSULTANT agree that title to all types of hazardous or toxic wastes, materials, or substances originating at or removed from the Site will remain with the CLIENT.
- 1.7. **Transportation or Disposal of Hazardous Materials.** The CLIENT further agrees that, if this Agreement requires the containerization, transportation, or disposal of any hazardous or toxic wastes, materials or substances, CONSULTANT is not, and has no authority to act as a generator, arranger, transporter, or disposer of any hazardous or toxic wastes, materials or substances that may be found or identified on, at, or around CLIENT's premises. In this regard, the CLIENT and CONSULTANT agree as follows:
 - 1.7.1. CONSULTANT may assist the CLIENT in obtaining the services of licensed hazardous materials contractors for the transportation and disposal of all hazardous or toxic wastes, materials or substances. CONSULTANT shall not contract directly for these services.
 - 1.7.2. It is understood by both the CLIENT and CONSULTANT that the CLIENT will provide all required hazardous or toxic wastes, materials or substance generator numbers, signed manifests, storage and treatment permits, and any

permits or licenses required by local, state, or federal laws or regulations for the generation, transportation, storage, treatment and/or disposal of any hazardous or toxic wastes, materials or substances.

2. ADDITIONAL SERVICES

- 2.1. **Scope.** CONSULTANT will provide the **Additional Services** when authorized by the CLIENT in writing in a Task Order or amendment to a Task Order.

3. THE CLIENT'S RESPONSIBILITIES

Unless stated otherwise in Section 8 or in individual Task Orders, the CLIENT shall do the following in a timely manner:

- 3.1. **The CLIENT's Representative.** The CLIENT will designate a representative having authority to give instructions, receive information, define the CLIENT's policies, and make decisions with respect to individual Task Orders.
- 3.2. **Project Criteria.** Provide criteria and information as to the CLIENT's requirements for a Task Order, including design objectives and constraints, space, capacity, scope of work, task assignments, and performance requirements, and any budgetary limitations to the extent known to the CLIENT.
- 3.3. **Data.** Provide all available information, including previous reports and any other data in the possession of the CLIENT relevant to a Task Order.
- 3.4. **Access.** Arrange for CONSULTANT to enter upon public property as mandated by the CLIENT.
- 3.5. **Review.** Respond to CONSULTANT's request for decisions or determinations.
- 3.6. **Meetings.** Hold or arrange to hold meetings required to assist in the work required by a Task Order.
- 3.7. **Project Developments.** Give prompt written notice to CONSULTANT whenever the CLIENT observes or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT's services.

4. PERIODS OF SERVICE

- 4.1. **Time of Performance.** Sections 4 and 5 anticipate the orderly and continuous progress of Task Orders through completion of each Task Order's scope of work.
- 4.2. **Start of Performance.** CONSULTANT will start the Services described in each Task Order upon authorization by the CLIENT. If the CLIENT gives authorization before signing a Task Order, CONSULTANT shall be paid as if the services had been performed after both parties signed the Task Order. Task orders will only be valid if signed by the CLIENT's authorized representative.
- 4.3. **Force Majeure.** If a force, event, or circumstance beyond CONSULTANT's or the CLIENT'S control interrupts or delays CONSULTANT's performance, the time of performance shall be equitably adjusted.
- 4.4. **Term.** This Agreement shall be in effect for three (3) years from date of execution, with an option for two (2) two (2) year renewals.

5. COMPENSATION

- 5.1. **CONSULTANT Services.** Based upon the Scope of Services provided for in each Task Order issued pursuant to the Agreement and Fee Schedule (Schedule B), the CLIENT shall pay CONSULTANT the amount stated in invoices issued for and in accordance with each Task Order for actual work performed and reimbursable expenses incurred during the period covered by the invoice. Invoices are payable by the CLIENT within 30 days after receipt of invoice.

6. OPINIONS OF CONSTRUCTION COST

- 6.1. **Construction Cost.** If required by this Subcontract, opinions related to cost given by CONSULTANT are subject to the following. CONSULTANT has no control over the cost of labor, materials, equipment or services furnished by others, or over a Contractor's or disposal site methods of determining prices, or over competitive bidding or market conditions. CONSULTANT's opinion of probable cost is made on the basis of CONSULTANT's experience and qualifications and represents CONSULTANT's judgment as an experienced and qualified professional firm, familiar with the disaster recovery industry. CONSULTANT does not guarantee that proposals, bids or actual project cost will not vary from CONSULTANT's opinions of probable cost.

7. GENERAL CONSIDERATIONS

- 7.1. **Changes.** By written and/or electronic notice at any time, the CLIENT may change Services required by a Task Order, provided such changes are within the general scope of the services contemplated by this Agreement. In such event, an equitable adjustment both in the compensation for and time of performance of the adjusted Task Order shall be made in writing prior to CONSULTANT performing the changed services. Such changes can only be required by the CLIENT's authorized representative.
- 7.2. **Confidentiality and Proprietary Information.** CONSULTANT will hold secret and confidential all information designated by the CLIENT as confidential [**Confidential Information**]. CONSULTANT will not reveal Confidential Information to a third party unless:
- 7.2.1. the CLIENT consents in writing;
 - 7.2.2. the information is or becomes part of the public domain;
 - 7.2.3. applicable law, regulation, court order or an agency of competent jurisdiction requires its disclosure; or
 - 7.2.4. failure to disclose the information would pose an imminent and substantial threat to human health or the environment.
- 7.2.5 All drawings, specifications, technical information, and other information furnished to CLIENT by CONSULTANT or developed by CONSULTANT in connection with the work are, and will remain, the property the CLIENT.
- 7.3 **Disputes.** If a dispute or complaint [**Dispute**] arises concerning this Agreement, the CLIENT and CONSULTANT will negotiate a resolution of the Dispute. Should negotiation be unsuccessful, mediation of the Dispute by a third party shall follow. Any time which elapses in attempting to resolve the Dispute through either or both negotiation or mediation shall extend day-for-day any applicable statute(s) of repose or limitation of actions.
- 7.3.1 **Negotiation.** Following written notice of a Dispute, a minimum of one face-to-face meeting (or less if the Dispute is resolved) shall be held.
 - 7.3.2 **Mediation.** If negotiation is unsuccessful, a mutually acceptable third party [**Facilitator**] having expertise in the subject of the Dispute shall be engaged to mediate the Dispute. The fee and expenses of the Facilitator shall be shared equally by the parties to the Dispute. The parties may present evidence and arguments to the Facilitator. Unless the Facilitator and the parties agree otherwise, a minimum of one face-to-face meeting shall be held within the sixty day period beginning on the date of the Facilitator's engagement.
 - 7.3.3 Following the meeting or earlier if appropriate, the Facilitator shall report to the parties whether he believes the Dispute is resolvable through mediation. At that point the parties shall elect (a) to continue mediation, (b) replace the Facilitator and continue mediation, or (c) end mediation. If the mediation is ended, the parties may litigate the Dispute.
- 7.4 **Insurance.** CONSULTANT will maintain **insurance** against the following risks during the term of the Agreement:
- 7.4.1 workers compensation in statutory amounts and employer's liability for CONSULTANT's employees' project-related injuries or disease;
 - 7.4.2 general liability and automobile liability each in the amount of \$1,000,000 for personal injury or property damage to third parties which arises from CONSULTANT's performance under this Agreement; and
 - 7.4.3 professional liability in the amount of \$1,000,000 for legal obligations arising out of CONSULTANT's failure to meet the Standard of Care.
- 7.5 **Indemnification.**
- 7.5.1 CONSULTANT hereby agrees to indemnify and hold the CLIENT harmless from and against any and all losses, damages, settlements, costs, charges, or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind and character arising out of the negligent acts, errors, or omissions of CONSULTANT or others for whose acts CONSULTANT is responsible under this Agreement.

- 7.5.2 The CLIENT hereby agrees to indemnify and hold CONSULTANT harmless from and against any and all losses, damages, settlements, costs, charges, or other expenses or liabilities of every kind and character arising out of or relating to any and all third party claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind and character arising from performance of the CLIENT of its obligations under this Agreement, and the performance hereunder of its employees, agents or others for whose acts the CLIENT is responsible under this Agreement.
- 7.6 **Limitation of Liability.** Notwithstanding any other provision of this Agreement and to the fullest extent permitted by law the parties agree that neither the CLIENT nor CONSULTANT shall be liable to each other for any special, indirect or consequential damages, whether caused or alleged to be caused by negligence, strict liability, breach of contract or warranty under this Agreement. Except for amounts for which indemnification is given by CONSULTANT hereunder, in no event will CONSULTANT's liability to the CLIENT, whether in contract, tort or any other theory of liability, exceed CONSULTANT's fees for services from which the liability arises.
- 7.7 **Reserved.**
- 7.8 **Interpretation.** This Agreement shall be interpreted in accordance with the laws of Texas.
- 7.9 **Successors.** This Agreement is binding on the successors and assigns of the CLIENT and CONSULTANT. The Agreement may not be assigned in whole or in part to any third parties without the written consent of the CLIENT.
- 7.10 **Independent Contractor.** CONSULTANT represents that it is an independent contractor and is not an employee of the CLIENT.
- 7.11 **Notices.** Written notices may be delivered in person or by certified mail, or by facsimile, or by courier or by email. All notices shall be effective upon the date of receipt by the party.
- 7.12 **Entire Agreement.** This Agreement, including Schedules, Attachments, and Task Orders executed pursuant to this Agreement, is the entire agreement between the CLIENT and the CONSULTANT. Any prior or contemporaneous agreements, promises, negotiations or representations not expressly stated herein are of no force and effect. Any changes to this Agreement shall be in writing and signed by the CLIENT and CONSULTANT.
- 7.13 **Waivers and Severability.** A waiver or breach of any term, condition, or covenant by a party shall not constitute a waiver or breach of any other term, condition or covenant. If any court of competent jurisdiction declares a provision of this Agreement invalid, illegal, or otherwise unenforceable, the remaining provisions of the Agreement shall remain in full force and effect.
- 7.14 **Termination.** This Agreement may be terminated by either Party at will and without cause, at any time upon three (3) days prior written notice to the other Party, and shall remain in force until so terminated. All information, data, materials, software and any other materials provided to the Party must be returned to the other Party upon termination of the Agreement.
- 7.15 **Effective Date.** This Agreement is effective on the date shown on the cover page.

8 SPECIAL PROVISIONS, EXHIBITS and SCHEDULES

- 8.1 **Special Provisions.** This Agreement is subject to the following special provisions:

Duties and Responsibilities of CONSULTANT. CONSULTANT or its representatives may be on site during the various stages of the work to observe the progress and quality of the work and to determine, in general, if the work is proceeding in accordance with the intent of the Agreement. Visits and observations made by CONSULTANT will not relieve other contractors of their obligation to conduct comprehensive inspections of the work, to furnish materials, to perform acceptable work, and to provide adequate safety precautions.

Limitations of CONSULTANT's Responsibilities. CONSULTANT will not be responsible for other contractors' means, methods, techniques, sequences or procedures of the work, or the safety precautions, including compliance with the programs incident thereto. CONSULTANT will not be responsible for contractors' or their subcontractor's failure to perform the work in accordance with their contract with the CLIENT or any other agreement. CONSULTANT will not be responsible for the acts or omissions of contractors, their subcontractors or any other

Between _____ and _____

contractors, or any of its or their agents or employees or any other persons at the site or otherwise performing any of the work.

8.2 **Schedules.** The following **Schedules** are attached to and made a part of this Agreement:

8.2.1 **Schedule A** Sample Task Order Form

8.2.2 **Schedule B** Fee Schedule

8.2.3 **Schedule C** CONSULTANT Proposal

8.2.4 **Schedule D** CLIENT RFP

Execution Authority. This Agreement is a valid and authorized undertaking of the CLIENT and CONSULTANT. The representatives of the CLIENT and CONSULTANT who have signed below have been authorized to do so.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year shown on the cover page.

[CLIENT]

CONSULTANT

By _____

By _____

Title _____

Title _____

Witness _____

Witness _____

Schedule A

SAMPLE

PROFESSIONAL SERVICES TASK ORDER

SAMPLE

Project Number--Task Order Number: _____ -- _____

Task Order Date: _____

Subject to the Agreement between the CLIENT [the CLIENT] and _____ [CONSULTANT], effective _____, _____, 2017 the CLIENT hereby authorizes CONSULTANT to perform services as specified in this Task Order and in accordance with the above mentioned Agreement.

1. Basic Project Information.

Project Name: _____

Project Number: _____

Project Location: _____

CLIENT Representative: _____

CONSULTANT Representative: _____

2. Scope of Services: CONSULTANT shall perform its Basic and Optional Services as described in Attachment 1, Scope of Services, attached and incorporated into this Task Order.

3. Period of Service: The period of service shall be: _____.

4. Compensation: CONSULTANT's compensation under this Task Order, which shall not be exceeded without prior written authorization of the CLIENT, is \$ _____

5. This Task Order's Pricing Schedule is incorporated and attached as Attachment 2.

6. Special Conditions: This Task Order is subject to the special terms and conditions as described in Attachment 3, attached and incorporated into this Task Order.

7. Amendment: [_____] This Task Order amends a previously executed Task Order No. _____, Date _____

8. (Reserved)

ISSUED AND AUTHORIZED BY:

[CLIENT]

ACCEPTED AND AGREED TO BY:

CONSULTANT

By: _____ SAMPLE _____

By: _____ SAMPLE _____

Title: _____

Title: _____

SAMPLE

SAMPLE

PROFESSIONAL SERVICES TASK ORDER

Task Order Number: _____

PROFESSIONAL SERVICES TASK ORDER

Task Order Number: _____

Attachment 1
Scope of Services

PROFESSIONAL SERVICES TASK ORDER

Task Order Number: _____

Attachment 2
Fee Schedule

PROFESSIONAL SERVICES TASK ORDER

Task Order Number: _____

Attachment 3
Special Conditions

Schedule B: Fee Schedule

[INSERT PROPOSAL Fee Schedule]

Schedule C: CONSULTANT RFP

Schedule D: CLIENT RFP