



**REQUEST FOR PROPOSALS (RFP) #:  
2016-17-001  
for  
*FEMA Grant Program Services*  
DUE: 2:00 p.m., EST on  
December 9, 2016**

*Prepared by:  
The Town of Surfside Beach  
115 Highway 17 North  
Surfside Beach, SC 29575*

*Requests for information regarding this Request for Proposals should be directed to the Director of Public Works.*

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ADVERTISEMENT

**THE TOWN OF SURFSIDE BEACH, COUNTY OF HORRY**

The Town of Surfside Beach is seeking proposals for **FEMA Grant Program Services**, to be performed on an as needed basis. Proposals must be received by the Town of Surfside Beach, Bid Coordinator, Joseph Smith, 115 Highway 17 North, Surfside Beach, South Carolina 29575 no later than 2:00 p.m., local time on December 9, 2016. Any proposal received later than the specified time and date will NOT be accepted or considered. No facsimile, email, or telephone proposals will be accepted. Submitted Proposals shall contain all information requested and be submitted in the format shown within the solicitation document. Proposals MUST be sealed and clearly identify the name and number of the RFP on the outside of the envelope/package, as well as the Proposer's business name, address, and license number (if applicable).

It is anticipated that any services performed under the resulting contract from this solicitation may be funded under a federal grant such as a Federal Emergency Management Agency (FEMA) grant; therefore, all rules and regulations related to the funding source apply.

**The Town of Surfside Beach**, in accordance with the provisions of **ALL TITLES** of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

The solicitation (RFP) document can be accessed from the Town's website by visiting <http://www.surfsidebeach.org/bids>.

**Contact Information for this Project:**

**John Adair**

**[jadair@surfsidebeach.org](mailto:jadair@surfsidebeach.org)**

**843.913.6361**

## A. INSTRUCTIONS TO PROPOSERS

### I. **General:**

This solicitation will be conducted in accordance with The Town of Surfside Beach Procurement Code and Regulation. This ordinance can be found in its entirety on the Town's Municode website at:

[https://www.municode.com/library/sc/surfside\\_beach/codes/code\\_of\\_ordinances?nodeId=VOLI COOR\\_CH2AD\\_ARTVIFI\\_DIV2BIADPRPR](https://www.municode.com/library/sc/surfside_beach/codes/code_of_ordinances?nodeId=VOLI COOR_CH2AD_ARTVIFI_DIV2BIADPRPR).

The Town of Surfside Beach hereby notifies all those responding to this RFP that, in accordance with the provisions of the Civil Rights Act of 1964 (4 Chapter 21, Title 42, of the U.S. Code) and Regulations promulgated in connection therewith, that it will affirmatively ensure that any contract entered into pursuant to this RFP, disadvantaged business enterprises will be afforded full and fair opportunity to make submittals in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

### II. **Submitting a Proposal:**

Sealed Proposals must be received by the Town of Surfside Beach, Bid Coordinator, Joseph Smith at 115 Highway 17 North, Surfside Beach, South Carolina 29575 no later than 2:00 p.m., local time on December 9, 2016. Any proposal received later than the specified time and date will be considered a "Late Proposal" and will not be accepted or considered. No facsimile, email, or telephone proposals will be accepted. Submitted proposals shall contain all information requested and shall be submitted in the format shown within this solicitation document. Proposals must be sealed and clearly identify the name and number of the RFP on the outside of the envelope/package, as well as the Proposer's business name, address, and license number (if applicable). No other information shall be included or written on the outside of the proposal envelope/package. The Town of Surfside Beach shall not be responsible for unidentified proposals.

### III. **Examination of RFP Document:**

Prior to submitting a proposal, each Proposer shall carefully examine the RFP documents, study and thoroughly familiarize themselves with the requirements thereof and notify the Owner of any and all conflicts, errors, or discrepancies.

The proposal shall remain firm for no less than one hundred twenty (120) calendar days from the date of proposal.

By submission of this proposal, the Proposer guarantees that all goods and services meet the requirements of this solicitation.

### IV. **Questions:**

Submit written questions to Mr. John Adair via email at [jadair@surfsidebeach.org](mailto:jadair@surfsidebeach.org). All questions related to this Request for Proposals must clearly identify the name and number of the RFP. The deadline for questions is 2:00 p.m., local time, on December 1, 2016.

Questions will be answered and the responses to inquiries shall be in the form of an Addendum. If it becomes necessary to revise any part of this RFP, revisions will be made in writing in the form of an addendum. All addenda will be posted on the Town of Surfside Beach website. All addenda issued by The Town of Surfside Beach must be acknowledged in writing by the Proposer. It shall be the Proposer's responsibility to ensure they have all addenda which have been issued, by

visiting the Town's website at <http://www.surfsidebeach.org/bids>. Verbal information obtained otherwise will not be considered in the awarding of the RFP.

**V. Licenses:**

All Proposers must be properly licensed to do business in the State of South Carolina and must comply with the Code of Laws of South Carolina. The Proposer's company does not need to be based in South Carolina, but should be licensed to do business in South Carolina, if awarded a contract. Proposers that fail to comply with this requirement, may subject their proposal to being rejected as non-responsive. The successful bid Proposer shall also be required, after award, to obtain a Town of Surfside Beach Business License.

**VI. Expense Reimbursement:**

Contractor expenses will be on a reimbursement basis. Reimbursement will occur within two weeks of submission of appropriate documentation and receipts or invoices as agreed upon by the Town's designee and the Director of Finance and in accordance with the Town's purchasing procedures and precedents.

**VII. Evaluation and Award:**

The Town of Surfside Beach reserves the right to reject any or all proposals and further reserves the right to waive technicalities and formalities in proposals, as well as, to accept in whole or in part such proposal or proposals where it deems it suitable in protection of the best interest of the Town. The Town shall be the sole judge as to whether proposals submitted meet all requirements contained in this procurement.

The Town of Surfside Beach may elect to award to one proposer, or make multiple awards, as deemed in the Town's best interest.

This procurement does not commit the Town of Surfside Beach to award a contract, to pay any costs incurred in the preparation of the proposal, or to procure or contract for goods or services listed herein. Costs associated with proposal preparation, oral interviews, and/or presentations shall be the sole responsibility of the Proposer. The Town of Surfside Beach will not reimburse for costs associated with interviews or presentations.

**VIII. Award WITH or WITHOUT Discussions/Negotiations:**

Time is of the essence in conducting the proposal evaluations. The evaluation committee will score each proposal and rank them in descending order. If there is no need to conduct discussions or negotiations with the top ranked Proposer, the Town of Surfside Beach may award a contract without discussions. If there is a need to conduct discussions or negotiations, the evaluation committee will determine which Proposers, in the competitive range, will participate. Proposers may be afforded the opportunity to submit a best and final offer (price).

**IX. Contract Award:**

Whether or not discussions or negotiations are held, contract award will be made to the Proposer whose proposal is deemed most advantageous to the Town, considering all evaluation factors. The Town of Surfside Beach shall be the sole judge of this determination; therefore, contract award may be made to other than the lowest priced Proposer. A copy of the firm's proposal may be attached to the contract, however, in the event of any ambiguity with any attachments, the Town's contract and Procurement Regulation will prevail.

**X. Term of Contract:**

The term of this contract shall begin on the date of Town's signature and end on December 31, 2018 with four optional one-year renewals. The successful Proposer will be expected to execute and abide by the **Sample Contract** attached.

**XI. Cooperative Clause:**

By submitting a proposal, the successful Proposer that is awarded a contract by The Town of Surfside Beach agrees to allow other government entities (i.e. cities, towns, villages, schools, and special districts/authorities) to enter in to their own contract or issue purchase orders based on the terms and conditions of the contract resulting from this RFP. The use of this contract by other units of government will be optional. Sales to the above government entities by the Vendor will be optional and will not be considered when determining contract award for this RFP.

The Town of Surfside Beach shall not be responsible for any problems that may arise between any other government entities and the contractor as a result of any sales. Any resulting contract is solely between the supplier and third party government entity. Invoices for items purchased under this agreement, shall be directed to, and are the responsibility of, the government entity making the purchase.

**XII. Independent Contractor Status:**

The contractor shall not, by entering into a contract, become a servant, agent, or employee of The Town of Surfside Beach, but shall remain at all times an independent contractor to the Town. The contract resulting from this RFP shall not be deemed to create any joint venture, partnership, or common enterprise between the Contractor and The Town of Surfside Beach, and the rights and obligations of the parties shall not be other than as expressly set forth.

**XIII. Liability Coverage:**

The successful Proposer shall provide proof of all required insurance(s), including worker's compensation, premises, liability and general liability. Worker's compensation shall include a minimum limit of \$100,000 per accident and commercial general liability coverage shall provide minimum limits of liability of \$1,000,000 per occurrence Combined Single Limit for Bodily Injury and Property Damage. This shall include coverage for premises/operations, products/completed operations, contractual liability, independent contractors, and vehicles, used in premises/operations. Professional Liability insurance shall be provided with minimum liability limits of \$1,000,000 per occurrence (in addition to Commercial General Liability insurance) by professional services such as accountant, attorney, architect, design, engineering and most consultants that involve errors and omissions exposure protection. The Town of Surfside Beach shall be named as an additional insured on all liability policies and expressed on the Certificate of Liability Insurance. Insurance shall indemnify Town against any and all claims arising under or as a result of the performance of the contract resulting from this solicitation. The Town must be provided sixty (60) day's written notice prior to cancellation, modification or reduction in limits of any stipulated insurance. It is the responsibility of the vendor/contractor to ensure that all subcontractors comply with all insurance requirements of this solicitation and the resulting contract.

**XIV. Grievance:**

Any actual or prospective Proposer who is aggrieved in connection with this procurement, or the award of a contract resulting from this procurement, may protest to the Town Administrator. The protest shall be submitted in writing within seven (7) calendar days after such aggrieved person knows or should have known of the facts giving rise thereto provided that grievance has been made in accordance with solicitation requirements.

**XV. Freedom of Information Statement:**

Procurement information shall be a public record to the extent required by Chapter 4 of Title 30, Code of Laws of South Carolina (1976, as amended) (The Freedom of Information Act), with the exception that commercial or financial information obtained in response to a "Request for Proposals (RFP)" which is privileged and confidential if so designated by the Proposer shall be protected from disclosure. Such information must be clearly marked as "CONFIDENTIAL" by those submitting responses for each section of information so affected. Privileged and confidential information is information in specific detail not customarily released to the general public, the release of which might cause harm to the competitive position of the party supplying the information.

**XVI. Legal Statement:**

Proposers to this RFP must disclose involvement in any litigation within the last five (5) years in which a claim has been made against any team member (individual or company) asserting a cause of action other than employment issues or contracts not related to your professional work. Explain the issues in these cases (or the fact that there are none) as part of your submittal.

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**Please submit one (1) original copy, one (1) duplicate copy, and one (1) electronic copy (*thumb drive or CD*).**

## B. BACKGROUND INFORMATION

### I. Background:

The Town of Surfside Beach with a year-round population of slightly less than 4,000 people, is located in the County of Horry (pronounced O-ree) which is one of the largest counties in the Eastern United States (over 1100 square miles). The Town has two miles of pristine beachfront and over 30 public beach accesses. The primary industry for the entire area, better known as the "Grand Strand", is tourism attracting millions of visitors annually.

### II. Project Overview:

The Town of Surfside Beach is soliciting proposals from professional consulting firms to provide consulting and representation services in support of the FEMA Grant Program Services, on an as needed basis, in accordance with the requirements stated herein. The Town of Surfside Beach, SC is considered a high risk Hurricane Zone. In 1989, Hurricane Hugo, hit The Town of Surfside Beach causing major damage. In subsequent years, hurricanes, tropical storms, and the effects of such storms have been seen in The Town of Surfside Beach. Most recently in October 2016, The Town of Surfside Beach was hit by Hurricane Matthew which resulted in the loss of a large portion of the Town-owned fishing pier. To aid the Town in the recovery effort the ideal consultant shall possess demonstrated experience in programmatic disaster recovery and must have intimate knowledge and expertise regarding structures in water and the operations of the Federal Emergency Management Agency's (FEMA) Grant Program and hazard mitigation planning for government entities.

The successful Proposer will be expected to enter into a contract with The Town of Surfside Beach Government, similar to the **sample contract** attached to this solicitation. The resultant contract from this RFP will incorporate by reference this RFP document in its entirety and the successful proposer's response to this RFP, as well as any negotiated terms and conditions.

The successful Proposer will be expected to work with multiple Town of Surfside Beach Departments in order to provide the services indicated in the scope of work.

## C. SCOPE OF WORK

### I. Requirements:

The selected firm will be responsible for providing services on a task order basis including, but not limited to, the following:

1. Provide technical assistance and advisory services related to the event identified in the task order.
2. Develop and implement strategies designed to maximize federal and state assistance. Provide support for strategic planning and coordination for recovery of the pier and pier structures.
3. Provide expert programmatic and policy advice on federal disaster relief programs. Provide extensive knowledge, experience and technical competence in dealing with Federal regulations, specifically including the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Post-Katrina Emergency Management Reform Act of 2006, and the Sandy Recovery Improvement Act of 2013.
4. Review contracts and purchasing documentation to ensure compliance.
5. Attend meetings in conjunction with and on behalf of Town Representatives.
6. Provide damage assessment and assist in Project Worksheet formulation.
7. Proactively identify opportunities to maximize Public Assistance and Post-Disaster Mitigation funding within the current regulatory framework.

8. Assist in the development of hazard mitigation proposals under Sections 404 and 406 of the Stafford Act. Assist in identifying, developing, and evaluating opportunities for hazard mitigation projects to reduce or eliminate risk from future events. Prepare hazard mitigation proposals, grant applications, benefit cost analysis, and other services related to the Hazard Mitigation Grant Program, Pre-Disaster Mitigation, and other mitigation programs.
9. Coordinate with Town offices and departments to assist in the compilation of documentation for Project Worksheets, and identify permit and regulatory requirements necessary to complete Project Worksheets. Provide assistance and oversight as needed for departments and offices that have difficulty completing necessary documentation.
10. Progressively work with Town officials to resolve disputes with FEMA and SCEMD, including the preparation of appeals or responses to arbitration if necessary.
11. Provide grant close-out services to ensure funding is retained.

## **II. RFP Response Requirements:**

Your submission **MUST** include:

- Cover Letter to include:
  - Company or corporation name, street and mailing addresses, the responsible officer(s) of the firm. Indicate the type of company (i.e. Sole Proprietor, Corporation, Limited Liability Corporation, Partnership etc.)
  - Names of all owners and/or corporate officers.
  - Identify contact person and provide telephone, fax, email address.
  - Date and state of incorporation (if applicable).
  - Signature of company officer(s) authorized to obligate the firm.
- Non-collusion Affidavit
- Acknowledgement of Addenda (even if none, submit form)
- Anti-Lobbying Form
- Debarment, Suspension, and Other Responsibility Matters
- Drug-Free Workplace
- IRS W-9 Form
- Copies of all required licenses
- Staff resumes with qualifications and experience
- List of PA (Public Assistance) and HMGP (Hazard Mitigation Grant Program) projects managed by firm to include work performed and monetary values of projects;
- Documentation of Successful grants attained for structures in water
- Documentation of Successful project appeals for PA and HMGP;
- Examples of grant closeouts and final audits
- Demonstrate Financial Stability
- Legal/ Pending Litigation Statement
- Proposed pricing schedule indicating the length of time pricing will be held firm

The Town does not desire voluminous submissions; therefore, please limit your presentation to only essential information. By submitting a proposal, your firm agrees to the terms and conditions stated herein unless explicitly stated otherwise in your response to this RFP.

#### D. EVALUATION CRITERIA

On the time/date established for receipt of proposals, only the name of Proposers will be read aloud. An evaluation committee will be convened to evaluate and score proposals received. The following criteria shall be used by the committee and are weighted as shown.

Proposals will be evaluated and independently scored based upon the following factors:

<b>#</b>	<b>Evaluation Criteria</b>	<b>Weight</b>
1.	Experience and qualifications of staff related to disasters that involve the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Post-Katrina Emergency Management Reform Act of 2006 and the Sandy Recovery Improvement Act of 2013	20 Points
2.	List of PA and HMGP projects managed by the firm to include the work performed, and monetary values of the projects.	15 Points
3.	Documented successful project appeals for PA and HMGP applications.	20 Points
4.	Examples of grant closeouts and final audits.	15 Points
5.	Firm's financial ability to cover the cost of the Firm's expenses based on a 30, 60, 90-day billing cycle.	10 Points
6.	List of any pending or post litigations including an explanation of the circumstances.	05 Points
7.	Firm's proposed pricing	15 Points

Award of contract will be made to the Proposer or Proposers whose proposal is deemed to be most advantageous to the Town, considering all of the evaluation factors. This decision shall be in the sole judgment of The Town of Surfside Beach.

**-END OF RFP NARRATIVE-**



**Required Form**

*F. ACKNOWLEDGEMENT OF ADDENDA*

Proposer hereby acknowledges receipt of all Addenda through and including:

Addendum No. \_\_\_\_\_, dated \_\_\_\_\_.

Company \_\_\_\_\_

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

Print Name \_\_\_\_\_

**Required Form**

G. ANTI-LOBBYING FORM

CERTIFICATION OF RESTRICTIONS ON LOBBYING

I, \_\_\_\_\_, hereby certify on behalf of  
(name and title of bidder's official)  
\_\_\_\_\_, that to the best of his or her  
(name of bidder)

knowledge and belief that:

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

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

Executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

By \_\_\_\_\_  
(signature of authorized official)

\_\_\_\_\_  
(title of authorized official)

**Required Form**

**H. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under the applicable CFR covering New Restrictions on Government-wide Debarment and Suspension (Nonprocurement). The certification shall be treated as a material representation of fact upon which reliance will be placed when the Agency determines to award the covered transaction or cooperative agreement.

As required by Executive Order 12549, Debarment and Suspension, and implemented under the applicable CFR, for prospective participants in covered transactions, as defined in the applicable CFR.

A. The applicant certifies that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal State or local) with commission of any of these offenses enumerated in paragraph (1) (b) of this certification; and
- (d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

_____	Address: _____
Contractor's Signature	_____
_____	_____
Printed or Typed Name	_____
_____	_____
Title	_____

**Required Form**

**I. DRUG-FREE WORKPLACE CERTIFICATION**

In accordance with Section 44-107-30, South Carolina Code of Laws (1976), as amended, and as a condition precedent to the execution of this agreement, the undersigned will provide drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensations, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of the prohibition;
2. Establishing a drug-free awareness program to inform employees about:
  - a. The dangers of drug abuse in a workplace;
  - b. The person's policy of maintaining a drug-free workplace;
  - c. Any available drug counseling, rehabilitation, and employee assistance programs; and
  - d. The penalties that may be imposed upon employees for drug violation;
3. Making it a requirement that each employee to be engaged in the performance of the agreement be given a copy of the statement required by item 1;
4. Notifying the employee in the statement required by item 1 that, as a condition of employment of this agreement, the employee will:
  - a. Abide by the terms of the statement; and
  - b. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after the conviction;
5. Notifying the South Carolina Department of Transportation within ten days after receiving notice under item 4b from an employee or otherwise receiving actual notice of the conviction;
6. Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance, or rehabilitation program by, any employee convicted as required in Section 44-107-50; and
7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of items 1,2,3,4,5, and 6.

\_\_\_\_\_  
Contractor Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor Name

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

## J. PROFESSIONAL SERVICES CONTRACT

No. \_\_\_\_\_

This Contract for Professional Services (“**Contract**”), with an effective date of \_\_\_\_\_, is hereby entered into between **THE TOWN OF SURFSIDE BEACH**, a political subdivision of the State of South Carolina, whose Administrative Office is at 115 Highway 17 North, Surfside Beach, SC 29575 (“**Town**”); and \_\_\_\_\_ (“**Provider**”), a corporation organized and existing under the laws of the State of \_\_\_\_\_ and authorized to conduct business in the Town of Surfside Beach and in the State of South Carolina.

### 1. GENERAL TERMS OF CONTRACT

**1.1. Headings:** Headings to paragraphs in this Contract shall not interpret or alter the meaning of the words in the respective paragraph, nor any other provision of this Contract.

**1.2. Time of Performance:** The timely performance by **Provider** of the services described in this Contract is of the essence, and shall commence on the Effective Date. Failure to perform timely, except for cause occasioned by Act of God, shall permit Town to declare this Contract voided and of no further effect.

**1.3. Arbitration:** This contract is not subject to arbitration.

**1.4. Dispute Resolution:** If the parties hereto cannot settle any difference arising between them without litigation, any such litigation shall take place in the South Carolina Circuit Court in Conway, South Carolina.

**1.5. Merger, Amendment, and Waiver:** This Contract contains all the terms of all agreements, oral or written, between the parties, and is the only document containing all such terms. This Contract merges all prior contracts, agreements, and understandings between **Town** and **Provider** concerning the scope of work described herein. The Scope of Services described in this Contract, and all other terms of this Contract, shall not be amended or varied except by a written instrument signed by a duly authorized signatory of **Town** and **Provider**. Forbearance by **Town** from enforcing the strict terms of this Contract shall not be a waiver of any other term of this Contract, nor shall such forbearance entitle **Provider** to rely upon such forbearance in the event of another similar breach by **Provider** of the terms of this Contract. Any variance to the terms of this Contract shall be attached as an Exhibit hereto, and shall have effect as from the effective date thereof as set forth on such Exhibit.

**1.6. Compliance with EEOC and other State and Federal Laws:** To the extent set forth in the respective statutes, **Provider** shall comply with the provisions of:

**1.6.1. Title VII of the Civil Rights Act of 1964;**

**1.6.2. Age Discrimination in Employment Act of 1967;**

**1.6.3. Title I of the Americans with Disabilities Act of 1990;**

**1.6.4. Equal Pay Act of 1963;**

**1.6.5. Fair Labor Standards Act of 1938;**

**1.6.6. Immigration Reform and Control Act of 1986;**

**1.6.7. South Carolina Payment of Wages Act, S.C. Code §§ 41-10-10 et seq.;**

**1.6.8 South Carolina Worker's Compensation Act, S.C. Code §§ 42-1-10 et seq.;**

**1.6.9 South Carolina Illegal Immigration Reform Act, including without limitation Chapters 14&29, Title 8, and Chapter 8, Title 41, S.C. Code of Laws;**

**1.6.10 Part 681, Title 16 of the Code of Federal Regulations, Sections 114 and 315 of the Fair and Accurate Credit Transactions Act (FACTA) of 2003; the South Carolina Act 190 of 2008; Financial and Identity Theft Protection Act; and the Town of Surfside Beach Privacy / Identity Theft Policy.**

1.7. By entering into this Contract, **Provider** affirmatively warrants that **Provider** is currently in compliance with such laws, and further warrants that during the term of this Contract, **Provider** shall remain in compliance therewith.

**2. SCOPE OF SERVICES:**

2.1. **Provider** shall perform those tasks set forth in Exhibit "A", attached hereto and incorporated herein by reference. The anticipated scope of work shall be considered the minimum service to be provided under this Contract. If any term contained in Exhibit "A" shall conflict with any of the terms of this Contract, then such term as set forth on Exhibit "A" shall not bind **Town**.

2.2. All services to be performed by **Provider** under this Contract shall be performed within the term set forth on Exhibit "A", not to exceed three (3) years.

**3. PAYMENT FOR SERVICES:**

3.1. The costs of services are set forth in Exhibit "B" of this Contract. The total projected cost of \$\_\_\_\_\_ shall be a guaranteed maximum price (GMP) for the services to be provided. **Provider's** invoice to **Town** will be on a basis of net 30 days after receipt by **Town** of invoice.

3.2. Services not included in the Scope of Services constitute additional charges to **Town**, at rates and intervals to be agreed upon between **Town** and **Provider** in a written Amendment executed by both parties prior to the performance of such services.

**4. WARRANTIES OF PROVIDER AND TOWN:**

**4.1. Town warrants that:**

4.1.1. **Town** has the lawful authority required under State law and **County's** Ordinances to enter into and perform this Contract;

4.1.2. **Town** shall not offer employment to any employee of **Provider** for a period of two (2) years after the termination, except for cause, of this Contract.

**4.2. Provider warrants that Provider has:**

4.2.1. All necessary licenses and consents required for **Provider** to enter into and fully perform the Scope of Services set forth on Exhibit "A", and is in good standing in the State of South Carolina;

4.2.2. All required insurances, including Worker's Compensation Insurance and General Liability Insurance, to indemnify **County** against any and all claims arising under or as a result of the performance of this Contract, in at least the following amounts (or in those amounts, if specified, as set forth in **Town's** Invitation to Bid or Request for Proposals, that formed the basis of the Scope of Services of this Contract) Worker's compensation shall include a minimum limit of \$100,000 per accident and comprehensive general liability coverage shall provide minimum limits of liability of \$1,000,000 per occurrence Combined Single Limit for Bodily Injury and Property Damage. This shall include coverage for premises/operations, products/completed operations, contractual liability, errors and omissions (professional liability), independent contractors and vehicles used in premises/operations. Insurance shall indemnify **Town** against any and all claims arising under or as a result of the performance of the contract. The **Town** shall be named as an additional insured on all liability policies. The **Town** must be provided with notice prior to cancellation, modification or reduction in limits of any stipulated insurance.

4.2.3. No conflict of interest with any other contract with a third party that might cause a claim to arise against **Town** by the entry into or performance of this Contract by **Provider**.

**4.3. Provider warrants that Provider shall throughout the term of this Contract:**

- 4.3.1. Perform all tasks required under the Scope of Services with a degree of skill and care of reputable members of the same profession in South Carolina;
- 4.3.2. Maintain all insurances required by law or this Contract, including worker's compensation, premises liability, general liability, and professional malpractice coverage in those amounts set forth herein;
- 4.3.3. Properly withhold from all wages, commissions, salaries, and fees paid by **Provider** to third parties or employees, agents, or sub-contractors of **Provider**, all amounts required by State or Federal law to be withheld for or on account of taxes, social security payments, or other withholdings mandated by law or regulation;
- 4.3.4. Ensure that any third party, employee, agent, or sub-contractor of **Provider** shall comply with the terms of this Contract concerning employment discrimination, insurances, and withholdings, so far as concerns this Contract;
- 4.3.5. Comply with all lawful demands made pursuant to the South Carolina Freedom of Information Act, S.C. Code § 30-4-10 *et seq.* or the Federal Freedom of Information Act, 5 U.S.C.S. § 552;
- 4.3.6. Make no offer of employment to any **Town** employee for a period of two (2) years after the termination of this Contract.

**5. OWNERSHIP OF PROJECT MATTER:**

Unless otherwise agreed between **Town** and **Provider**, and approved by Town's attorney:

- 5.1 All plans, reports, surveys, and other professional work product of **Provider** concerning this Contract (but not internal working files, drafts, memoranda, and equipment) shall become the property of **Town** during and at the completion or termination of this Contract;
- 5.2. All materials supplied or loaned by **Town** to **Provider** during the term of this Contract shall remain the property of **Town**;
- 5.3. All intellectual property provided to **Town** by **Provider** and originating from this Contract shall become and remain the property of **Town**, and **Provider** shall not, without the written consent and license from **Town**, use such intellectual property for another commercial purpose;
- 5.4. **Town** shall not become the owner, assignee, or licensee of any standard routine, programs, development tools, techniques, interfaces, texts, or other work existing prior to the date of this Contract that may be

used by **Provider** in providing the services or intellectual property subject to this Contract, except as may be specifically agreed in writing between the parties.

**6. EARLY TERMINATION OF CONTRACT:**

**Town** and **Provider** shall have the right, upon thirty (30) days written notice, to terminate this Contract, and thereafter **Town** shall have no obligation to pay for services provided to **Town** except up to the effective date of termination of this Contract. In the event **Provider** exercises its right to terminate this Contract, **Provider** will not cease services for a reasonable period of time, not to exceed One-Hundred Twenty (120) days, to allow **Town** to procure another provider.

**7. INDEPENDENT CONTRACTOR STATUS:**

**Provider** shall not, by entering into this Contract, become a servant, agent, or employee of **Town**, but shall remain at all times an independent contractor to **Town**. This Contract shall not be deemed to create any joint venture, partnership, or common enterprise between **Provider** and **Town**, and the rights and obligations of the parties shall not be other than as expressly set forth herein.

**8. NOTICES TO PARTIES:**

All notices to each party to this Contract, except routine notices of performance of the Scope of Services during the Contract term, shall be in writing, and sent as follows:

**8.1. To Town:**

**8.1.1.**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with a copy to:

Town of Surfside Beach, Town Administrator  
115 Highway 17 North  
Surfside Beach, SC 29575  
(Tel: 843-913-6111; fax 843-238-5432)

**8.2. To Provider:**

**8.2.1.**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**8.3. Form of Notice:** All notices required or permitted under this Contract shall be effective:

**8.3.1.** On the third (3<sup>rd</sup>) business day after mailing by depositing the notice in the United States Mail, certified mail, return receipt requested, postage prepaid, addressed as set forth above; or on the day of receipt of such notice (whether by mail, courier, hand delivery, or otherwise), whichever is the earlier date of receipt; or

**8.3.2.** On the first day after receipt of a facsimile transmission of the written notice, with delivery confirmed, provided that such notice is also thereafter sent by first class mail as set forth above.

**9. INDEMNIFICATION AND HOLD HARMLESS AGREEMENT:**

The Provider will indemnify and hold harmless the Town and its agents and employees from and against all claims, damages, losses and expenses, including attorney's fees arising out of or resulting from the performance of the Work provided that any such claims, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, injury to or destruction of tangible property, including the loss of use resulting therefrom, and is caused by any negligent or willful act or omission of the Provider, and anyone directly or indirectly employed by it or anyone for whose acts any of them may be liable. In any and all claims against the Town or any of their agents or employees by an employee of the Provider, and anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way to the amount or type of damages, compensation or benefits payable by or for the Provider under the

workman's compensation acts, disability benefit acts, or other employee benefit acts. The obligation of the Provider under this paragraph shall not extend to the liability of the Town or its agents or employees arising out of reports, surveys, change orders, designs, or specifications that are un-attributable to the Provider.

**10. ASSIGNMENT:**

Provider shall not assign, permit the assumption of or in any manner transfer any interest in this Contract, or any part thereof, without the prior written consent of the Lessor. If Provider assigns, permits the assumption of or in any manner attempts a transfer of its interest in this Contract, Town, in its sole discretion, may declare this entire Contract null and void

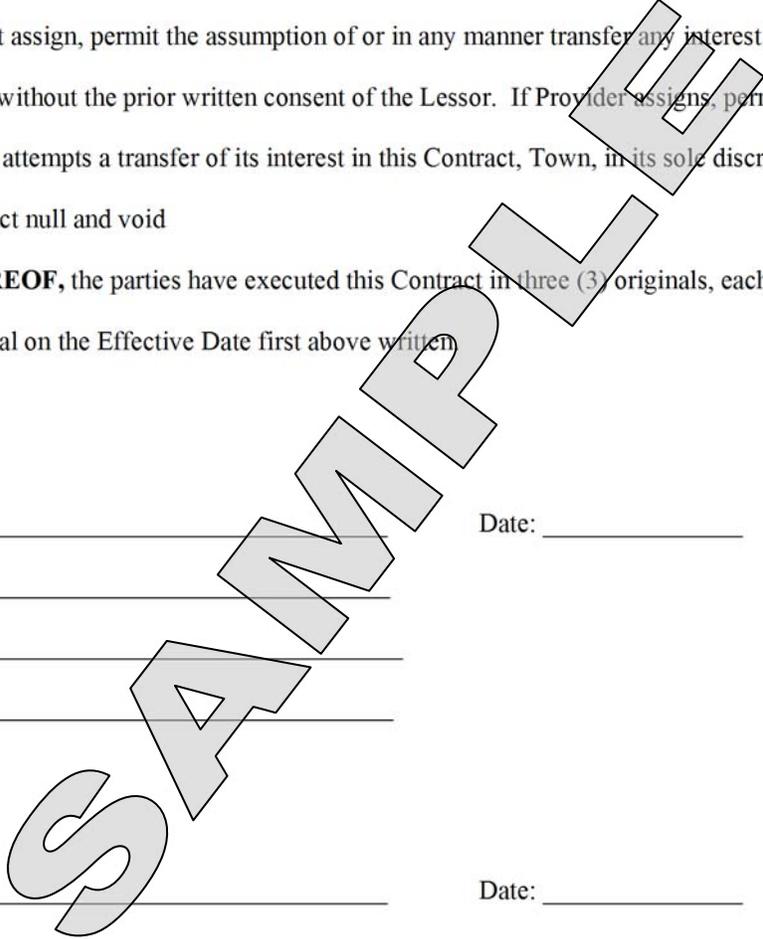
**IN WITNESS WHEREOF**, the parties have executed this Contract in three (3) originals, each of which shall be deemed to be an original on the Effective Date first above written

**Provider:**

By (signature): \_\_\_\_\_ Date: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Witness: \_\_\_\_\_

**Town:**

By (signature): \_\_\_\_\_ Date: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Witness: \_\_\_\_\_



## K. CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or sub-recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or sub-recipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and sub-grants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

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

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the non-Federal award.

(J) See §200.322 Procurement of recovered materials.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014]

## **Exhibit “A”**

### **SCOPE OF WORK:**

*History:* On October 8, 2016, Hurricane Matthew made landfall in McClellanville, SC (50 miles south of the Town of Surfside Beach) as a Category 1 hurricane with 75 mile per hour winds. The associated, sustained elements (i.e., wind, rain, wave action, storm surge, etc.) destroyed a significant portion of the Surfside Beach Pier and rendered most of the remaining structure unsafe. The pier was a focal point of the municipality and was owned and maintained by the town as a fishing pier and was only insured for personal liability. Eventually, the President declared Horry County a major disaster area eligible for increased assistance from FEMA (i.e., categories A through G).

*Intent of Town:* The Town wishes to seek assistance from FEMA to rebuild the pier with possible hazard mitigation components and is seeking a FEMA disaster recovery consultant with expertise in structures in water and demonstrated success with FEMA for the funding of same.