

RFP REGISTRATION

You MUST register using this form in order to receive notice of any addenda to these documents. Please email the completed form to the Town of Edisto Beach as soon as possible. It is the vendor's responsibility to verify if addenda have been issued.

RFP Number and Title: 2024-02, Construction Project Management Services

Description: Construction Project Management Services for a new Town Hall / Emergency Operations Center

Receiving Period: June 19, 2024, Prior to 2:00 p.m.

Proposal Opening: June 19, 2024, 2:00 p.m.

This form is for qualification registration. Please scroll down for additional information.

**BIDDER REGISTRATION
EMAIL THIS FORM BACK IMMEDIATELY
maakhus@townofedistobeach.com**

Carefully complete this form and email it to the Town of Edisto Beach: Attention Mark Aakhus, Town Administrator. You must submit one form for each bid that you are registering for.

Company Name: _____

Contact Person: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Phone: Mobile: E-mail:

TOWN OF EDISTO BEACH

REQUEST FOR PROPOSALS #2024-02 CONSTRUCTION PROJECT MANAGEMENT SERVICES

Sealed proposals will be received in Town Hall, **June 19, 2024, prior to 2:00 p.m.**

Attached are important instructions and specifications regarding responses to this Request for Proposal. Failure to follow these instructions could result in Proposer disqualification.

Questions regarding this proposal must be in writing and must be sent to Mark Aakhus, Town Administrator, email: maakhus@townofedistobeach.com. All questions must be received by June 12, 2024.

Prospective proposers shall not contact, communicate with or discuss any matter relating in any way to the Request for Proposal with the Town Council, any employee of the Town of Edisto Beach, other than as directed in the cover page of the Request for Proposal. Such communications initiated by a proposer shall be grounds for disqualifying the offending proposer from consideration for award of the proposal and/or any future proposal.

Proposals may be mailed, express mailed or hand-delivered to:

**Town of Edisto Beach 2414 Murray Street
Edisto Beach, South Carolina 29438**

PURPOSE

The Town of Edisto Beach is requesting proposals from Construction Management Firms (the “Firm(s)”) to provide Owner’s Representative / Construction Project Management Services (“CPM Services”) for a new Town Hall / Emergency Operations Center construction project (the “Project”). The selected Firm will work in coordination with the project architect and engineering team, the selected contractor, and Town staff (collectively the “Project Team”). The Project is being delivered under the design-bid-build process.

BACKGROUND

The Town received funding from the 2022 Colleton County Capital Project Sales Tax for the construction of a new Town Hall and Emergency Operations Center. The Town is currently finishing the design development phase of the Project and the Architect is beginning the contract document phase. We are currently anticipating advertising for construction bids in September 2024.

The facility is an approximately 10,000-square-foot, single-story town hall facility that has office space, clerk windows, Council Chambers, and a small Emergency Operations Center.

SCOPE OF SERVICES

The selected firm shall provide CPM Services for the Project. The Firm shall coordinate all services with assigned Town personnel. CPM Services shall include, but not be limited to, the following:

- Provide support services in all disciplines associated with construction management including, but not limited to construction field oversight and management, scheduling, inspection, change order preparation and negotiation, cost estimating, budgeting, and other related services as the Town may request.
- Provide all necessary CPM Services throughout all phases of the Project, including the pre-construction, construction, and post-construction/close-out phases.
- Assist in the formulation of, and assume primary responsibility for, reviewing and tracking the Project’s schedule.
- Coordinate and monitor construction progress against the construction schedule, including, but not limited to, weather conditions, contractor manpower, deliveries, job progress, work completeness, special occurrences, photo documentation of work, and pre-construction conditions. This information must be submitted bi-weekly to the Town.
- Review contractor submittals with the Project Team and respond to requests for information (RFI’s) during the construction phase of the Project.
- Oversee, in coordination with the Project Team, all financial aspects of the project, including, but not limited to, budgets, cost estimates, change orders, pay applications, and financial reporting.
- Attend construction kick-off meeting.
- Schedule and conduct biweekly Project Team meetings, including the prompt preparation and distribution of minutes.
- Track all contractor submittals including general requirements (bonds,

insurance, etc.), schedules, procedures, materials, shop drawings, and subcontractor and supplier qualifications – in accordance with the Project specifications. The selected Firm shall provide bi-weekly submittals tracking reports and schedule updates for the Project.

- Review and approve the contractor's trade payment breakdown and schedule
- Direct and coordinate the work of the contractor, in accordance with the Town's plans and specifications, objectives, budget, schedule, and standards of quality, including ensuring that the work is performed with as little disruption as possible to the adjacent areas (public and private), and with as little impact as possible on the community and the general public.
- Provide prompt notice to the Town as soon as quality or performance issues come to light. Provide detailed documentation regarding issues discovered, and work in conjunction with the Project Team to address performance issues.
- Review all requests for change orders and provide all supporting documentation along with recommendations for acceptance or rejection to the Town.
- Determine substantial completion of contractor work and coordinate a punch list inspection.
- Conduct final inspections, approve of contractor work, and issue work acceptance certificates.
- Ensure that the Construction Project is completed by the contractors within the approved construction schedule timeframe. The selected Firm must work diligently to avoid any and all delays.

QUALIFICATIONS AND EXPERIENCE SUBMITTAL

The response submitted by the Firm shall contain only the information requested by this RFP and shall be concise. Key information shall include:

1. Specific ability of the Firm relative to CPM Services, specifically municipal facilities
2. Experience of staff within the past five years
3. Office location of staff
4. Innovative and cost-saving approaches to providing CPM Services
5. Firm's past performance in meeting project and budget constraints

Any proposed FIRM/sub-FIRM shall be clearly identified including its role, responsibility, and staff.

RESPONSE

Interested parties are invited to submit one (1) original marked "ORIGINAL" and three (3) copies marked "COPY" of their proposal in a sealed envelope to the Town of Edisto Beach. The envelope should be labeled "**RFP #2024-02 Construction Project Management Services**" and marked with the respondent's name and address. Proposals may be mailed or delivered to:

**Town of Edisto Beach 2414 Murray Street
Edisto Beach, South Carolina 29438**

The submittal shall be received by the Town only at the above address prior to **2:00 p.m., June 19, 2024.**

The delivery of the submittal on the above date and prior to the specified time is solely the responsibility of the proposer.

SUBMITTAL

Submittals should not contain information more than that requested, must be concise, and must specifically address the issues of this RFP. A page can be either single or double-sided. It is requested that the responses be in the same order as the selection and evaluation procedures. The submittals should include the following:

1. Brief overview of the firm's history and organization that includes the name of the firm's contact person, address, telephone, fax number, and email address. **(Limit response to one page)**
2. Resumes of all personnel that may be assigned to the Town of Edisto Beach under an agreement for services contained herein. **(Limit response to one page per resume)**
3. Provide a list of reference agencies for which your firm has provided construction project management services over the last five (5) years. A client list showing the current contact person, telephone number, and email address for each agency must be submitted. **(Limit response to one page per reference)**
4. Provide a short narrative outlining your firm's approach to meeting the Town's needs. **(Limit response to one page maximum)**
5. Describe how the firm plans to maintain the project team and manage the project team members' time to ensure cost-effectiveness. **(Limit response to one page maximum)**
6. Provide information that demonstrates the firm's ability to obtain project cost savings. **(Limit response to one page maximum)**

SELECTION AND EVALUATION PROCEDURES

A Selection Committee will review the proposals received. The evaluation criteria listed below will be utilized to rank the firms and to potentially short-list the FIRMS. Interviews with the firms short-listed may then be scheduled with the Selection Committee for final ranking and selection. The Town shall be the sole judge of its own best interests, the proposals, and the resulting negotiated agreement. The Town's decisions will be final.

Firms will be evaluated using several factors including, but not limited to, the following:

1. Experience and expertise of the firm and its key personnel (25 points)
2. Approach to meeting the Town's needs as stated in the Introduction, Background, and Scope of Services (25 points)
3. Client reference list (5 points)
4. Ability to obtain project cost savings (10 points)
5. Location of key personnel (5 points)
6. Price Proposal (30 points)

CONTACT

After the issuance of any Request for Proposal, prospective proposers shall not contact, communicate with, or discuss any matter relating in any way to the Request for Proposal with the Town Council, and any employee of Town of Edisto Beach, other than as directed in the cover page of the Request for Proposal. This prohibition begins with the issuance of any Request for Proposal and ends upon execution of the final contract. Such communications initiated by a proposer **shall** be grounds for disqualifying the offending proposer from consideration for award of the proposal and/or any future proposal.

INSURANCE REQUIREMENTS

General Provisions:

FIRM shall maintain, at all times, the following minimum levels of insurance and shall, without in any way altering their liability, obtain, pay for and maintain insurance for the coverages and amounts of coverage not less than those set forth below and provide the TOWN with a Certificate of Insurance and an opportunity to inspect a certified copy of each policy applicable to this Agreement followed thereafter by an annual Certificate of Insurance satisfactory to the TOWN to evidence such coverage before any work commences. Such certificates will provide that there shall be no termination, non-renewal, modification or expiration of such coverage without thirty (30) days prior written notice to the TOWN.

The TOWN shall be named as an additional insured on all FIRM policies related to the project, excluding professional liability and worker's compensation. The policies shall contain a waiver of subrogation in favor of the Town of Edisto Beach. All insurance coverage shall be written with an insurer having an A.M. Best Rating not less than A:VII and licensed to operate in the State of South Carolina and the SC Department of Insurance.

The FIRM's self-insured retention or deductible per line of coverage shall not exceed \$25,000.00 without the permission of the TOWN

Any failure by the FIRM to comply with the provisions of this section, the TOWN may, at its option, on notice to the FIRM, suspend the work for cause until there is full compliance.

TOWN may, at its sole discretion, purchase such insurance at FIRM's expense provided that the TOWN shall have no obligation to do so and if the TOWN shall do so, it shall not relieve FIRM of its obligation to obtain insurance.

The FIRM shall not be relieved of or excused from the obligation to obtain and maintain such insurance amount and coverages.

All FIRM's sub-contractors shall be required to include TOWN and FIRM as additional insured on their General Liability Insurance policies.

In the event that subconsultants used by the FIRM do not have insurance, or do not meet the insurance limits, FIRM shall indemnify and hold harmless the TOWN for any claim in excess of the subconsultants' insurance coverage.

The FIRM shall not commence work under this Agreement until all insurance required as stated herein has been obtained and such insurance has been approved by the TOWN.

Comprehensive Automobile Liability Insurance. \$1,000,000.00 combined single limit of liability for bodily injuries, death and property damage resulting from any one occurrence, including all owned, hired, and non-owned vehicles.

Commercial General Liability. \$1,000,000.00 combined single limit of liability for bodily injuries, death and property damage, and personal injury resulting from any one occurrence, including the following coverages:

Premises and Operations: Broad Form Commercial General Liability Endorsement to include Blanket Contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the firm); Personal Injury (with employment and contractual exclusions deleted); and Broad Form Property Damage coverage.

Independent Contractors: Delete Exclusion relative to collapse, explosion and underground; Property Damage Hazards; Cross Liability Endorsement; and Contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the firm)

Umbrella (Excess) Liability Insurance. Umbrella Liability with limits of not less than \$1,000,000.00, exclusive of defense costs, to be in excess of all other coverages. Such coverage shall be at least as broad as the primary coverages above, with any excess umbrella layers written on a strict following form basis over the primary coverage. All such policies shall be endorsed to provide defense coverage obligations.

Professional Liability Insurance. \$3,000,000.00 for errors and omissions, exclusive of defense costs. FIRM shall be required to provide continuing Professional Liability Insurance to cover each project for a period of two (2) years after the project is completed.

Performance, Payment and Other Bonds. FIRM shall furnish Performance and Payment Bonds specific to each project if required and agreed to.

Workers Compensation. The FIRM shall provide, pay for, and maintain workers compensation insurance on all employees, its agents or subcontractors as required by S.C. Statutes.

\$500,000 Each Accident

\$500,000 Disease Each Employee

\$500,000 Disease Policy Limit

INDEMNIFICATION

FIRM shall, in addition to any other obligation to indemnify the Town and to the fullest extent permitted by law, protect, defend (by counsel reasonably acceptable to Town), indemnify and hold harmless the Town, their agents, elected officials and employees from and against, including, but not limited to, all claims, actions, liability, losses, expenses, costs (including attorney's fees) arising out of any actual or alleged bodily injury, sickness, disease or death, or injury to or destruction of tangible property

including the loss of use resulting there from, or any other damage or loss arising out of or resulting from or claims to have resulted in whole or in part from any actual or alleged act or omission of the FIRM, any subcontractor, anyone direct or indirectly employed by any of them, or anyone for whose acts any of them may be liable in the performance of the work; or violation of law, statute, ordinance, governmental administration order, rule, regulation or infringement of patent rights by FIRM in the performance of the work; or liens, claims or actions made by the FIRM or any subcontractor or other party performing the work.

EQUAL OPPORTUNITY/AFFIRMATIVE ACTION

The Town is an equal opportunity/affirmative action employer. The Town is committed to equal opportunity employment effort; and expects firms that do business with the Town to have a vigorous affirmative action program. 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 CFR 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." Pursuant to Federal Rule (C) above, when a Participating Agency expends federal funds on any federally assisted construction contract, the equal opportunity clause is incorporated by reference herein.

WOMEN/MINORITY BUSINESS ENTERPRISE OUTREACH

The Town hereby notifies all Proposers that W/MBEs are to be afforded a full opportunity to participate in any request for proposal by the Town and will not be subject to discrimination on the basis of race, color, sex or national origin.

DEVELOPMENT COSTS

Neither the Town nor its representative(s) shall be liable for any expenses incurred in connection with preparation of a response to the RFP. Proposers should prepare their proposals simply and economically, providing a straightforward and concise description of the proposer's ability to meet the requirements of the RFP.

APPLICABLE LAWS AND COURTS

This RFP and any resulting agreements shall be governed in all respects by the laws of the State of South Carolina and any litigation with respect thereto shall be brought only in the courts of Colleton County, South Carolina. The proposer shall comply with all applicable federal, state and local laws and regulations.

CONTRACTUAL MATTERS

A draft of the proposed Agreement to be entered into with the successful proposer(s) is included with this RFP as Attachment A. The terms of this Agreement and any other contractual documents are subject to negotiation and agreement of the parties.

All contracts are subject to final approval of the Town Council. Persons or firms who incur expenses or change position in anticipation of a contract prior to the Board's approval do so at their own risk.

PROPRIETARY INFORMATION

In accordance with South Carolina Freedom of Information Act and except as may be provided by other applicable State and Federal Law, all proposers should be aware that Request for Proposals and the responses thereto are in the public domain. However, the proposers are required to **identify specifically** any information contained in their proposals which they consider confidential and/or proprietary and which they believe to be exempt from disclosure.

All proposals received from proposers in response to this Request for Proposal will become the property of the Town and will not be returned to the proposers. In the event of contract award, all documentation produced as part of the contract will become the exclusive property of the Town.

UNAUTHORIZED ALIEN(S) The FIRM agrees that unauthorized aliens shall not be employed nor utilized in the performance of the requirements of this solicitation. The Town shall consider the employment or utilization of unauthorized aliens a violation of Section 274A(e) of the Immigration and Naturalization Act (8 U.S.C. 1324a). Such violation shall be cause for unilateral termination of this Agreement by the Town.

Employers may avail themselves of a program by the U.S. Immigration and Customs Enforcement called E-Verify. E-Verify is an Internet-based system operated by U.S. Citizenship and Immigration Services (USCIS), part of the Department of Homeland Security (OHS), in partnership with the Social Security Administration (SSA). E-Verify is currently free to employers. E-Verify provides an automated link to Federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers.

If your company wishes to avail themselves of this program, you can register online for E-Verify at **<https://www.vis-dhs.com/EmployerRegistration>**, which provides instructions for completing the registration process. At the end of the registration process, you will be required to sign a Memorandum of Understanding (MOU) that provides the terms of agreement between you as the employer, the SSA, and OHS. An employee who has signatory authority for the employer can sign the MOU. Employers can use their discretion in identifying the best method by which to sign up their locations for E-Verify. To find out more about E-Verify, please visit **www.dhs.gov/e-verify** or contact USCIS at **1-888-464-4218**.

LIMITATIONS

This request does not commit the Town of Edisto Beach to award a contract. Proposers will assume all costs incurred in the preparation of their response to this RFP. The Town reserves the right to: 1) accept or reject qualifications and/or proposals in part or in whole; 2) request additional qualification information; 3) limit and determine the actual contract services to be included in a contract; 4) obtain information for use in evaluating submittals from any source and 5) reject all submittals.

Draft Construction Project Management Services Agreement

THIS AGREEMENT entered into this ___ day of _____, 2024, between the TOWN OF EDISTO BEACH, a political subdivision of the State of South Carolina, by and through its Town Council, situated at 2414 Murray Street, Edisto Beach, SC 29438, hereinafter referred to as TOWN, and _____, a corporation headquartered at _____ hereinafter referred to as FIRM, and whose Federal Employer Identification Number is _____.

WHEREAS, the TOWN requires certain, professional services in connection with the design and construction of a new town hall complex on Edisto Beach; and,

WHEREAS, the TOWN has solicited these services in RFP #2024-02, included by reference as to the scope of services contained therein; and

WHEREAS, the FIRM represents it is capable and prepared to provide such Services;

NOW, THEREFORE, in consideration of the promises contained herein, the parties hereto agree as follows:

1.0 Term

1.1 This Agreement shall take effect on the date of its execution by the Mayor, Edisto Beach Town Council.

1.2 The term of this Agreement shall be project completion.

2.0 Services to Be Performed by FIRM

2.1 FIRM shall perform the project as generally described in the Request for Qualifications, Exhibit A.

3.0 Compensation

3.1 General

3.1.1 TOWN shall pay FIRM a fixed amount of _____ per month.

3.1.3 Total compensation shall not exceed _____.

3.1.4 Invoices must reference the RFP No. and the project name.

3.1.5 Each individual invoice shall be due and payable forty-five (45) days after receipt by the TOWN of correct, fully documented, invoice, in form and substance satisfactory to the TOWN with all appropriate cost substantiations attached. All invoices shall be delivered to:

Town of Edisto Beach
2414 Murray Street
Edisto Beach, SC 29438
Attention: Senior Finance Clerk

3.1.6 In order for both parties herein to close their books and records, the FIRM will clearly state "Final Invoice" on the FIRM's final/last billing to the TOWN. This certifies that all services have been properly performed and all charges and costs have been invoiced to the TOWN. Since this account will

thereupon be closed, any and other further charges if not properly included on this final invoice are waived by the FIRM.

3.1.7 Payment of the final invoice shall not constitute evidence of the TOWN's acceptance of the work.

3.1.8 Invoices shall be accompanied by task records for all billable hours appearing on the invoice. Additional documents may be requested by TOWN and, if so requested, shall be furnished by FIRM to TOWN's satisfaction.

3.1.9 Project manager or designated payroll officer shall, by affidavit, attest to the correctness and accuracy of time charges and requested reimbursements.

4.0 Insurance

4.1 General Provisions

4.1.1 FIRM shall maintain, at all times, the following minimum levels of insurance and shall, without in any way altering their liability, obtain, pay for and maintain insurance for the coverages and amounts of coverage not less than those set forth below and provide the TOWN with a Certificate of Insurance and an opportunity to inspect a certified copy of each policy applicable to this Agreement followed thereafter by an annual Certificate of Insurance satisfactory to the TOWN to evidence such coverage before any work commences. Such certificates will provide that there shall be no termination, non-renewal, modification or expiration of such coverage without thirty (30) days prior written notice to the TOWN.

4.1.2 The TOWN shall be named as an additional insured on all FIRM policies related to the project, excluding professional liability and worker's compensation. The policies shall contain a waiver of subrogation in favor of the Town of Edisto Beach. All insurance coverage shall be written with an insurer having an A.M. Best Rating not less than A:VII and licensed to operate in the State of South Carolina and the SC Department of Insurance. .

4.1.3 The FIRM's self-insured retention or deductible per line of coverage shall not exceed \$25,000.00 without the permission of the TOWN

4.1.4 Any failure by the FIRM to comply with the provisions of this section, the TOWN may, at its option, on notice to the FIRM, suspend the work for cause until there is full compliance.

4.1.5 TOWN may, at its sole discretion, purchase such insurance at FIRM's expense provided that the TOWN shall have no obligation to do so and if the TOWN shall do so, it shall not relieve FIRM of its obligation to obtain insurance.

4.1.6 The FIRM shall not be relieved of or excused from the obligation to obtain and maintain such insurance amount and coverages.

4.1.7 All FIRM's sub-contractors shall be required to include TOWN and FIRM as additional insured on their General Liability Insurance policies.

4.1.8 In the event that subconsultants used by the FIRM do not have insurance, or do not meet the insurance limits, FIRM shall indemnify and hold harmless the TOWN for any claim in excess of the subconsultants' insurance coverage.

4.1.9 The FIRM shall not commence work under this Agreement until all insurance required as stated herein has been obtained and such insurance has been approved by the TOWN.

4.2 Comprehensive Automobile Liability Insurance. \$1,000,000.00 combined single limit of liability for bodily injuries, death and property damage resulting from any one occurrence, including all owned, hired, and non-owned vehicles.

4.3 Commercial General Liability. \$1,000,000.00 combined single limit of liability for bodily injuries, death and property damage, and personal injury resulting from any one occurrence, including the following coverages:

4.3.1 Premises and Operations:

Broad Form Commercial General Liability Endorsement to include Blanket Contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the firm); Personal Injury (with employment and contractual exclusions deleted); and Broad Form Property Damage coverage.

4.3.2 Independent Contractors:

Delete Exclusion relative to collapse, explosion and underground; Property Damage Hazards; Cross Liability Endorsement; and Contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the firm)

4.4 Umbrella (Excess) Liability Insurance. Umbrella Liability with limits of not less than \$1,000,000.00, exclusive of defense costs, to be in excess of all other coverages. Such coverage shall be at least as broad as the primary coverages above, with any excess umbrella layers written on a strict following form basis over the primary coverage. All such policies shall be endorsed to provide defense coverage obligations.

4.5 Professional Liability Insurance. \$3,000,000.00 for errors and omissions, exclusive of defense costs. FIRM shall be required to provide continuing Professional Liability Insurance to cover each project for a period of two (2) years after the project is completed.

4.6 Performance, Payment and Other Bonds. FIRM shall furnish Performance and Payment Bonds specific to each project if required and agreed to under the Work Authorization for the project.

4.7 Workers Compensation. The FIRM shall provide, pay for, and maintain workers compensation insurance on all employees, its agents or subcontractors as required by S.C. Statutes.

\$500,000 Each Accident

\$500,000 Disease Each Employee

\$500,000 Disease Policy Limit

5.0 Standard of Care

5.1 FIRM has represented to the TOWN that it has the personnel and experience necessary to perform the work in a professional and workmanlike manner.

5.2 FIRM shall exercise the same degree of care, skill, and diligence in the performance of the Services as is provided by a professional of like experience, knowledge and resources, under similar circumstances.

5.3 FIRM shall, at no additional cost to TOWN, re-perform services which fail to satisfy the foregoing standard of care or otherwise fail to meet the requirement of this Agreement.

5.4 The FIRM warrants that all services shall be performed by skilled and competent personnel to the professional standards in the field.

6.0 Indemnification

6.1 General. Having considered the risks and potential liabilities that may exist during the performance of the Services and in consideration of the promises included herein, TOWN and FIRM agree to allocate such liabilities in accordance with this Section.

6.2 Indemnification

6.2.1 FIRM, to the extent permitted by law, shall indemnify, defend (by counsel reasonably acceptable to TOWN) protect and hold TOWN, and its officers, employee and agents, free and harmless from and against any and all, including, but not limited to, any claims, actions, causes of action, liabilities, penalties, forfeitures, damages, losses and expenses (including, without limitation, attorney's fees and costs during negotiation, through litigation and all appeals therefrom), or death of or injury to any person or damage to any property whatsoever, arising out of or resulting from (i) the failure of FIRM to comply with applicable laws, rules or regulations, (ii) the breach by FIRM of its obligations under this Agreement, (iii) any claim for trademark, patent or copyright infringement arising out of the scope of FIRM's performance of this Agreement, or (iv) the negligent act, errors or omissions, or intentional or willful misconduct, of FIRM, its sub-consultants, agents, employees and invitees; provided, however, that FIRM shall not be obligated to defend or indemnify the TOWN with respect to any such claims or damages arising out of the TOWN's negligence.

6.2.2 TOWN review, comment and observation of the FIRM's work and performance of this Agreement shall in no manner constitute a waiver of the indemnification provisions of this Agreement.

6.2.3 FIRM agrees that it bears sole legal responsibility for its work and work product, and the work and work product of subconsultants and their employees, and/or for FIRM's performance of this Agreement and its work product(s).

6.3 Survival. Upon completion of all Services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Agreement shall survive as if the Agreement were in full force and effect.

7.0 Independent Contractor

7.1 FIRM undertakes performance of the Services as an independent contractor and shall be wholly responsible for the methods of performance.

7.2 TOWN shall have no right to supervise the methods used, but TOWN shall have the right to observe such performance.

7.3 FIRM shall work closely with TOWN in performing Services under this Agreement.

7.4 The FIRM shall not pledge the TOWN's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness and shall have no right to speak for or bind the TOWN in any manner.

7.5 FIRM further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

8.0 Authority to Practice

8.1 The FIRM hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner.

9.0 Compliance with Laws

9.1 In performance of the Services, FIRM will comply with applicable regulatory requirements including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria and standards.

10.0 Subcontracting

10.1 The TOWN reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractor.

10.2 If a subcontractor fails to perform or make progress, as required by this Agreement, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the FIRM shall promptly do so, subject to acceptance of the new subcontractor by the TOWN. Failure of a Subcontractor to timely or properly perform its obligations shall not relieve FIRM of its obligations hereunder.

11.0 TOWN's Responsibilities

11.1 TOWN shall be responsible for providing access to all TOWN project sites, and providing information in the TOWN's possession that may reasonably be required by FIRM, including; existing reports, studies, financial information, and other required data that are available in the files of the TOWN.

12.0 Termination of Agreement

12.1 If one party should breach or fail to perform any provision of this Agreement, then the other party may give written notice of such default (Notice of Default) to the breaching party. If the breaching party should fail to cure such default within thirty (30) days of notice thereof, the non-breaching party shall have the right to terminate this Agreement by a second written notice (Notice of Termination) to the breaching party. If a Notice of Termination is sent to the breaching party, this Agreement shall automatically terminate on the effective date of such notice. Termination shall not relieve the breaching party of its obligation to pay all amounts due to the non-breaching party as of the effective date of termination and shall not impair any accrued rights, including the right to pursue all available legal remedies for damages, of the non-breaching party.

12.2 The TOWN may terminate performance of work under this contract at the TOWN's convenience and without cause. The TOWN shall terminate by delivering to the FIRM a Notice of Termination specifying the effective date.

12.2.1. After receipt of a Notice of Termination, and except as directed by the Town, the FIRM shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under the termination for convenience:

- i. Stop work as specified in the notice;
- ii. Place no further subcontracts or orders for materials, services, or facilities;
- iii. Terminate all subcontracts and orders;
- iv. With approval or ratification to the extent required by the TOWN, settle all outstanding liabilities arising from the termination of subcontracts;
- v. As directed by the TOWN, transfer title and deliver to the TOWN (a) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (b) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the TOWN; and
- vi. Take any action that may be necessary, or that the TOWN may direct, for the protection and preservation of the property related to this contract that is in the possession of the FIRM and in which the TOWN has or may acquire an interest;

12.2.2. Upon the TOWN's termination for convenience the FIRM shall only be entitled to payment, subject to the deduction set forth in subsection (12.2.3.) herein, for the following:

- i. all work executed prior to the date of termination;
- ii. any "loss and expense" suffered by the FIRM in connection with, or as a consequence of, the termination. For the purposes of this clause "loss and expense" is defined as: (a) the direct and necessary costs of labor, material, and goods actually incurred on the work prior to the date of termination; (b) costs of an overhead nature actually and necessarily incurred on the job site only in so far they would not otherwise have been incurred but for the termination and which were not and should not have been provided for by the FIRM in the course of performing its obligations under the contract; and (c) 10% of the sum of costs set forth in subsections (a) and (b) of this definition, with such 10% to be inclusive and in lieu of any other profits or revenue of any nature or type, whether past, present, or future.

12.2.3. There shall be deducted from such payment as provided in subsection (12.2.2.) the amount of any payments made to FIRM prior to the date of the termination of this contract. FIRM shall not be entitled to any claim or claim of lien against the TOWN for any additional compensation, profits, revenue, payment, costs, or damages in the event of such termination for convenience. Payment as provided in subsection (12.2.2.) shall be in lieu of any other payments of any type or form to the FIRM, and shall be in lieu of any claim of FIRM to future profits, lost profits, lost revenue, additional expenses incurred, damages, or costs of any kind.

12.2.4. FIRM shall provide an itemized written statement of all work executed prior to the date of termination and all "loss and expense" suffered by the FIRM in connection with, or as a consequence of, the termination no later than 60 days after the date of termination. The written statement shall contain all written documentation supporting the payment request, to include, but not be limited to, invoices, receipts, work

schedules, bills of sale, etc. The TOWN reserves the right to ask for and review additional documentation to verify the FIRM's payment request. If the FIRM does not submit the written statement within the aforesaid 60 days without good cause for delay, the FIRM waives its right to payment.

12.2.5. The FIRM shall provide written notice to all subcontractors prior to hiring of this termination for convenience right and require all subcontractors to hold the TOWN harmless from any claims for damages of the subcontractor in the event the Town executes its right to terminate this contract for convenience.

13.0 Uncontrollable Forces (Force Majeure)

13.1 Neither the TOWN nor FIRM shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

13.2 Neither party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed or remedied with reasonable dispatch.

13.3 The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

14.0 Governing Law and Venue

14.1 This Agreement shall be governed in all respects by the laws of the State of South Carolina and any litigation with respect thereto shall be brought only in the Court of Common Pleas of Colleton County, South Carolina.

15.0 Non-Discrimination

15.1 The FIRM warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, sex, national origin, age, or disability.

16.0 Waiver

16.1 A waiver by either TOWN or FIRM of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

17.0 Severability

17.1 The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement.

17.2 Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void.

17.3 The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

17.4 The provisions of this section shall not prevent the entire Agreement from being void should a provision which is of the essence of the Agreement be determined to be void.

18.0 Entirety of Agreement

18.1 The TOWN and the FIRM agree that this Agreement sets forth the entire Agreement between the parties, and that there are no promises or understandings other than those stated herein.

18.2 This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters or other communications between the TOWN and FIRM pertaining to the Services, whether written or oral.

18.3 None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered except by written instrument executed by the parties hereto.

19.0 Modification

19.1 The Agreement may not be modified unless such modifications are evidenced in writing signed by both TOWN and FIRM. Such modifications shall be in the form of a written Amendment executed by both parties.

20.0 Successors and Assigns

20.1 TOWN and FIRM each binds itself and its partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns, and legal representatives.

20.2 FIRM shall not assign this Agreement without the express written approval of the TOWN by executed amendment.

20.3 In the event of a merger, the surviving corporation shall be substituted for the contracting party to this agreement and such substitution shall be affirmed by the Town Council by executed amendment.

21.0 Contingent Fees

21.1 The FIRM warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the FIRM to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than bona fide employee working solely for the FIRM, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

22.0 Truth-In-Negotiation Certificate

22.1 Execution of this Agreement by the FIRM shall act as the execution of a Truth-in-Negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete, and current as of the date of the Agreement.

22.2 The said rates and costs shall be adjusted to exclude any significant sums should the TOWN determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside firms. The TOWN shall exercise its rights under this Certificate within one (1) year following payment.

23.0 Ownership of Documents

23.1 FIRM shall be required to cooperate with other consultants relative to providing information requested in a timely manner and in the specified form. Any and all documents, records, disks, original drawings, or other information shall become the property of the TOWN for its use and/or distribution as may be deemed appropriate by the TOWN. FIRM is not liable for any damages, injury or costs associated with the TOWN use or distribution of these documents for purposes other than those originally intended by FIRM.

24.0 Access and Audits

24.1 FIRM shall maintain adequate records to justify all charges and costs incurred in performing the work for at least three (3) years after completion of this Agreement. The TOWN shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours at the FIRM's place of business.

24.2 Misrepresentations of billable time or reimbursable expenses as determined by the Auditor to the TOWN shall result in the recovery of any resulting overpayments. The TOWN's cost of recovery shall be the sole expense of the FIRM, including accounting and legal fees, court costs and administrative expenses.

24.3 Intentional misrepresentations of billable hours and reimbursable expenses will be criminally prosecuted to the fullest extent of the law.

24.4 All invoices submitted are subject to audit and demand for refund of overpayment up to three (3) years following completion of all services related to this Agreement.

25.0 Notice

25.1 Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by Federal-Express or by Certified Mail, postage prepaid as follows:

As to TOWN:

Town of Edisto Beach
2414 Murray Street
Edisto Beach, South Carolina 29438
Attention: Town Administrator

As to FIRM:

25.2 Notices shall be effective when received at the addresses as specified above. Changes in the respective addresses to which such notice is to be directed may be made from time to time by either party by written notice to the other party. Facsimile transmission is acceptable notice effective when received, however, facsimile transmissions received (i.e.; printed) after 5:00 p.m., or on weekends or holidays, will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

25.3 Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of FIRM and TOWN.

26.0 Service of Process

As to TOWN:

TOWN ATTORNEY

Town of Edisto Beach

PO Box 1215

Walterboro, SC 29488

As to FIRM:

27.0 Contract Administration

27.1 Services of FIRM shall be under the general direction of the Town Administrator, or his/her successor, who shall act as the TOWN's representative during the term of the Agreement.

28.0 Key Personnel

28.1 FIRM shall notify TOWN in the event of key personnel changes, which might affect this Agreement. To the extent possible, notification shall be made within ten (10) days prior to changes. FIRM at TOWN's request shall remove without consequence to the TOWN any Subcontractor or employee of the FIRM and replace him/her with another employee having the required skill and experience. TOWN has the right to reject proposed changes in key personnel. The following personnel shall be considered key personnel:

Name: _____

Name: _____

29.0. Annual Appropriations

29.1 FIRM acknowledges that the TOWN, during any fiscal year, shall not expend money, incur any liability, or enter into any agreement which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any agreement, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such agreement. Nothing herein contained shall prevent the making of agreements for a period exceeding one year, but any agreement so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding

fiscal years. Accordingly, the TOWN's performance and obligation to pay under this agreement is contingent upon annual appropriation.

30.0 Liquidated Damages

30.1 The parties hereto agree that liquidated damages will be assessed against the FIRM for FIRM's failure to meet the deliverables in the Scope of Work, but only to the extent and in proportion to FIRM's fault in causing the delay as compared to other causes, and to the extent the FIRM is not delayed by reasons beyond FIRM's reasonable control.

31.0 Unauthorized Alien(s)

31.1 The FIRM agrees that unauthorized aliens shall not be employed nor utilized in the performance of the requirements of this Agreement. The TOWN shall consider the employment or utilization of unauthorized aliens a violation of Section 274A(e) of the Immigration and Naturalization Act (8 U.S.C. 1324a). Such violation shall be cause for unilateral termination of this Agreement by the TOWN. The form "AFFIDAVIT CERTIFICATION IMMIGRATION LAWS" will be signed by the FIRM and submitted as part of the Agreement.

31.2 Employers may avail themselves of a program by the U.S. Immigration and Customs Enforcement called E-Verify. E-Verify is an Internet-based system operated by U.S. Citizenship and Immigration Services (USCIS), part of the Department of Homeland Security (DHS), in partnership with the Social Security Administration (SSA). E-Verify is currently free to employers. E-Verify provides an automated link to Federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers.

31.3 If your company wishes to avail themselves of this program, you can register online for E-Verify at <https://www.vis-dhs.com/EmployerRegistration>, which provides instructions for completing the registration process. At the end of the registration process, you will be required to sign a Memorandum of Understanding (MOU) that provides the terms of agreement between you as the employer, the SSA, and DHS. An employee who has signatory authority for the employer can sign the MOU. Employers can use their discretion in identifying the best method by which to sign up their locations for E-Verify. To find out more about E-Verify, please visit www.dhs.gov/e-verify or contact USCIS at **1-888-464-4218**.

(THE REMAINDER OF THE PAGE LEFT INTENTIONALLY BLANK)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

Attest:

By: _____

By: _____

W. Crawford Moore, Jr., Mayor

Date Approved by COUNCIL: _____

Review as to form and legal sufficiency

TOWN Attorney's Office Date

Attest:

COMPANY

By: _____

Corporate Secretary

_____ **[Print Name]**

_____ **[Title]**

DATE: _____

APPENDIX B. Forms of Affirmation

DRUG-FREE WORKPLACE AFFIDAVIT

By submitting an Offer, Offeror certifies that, if awarded a contract, Offeror will comply with all applicable provisions of The Drug-free Workplace Act, Title 44, Chapter 107 of the South Carolina Code of Laws, as amended. [02-2A065-1]

Date: _____

Vendor: _____

Address: _____

Telephone: _____

By: _____

(Signature)

ETHICS COMPLIANCE

By submitting an offer, the Offeror certifies that the offeror has and will comply with, and has not, and will not, induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended. The following statutes require special attention: Section 8-13-700, regarding use of official position for financial gain; Section 8-13-705, regarding gifts to influence action of public official; Section 8-13-720, regarding offering money for advice or assistance of public official; Sections 8-13-755 and 8-13-760, regarding restrictions on employment by former public official; Section 8-13-775, prohibiting public official with economic interests from acting on contracts; Section 8-13-790, regarding recovery of kickbacks; Section 8-13-1150, regarding statements to be filed by FIRMs; and Section 8-13-1342, regarding restrictions on contributions by Offeror to candidate who participated in awarding of contract. The town may rescind any contract and recover all amounts expended as a result of any action taken in violation of this provision. If Offeror participates, directly or indirectly, in the evaluation or award of public contracts, including without limitation, change orders or task orders regarding a public contract, offeror shall, if required by law to file such a statement, provide the statement required by Section 8-13-1150 to the procurement officer at the same time the law requires the statement to be filed. [02- 2A075-2]

Authorized Signature of Offeror

Please print Offeror Name and Address:

Phone Number: _____

COMPLIANCE WITH ILLEGAL IMMIGRATION ACT

By signing a bid/proposal, the Bidder/Offeror certifies that it will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agree to provide to the State upon request any documentation required to establish either; (a) that Title 8, Chapter 14 is inapplicable to the Bidder/Offeror and its subcontractors; or (b) that the Bidder/Offeror and its subcontractors are in compliance with Title 8, Chapter 14.

Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this Chapter is guilty of a felony and, upon conviction, must be fined within the discretion of the Court or imprisoned for not more than five years, or both."

Bidder/Offeror agrees to include in any contracts with subcontractors, language requiring subcontractors to (a) comply with applicable requirements of Title 8, Chapter 14, and (b) include in its contracts with the subcontractor's language requiring the subcontractors to comply with the applicable requirements of Title 8, Chapter 14.

Project Name: _____

Contractor: _____

Address: _____

Authorized Representative Name and Title: _____

Signature of Authorized Representative: _____

Witness (Print and Sign) _____

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

(For Contractors/Vendors other than individuals)

According to SC Code of Regulations at 41 C.F.R. Part 60-1.4(b):

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

- 1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- 2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- 3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law. (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the

contractor may request the United States to enter into such litigation to protect the interests of the United States.”

Edisto Beach requires compliance with State and Federal regulations governing Equal Employment Opportunity, External Equal Opportunities (EO), External On-the-Job Training (OJT), Title VI, and the Americans with Disabilities Act (ADA) programs.

Sub recipients of federal aid contracts must include notifications in all solicitations for bids of work or material and agreements, subject to Title VI of the Civil Rights Act of 1964 and other nondiscrimination authorities. Sub-recipients, contractor and subcontractors may not discriminate in their employment practices or in the selection and retention of any subcontractor.

By signing this document, the Contractor/Vendor hereby certifies its commitment to assure nondiscrimination in its programs and activities to the effect that no person shall on the grounds of race, color, national origin, sex, age, disability or income status be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination or retaliation under any federally or non-federally funded programs or activity administered by the sub-recipient and/or its contractors.

Project Name: _____

Contractor: _____

Address: _____

Authorized Representative Name and Title:

Signature of Authorized Representative:

Witness (Print and Sign)

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS
(FIRST TIER SUBCONTRACTOR)

For all orders above the limit specified in FAR Section 52.209-6(e) (currently \$30,000) and in accordance with the requirements of FAR 52.209-6, the Bidder must complete and sign the following:

The Bidder certifies, to the best of its knowledge and belief, that--
The Bidder and/or any of its Principals--

Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

Have not, within a three-year period preceding this offer, 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) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision.

The Bidder has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

"Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER SECTION 1001, TITLE 18, UNITED STATES CODE.

The Bidder shall provide immediate written notice to the Town if, at any time prior to subcontract award, the Bidder learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Bidder's responsibility. Failure of the Bidder to furnish a certification or provide such additional information as requested by the Town may render the Bidder non-responsible.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of a Bidder is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Bidder knowingly rendered an erroneous certification, in addition to other remedies available to the Town, the Town may terminate the contract resulting from this solicitation for default.

SIGNATURE: _____

COMPANY NAME: _____

DATE: _____