



**Town of Spencer
Request for Proposal
Stream Debris Removal**

**Issued By:
Town of Spencer
Administration**

**460 South Salisbury Avenue
P.O. Box 45
Spencer, NC 28159**

**Date of Issue: November 30, 2022
Sealed Proposals Due: December 29, 2022, 2:00PM**

KEY INFORMATION SUMMARY SHEET

*Request for Proposals
Stream Debris Removal*

RFP Issue Date:	November 30, 2022
Mailing address to submit proposals:	Town of Spencer /Administration Attn: Joe Morris, Special Projects Planner 460 South Salisbury, Avenue P.O. Box 45 Spencer, NC 28159
Pre-Proposal Site Visitation	December 15, 2022, 9:00 AM
Deadline for Written Questions:	December 20, 2022, 12:00 noon
Sealed Proposals Due:	December 29, 2022, 2:00 PM
Intended Date of Award	January 10, 2023

**Town of Spencer, North Carolina
Request for Proposals
Stream Debris Removal**

1. Introduction: The Town of Spencer has been awarded grant funds through the Streamflow Rehabilitation Assistance Program (StRAP). The funding is to be used to assist in protecting and restoring the integrity of drainage infrastructure through removal of vegetative debris, fallen trees, dead trees and structurally compromised trees located within and adjacent to existing streams and drainage ways.

The streams sections that have been identified for this project include:

- (1) Grants Creek - From Henderson Branch (near Old Mocksville Road) to 7th Street ~4821 linear ft.**
- (2) Grants Creek – From 7th Street to 3rd Street (Hollywood Drive) ~ 6390 linear ft.**

(RFP) may be obtained by applying to the Town of Spencer Administration, phone (704) 633-2231 during regular business hours. The Town of Spencer reserves the right to reject any and/or all proposals. The Town of Spencer encourages all businesses, including minority, women owned businesses to respond to all Request for Proposals.

The award of a contract under this solicitation will be paid with state funding. Funding is contingent upon compliance with all terms and conditions of funding award. All prospective contractors shall comply with all applicable federal laws, regulations, and executive orders. In addition, contractors providing submittals shall be responsible for complying with state and local laws.

2. Pre-Proposal Site Visitation

A pre-proposal site visitation will be held on **December 15, 2022 at 9:00 AM (EST)**. Contractors will meet Joe Morris, Special Projects Planner at Spencer Town Hall 460, South Salisbury Avenue, Spencer, North Carolina 28159, and will be directed to the site location from there. This site visitation is not mandatory; however, it is preferred. Contractors are not authorized to conduct site visits on their own unless directed or assisted by the Town.

3. Questions

All questions pertaining to this Request for Proposal (RFP) shall be submitted in writing no later than December 20, 2022, by 12:00 noon. Questions may be emailed to: jmorris@spencernc.gov

Only written questions will be considered formal. Any information given verbally or by telephone will be considered informal. Any questions that the Town determines are pertinent to all proposers will be mailed as an addendum to the RFP.

4. Preparation of Proposal

Each bidder must thoroughly examine the Request for Proposal and contract documents to ensure that the contractor can meet all requirements. Proposals shall be submitted on the forms included within the RFP documents.

Proposals shall be signed by the person or persons legally authorized to bind the Provider to a contract. Proposals that are not signed will be rejected.

Failure to submit a proposal with all proposal requirements may be considered sufficient cause for rejection of the Proposal. Any interlineations, alterations or erasures must be initialized by the signer of the proposal.

Proposals shall remain firm for a period of sixty (60) calendar days after proposals are due.

5. Submittals

In order to be considered all proposals must be **sealed** and submitted in writing no later than **2:00 PM (EST) on December 29, 2022**. Time is of the essence; No proposal will be accepted after the official time and date. Contractors mailing responses should allow delivery time to ensure timely receipt of their proposal. The responsibility for getting the proposal to the Town of Spencer / Town Hall on or before the specified time and date is solely and strictly the responsibility of the responding contractor.

The outside of the envelope shall be clearly marked and sealed **“Stream Debris Removal - RFP”** *The Town will in no way be responsible for delays caused by any occurrence*. Responses may be hand carried during regular business hours (8:30 AM – 5PM) or mailed to:

**Town of Spencer
Attn: Joe Morris, Special Projects Planner
460 South Salisbury Avenue
Post Office Box 45
Spencer, NC 28159**

This is not a public bid opening. Proposals are subject to rejection unless submitted on this form.

6. Performance Bond

The awarded contractor will be required to provide a Performance Bond within ten (10) calendar days after receipt of written Notice of Award. The Performance Bond must be 100% of contract amount. Bond shall be issued by a Surety acceptable to the Owner licensed to conduct business in the State of North Carolina. Cost of bond shall be included in bid price.

7. Bidder Responsibility

The bidder is responsible for verifying any and all information provided and to familiarize themselves with the work required, prior to bidding. A plea of ignorance of the conditions that exist, or may hereafter exist, or difficulties that may be encountered in the execution of the work, as a result of failure to make necessary investigations and examinations, will not be accepted as an excuse for any failure, or omission on the part of the successful documents and to complete the work for the consideration set forth herein, or as a basis for any claim whatsoever.

8. Subcontract

The successful bidder is the primary contractor and will perform the work using their own work force. The contractor shall not sub-contract the services/work without the prior approval of the Town.

9. Certification of Proposer Regarding Debarment. By submitting a proposal under this solicitation, the Contractor certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction. See attached form enclosed.

10. Sample Agreement

Attached is a *Sample* STANDARD AGREEMENT OF PROFESSIONAL SERVICES that describes the town's contractual terms and conditions to include insurance requirements. The successful contractor will be required to enter into a service agreement with the Town. Any exceptions to the Service Agreement must be listed and included in Section 4 below.

11. Proposal Requirements

In order to evaluate responses efficiently and equitably, responses must be submitted as identified below. Failure to submit this information may render your proposal non-responsive. Each respondent shall provide the following company information:

Section 1: Introduction: Company Information

- Company name, address, including telephone, email address, website address.
- The type of company (individual, partnership, corporation, etc.) and list the names of all partners, principals, etc.
- Year established. Include former company name(s) and year(s) established, if applicable.
- The name, title, address, and telephone number of the company's authorized negotiator. The person identified must be empowered to make binding commitments for the company.
- Acknowledge the ability to provide a performance bond.

Section 2: Qualifications and Experience

- The proposer should demonstrate full knowledge and understanding of the project and the requirements for this type of Work.

Section 3: Forms

- Proposer's Bid Certification Form (Signed)
- The proposer is required to provide 3 references. Out of three references, two must be from a municipality, such as: Soil and Water Conservation.

Section 4: Exceptions

• **Exceptions to the *Sample* Service Agreement.** Attached is a sample service agreement that describes the Town's contractual terms and conditions. The awarded contractor will be required to enter into a service agreement. Any exceptions to the RFP and/or the agreement **must be documented** and submitted in this Section. A form has been provided.

Scope of Work

1. Scope

The Work will consist of the removal and disposal of down trees, logs, and debris in and adjacent to the designated waterways with minimal disturbance. A project limit map delineates the locations along Grants Creek for starting and ending of each stream section to be cleared.

Within each project area, contractor will cut debris bank to bank, through all trees, logs, and debris impeding water flow.

Equipment shall operate adjacent to the stream and not within the stream unless prior approval is granted. Use of amphibious excavators for debris removal within the stream are allowed. Where necessary, trees can be cut for access to work sites; however, mechanized land clearing will not occur within wetlands at any time. Crossing a stream to gain access to the opposite bank is permissible. Crossing sites should be selected to minimize damage to the streambank and aquatic habitat.

The awarded contractor shall follow Appendix B of the *Best Management Practices for Selective Clearing and Snagging* and the *USACE Technical Report EL-92-35*.

The guidelines for both of these can be downloaded at

<https://www.ncagr.gov/SWC/disasterresponse/WatershedRecoveryEfforts.html>

2. General

The awarded contractor will work under the Project Manager, and report to Joe Morris, Special Projects Planner, Town of Spencer.

The Contractor must be able to work independently with periodical inspections by the Project Manager, and/or designated town personnel. The Contractor will begin work immediately upon contract award and proceed with the work as weather and stream conditions permit. Work will take place when water levels on waterways are average or below average as measured by the river gauge operated by the US Geological Survey located near Foster Road on the South Yadkin River, south of Mocksville, NC. Current and historical data for this gauge can be found at the following: [USGS Current Conditions for USGS 02118000 SOUTH YADKIN RIVER NEAR MOCKSVILLE, NC](#)

3. Equipment

Method of debris removal will be accomplished with appropriate light to medium duty equipment, hand tools and power tools.

The contractor is not allowed to use any heavy equipment for this project. Light duty equipment, skid steer loaders, medium duty tractors and trucks are allowed. Preferred equipment includes: Aquatic excavators, skid steers, masticating forestry mowers, medium duty trucks, etc.

4. Access

The Contractor will ensure that rights of entry are secured, if required, for each site and landowner permission is granted prior to start of any work for that site. If an alternative route is obtained by a private property owner, the Contractor shall obtain written approval from the property owner. Copies of written approvals must be provided to the Project Manager before use of private owned property.

5. Limits of Work

The limits of the work area shall not exceed those shown on the drawings of this specification. The limits of the designated stream debris removal and securement areas are referenced throughout

this specification and on the maps as starting points and ending points. Each designated waterway shall be cleared by starting downstream and working upstream in each waterway. All work in project areas will be completed, inspected, and approved by the Town before work begins in the next project area.

6. Clearing and Debris Removal

Removal of debris will be limited to vegetative and woody materials. Fallen trees and limbs within or across the cross section of the waterway and the associated debris shall be removed and placed **a minimum of thirty (30) feet from the edge of the waterway**. Trees severely undercut by stream bank erosion and trees severely leaning over the waterway at an angle greater than 30 degrees of vertical whose near-term fall is apparent shall also be masticated on-site or removed and placed in a designated area for tub grinding. **Excavation of soil/sediment shall not be performed.**

- Unless otherwise approved by the Project Manager, trees designated for removal shall be cut as low as practical in relation to the ground surface or streambank.
- For leaning trees where the root system of the tree is not exposed, the trunk of the tree shall be cut a few feet above the ground or streambank to allow potential re-sprouting.
- For trees that are leaning or down and the root system is partially exposed (i.e.: hinged on one side) the trunk shall be cut a few feet above the ground or streambank to alleviate falling and stream blockage.
- Trees that have been “snapped” are not leaning, have a strong root structure, and pose no threat to the waterway shall be left as they are, provided the contractor does not need to remove the tree for access purposes.
- Naturally leaning trees with apparently undamaged root systems and other natural, undamaged vegetation shall remain in its natural condition and not be removed.

Removal of standing trees outside of the designated debris removal area is limited to the cutting of severely damaged trees leaning across the waterway and other trees as needed to gain access for equipment to points of waterway blockage. The approval of the Project Manager shall be obtained prior to the cutting of any “healthy” tree for equipment access. Unless otherwise marked, access for pre-approved for mechanized equipment shall be limited to one side of the waterway. Access to the waterway shall generally be perpendicular to the waterway with precautions taken to protect mast producing and stream canopy trees. Dead trees that provide den habitat and are determined to pose no hazard to the waterway shall be protected.

Disturbance of the waterway bottom and banks, and equipment access areas shall be held to the minimum necessary to allow the construction equipment to remove the debris. Trees shall be felled in such a manner as to avoid damage to trees left standing or existing structures and with due regard for the safety of persons and property.

Method of debris removal and securement will minimize impact to vegetation on adjacent shorelines; all disturbed areas must be seeded and mulched within 24 hours unless otherwise indicated.

7. Disposal

The preferred method of disposal is forest mastication, shredding and chipping with distribution of the processed woody material along the streambank and floodway. No discernable piles of wood chips are to be left on site.

An alternate method of disposal could involve use of a tub grinder with the woody debris hauled to a designated area or landfill. In all cases, woody debris from the project area shall not be placed on the property of others nor "piled up" to avoid disposal. Proposals to remove the woody and debris shall be hauled off-site to a disposal area provided by the sponsoring local organization may be considered.

Alternative methods proposed by the Contractor for disposal of naturally woody and other debris must be pre-approved by the Project Manager.

Debris shall not be placed on nature or hiking trails, sewer line, highway, or railroad rights-of-way, Etc. Debris shall not be placed in tributaries or side ditches. The debris shall be placed in such a manner to prevent potential movement of the materials back into the floodway by subsequent highwater flows. Any temporary waterway or drainage way crossings placed by the Contractor shall be removed prior to revegetating the area. The Contractor shall leave openings in debris piles to allow lateral flow to the stream.

8. Environmental Requirements

Equipment shall operate adjacent to the stream and not within the stream unless prior approval is granted by the Project Manager. Crossing a stream to gain access to the opposite bank is permissible. The Construction Inspector shall select crossing sites to minimize damage to streambank and aquatic habitat. Removal operations will be controlled to minimize soil disturbance. Should an area of the waterway be encountered which is affected by beavers, the beaver dam shall be removed to its lowest point.

Equipment shall be maintained to prevent fuel, oil, and lubricant spill. Refueling, repairs, and lubrication shall be performed at safe distances from the stream. Should fuel leaks, oil leaks or hydraulic line rupture occur during construction, the Contractor's operator is required to immediately remove the equipment to a safe area and take prompt action to minimize damage and safeguard the site. The Contractor must immediately report the discharge to the North Carolina Division of Water Resources, Mooresville Regional Office Regional Office at 610 East Center Avenue, Suite 301, Mooresville, NC 28115 **Phone: 704-663-1699 or 1-800-858-0368**, and the provisions of the North Carolina Oil Pollution and Hazardous Substances Control Act shall be followed.

The Contractor must immediately report any emergency discharge to Rowan County 9-1-1 and the Project Manager at 704-640-7867.

The Contractor shall provide tanks or barrels to be used for off-site disposal of chemical pollutants such as drained lubricating or transmission oils, greases, etc. produced as a by-product of this work. Washing, fueling, or servicing of equipment shall be avoided where spillage or wash water can enter the watercourse.

The Contractor shall be responsible for all wetlands, and erosion control issues associated with this type of project.

9. Revegetation

All ground surface areas denuded due to debris removal or equipment access shall be revegetated as directed by the Project Manager. Prior to revegetating, any ruts or other surface irregularities

resulting from this operation shall be smoothed and the ground surface shall be returned to its original degree of uniformity as directed by the Project Manager. Some soil fill material may be required where the existing surface has been compacted to return the ground surface to its original degree of uniformity. Seeding and mulching will be done on a daily basis as the work is completed. If an area is disturbed by the Contractor or the Contractor's crew after it has been seeded and mulched the Contractor shall reseed and re-mulch the disturbed area. Seed, fertilizer and mulch shall be uniformly applied at the following **rates per 1,000 square feet**:

All areas except those revegetated as along streambanks and riparian zones:

1.7 lb. Kentucky 31 Tall Fescue
12 lb. 10-20-20 Fertilizer
70 lb. Hay or Small Grain Straw Mulch

Should locality, climatic and/or ground conditions warrant, the Project Manager may alter the planting dates to an earlier or later period, seed combinations or mulch requirements shown for more favorable vegetative results.

10. Equipment Requirements

Each work site shall have two-way communication capabilities. This requirement will be met with cellular phones or two-way battery-operated radios.

11. Method of Payment

Method of payment for this project will be made for the units of work completed as confirmed by a Town representative. Payment will be made per linear foot. The payment shall be considered full compensation for all labor, equipment, tools, materials, seeding, mulching, mobilization, demobilization, and other items necessary and incidental to complete the work.

PROPOSAL FORM
TOWN OF SPENCER
GRANTS CREEK
STREAMFLOW RESTORATION PROJECT

General Information
Provided on Company Letterhead

Section 1: Introduction: Company Information

- Company name, address, including telephone, email address, website address.
- The type of company (individual, partnership, corporation, etc.) and list the names of all partners, principals, etc.
- Year established. Include former company name(s) and year(s) established, if applicable.
- The name, title, address, and telephone number of the company's authorized agents. The person identified must be empowered to make binding commitments for the company.
- Acknowledge the ability to provide a performance bond and / or bond capacity.

Section 2: Qualifications and Experience

- The proposer should demonstrate full knowledge and understanding of the project and the requirements for this type of Work.
- The proposer is required to provide 3 references. Out of three references, two must be from a municipality, such as: Soil and Water Conservation.

PROPOSAL FORM
TOWN OF SPENCER
GRANTS CREEK
STREAMFLOW RESTORATION PROJECT

PART A: PROPOSED BID

SECTION	ESTIMATED QUANTITY	UNIT PRICE /LINEAR FOOT	TOTAL PRICE
Grants Creek (A)	4,821 linear feet	\$	\$
Grants Creek (B)	6,390 linear feet	\$	\$
TOTAL	11,211 linear feet		\$

PART B: BIDDER INFORMATION & SIGNATURE

Company Name
Company Address
Telephone & Email
Representative (print name)
Signature of Representative
Date Submitted

REFERENCES

INSTRUCTIONS:

List the three (3) required references below. Two out of three must be from a municipality, county government or public agency, such as Soil and Water Conservation.

REFERENCE NO. 1 – Municipality, county government or public agency **(Required)**

Name & Title:

Agency:

Address:

Telephone:

Nature of Association:

Email: _____

REFERENCE NO. 2 – Municipality, county government or public agency **(Required)**

Name & Title:

Agency:

Address:

Telephone:

Email: _____

REFERENCE NO. 3 - Other

Name & Title:

Agency:

Address:

Telephone:

Email:

{EXAMPLE}
STANDARD AGREEMENT
FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this _____ day of _____, 2022, by and between the TOWN OF SPENCER, (herein referred to as the "Town") located at 460 S Salisbury Avenue, Spencer, North Carolina, and _____, a _____ (herein referred to as "Contractor") located at _____, _____, North Carolina;

W I T N E S S E T H:

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

Sec. 1. Professional Services to be Provided. The Contractor will provide professional services for the Project as set forth in Exhibit "A" attached hereto and incorporated herein by reference. The fee shall not exceed the amount set forth in Exhibit "A". Additional Exhibits may be used to further define this Agreement when the Contractor and Town so agree. Any additional exhibits shall be designated as exhibits to the Agreement with capitalized, sequential letters of the alphabet, shall be attached hereto and incorporated herein by reference as if the same were fully recited, and shall become terms of this Agreement upon execution by both parties.

Sec. 2. Standards of Performance.

A. The standard of care for all professional and related services performed or furnished by Contractor under this Agreement will be the care and skill ordinarily used by members of Contractor's profession practicing under similar conditions and circumstances and in a similar locality.

B. Contractor shall be responsible for the technical accuracy of its services and documents resulting therefrom, and Town shall not be responsible for discovering deficiencies therein. Contractor shall correct such deficiencies without additional compensation, except to the extent such action is directly attributable to deficiencies in Town-furnished information.

C. Contractor shall perform or furnish professional landscape design, architectural design and / or engineering and related services in all phases of the Project to which this Agreement applies. Contractor may employ such Contractor's consultants as Contractor deems necessary to assist in the performance or furnishing of the services. The meaning of the term "consultant" shall include "subcontractor." Contractor shall not be required to employ any Contractor consultant unacceptable to Contractor; however, the Contractor shall obtain the Town's written approval for each consultant selected. Such approval may be granted by the Town Manager or by any duly authorized agent of the Town Manager.

D. Contractor and Town of Spencer shall comply with all applicable local, state, and federal Laws and Regulations or Standards. Changes made to these requirements after the Town's issuance of the Notice to Proceed may be the basis for modifications to Town's responsibilities or to the scope, schedule, and compensation for Contractor's services.

E. Town of Spencer shall be responsible for, and Contractor may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Town to Contractor pursuant to the Agreement. Contractor may use such requirements, reports, data, and information in performing or furnishing services under this Agreement.

F. Town of Spencer shall make decisions and carry out its other responsibilities in a timely manner so as not to unreasonably delay the services of Contractor.

G. Contractor shall guarantee the performance of any consultant hired by, or otherwise relied upon by Contractor and shall assume responsibility for any such consultant's failure to furnish and perform the Work in accordance with this Agreement.

H. Contractor shall not be responsible for the acts or omissions of any contractor(s), subcontractor, or supplier, or of any of the contractor's agents or employees or any other persons (except Contractor's own employees or consultant's hired by or working directly for the Contractor) at the site or otherwise furnishing or performing any of the Contractor's work; or for any decision made on interpretations or clarifications by the Town of the Contract Documents when such interpretations or clarifications are given without the consultation and advice of Contractor.

Sec. 3. Project Site. Reasonable precautions will be taken to minimize damage to the Project Site (if applicable) from the Contractor's activities and use of equipment. The Contractor, well in advance of any testing or site investigation, will research and identify the accurate location of all utilities located on the Project Site including the presence and accurate location of hidden or obscured man-made objects known to the Town. Contractor shall take all reasonable precautions to locate any hidden or obscured utilities or other man-made objects which may be on the Project Site; but are unknown to the Town.

Sec. 4. Time of Service. The Contractor shall commence work upon execution of this contract which shall be the "Commencement Date." All work as set forth in the Scope of Services in Exhibit "A" shall be completed by _____ and shall be the "Completion Date." Time is of the essence with regard to this Project. If Contractor's obligations are not completed by the Completion Date, the Town reserves the right to nullify this Agreement, order the Contractor to immediately cease all work under this Agreement and vacate the premises, and to seek professional services equivalent to those outlined in Exhibit "A." The Contractor shall be held accountable for all damages incurred by the Town of Spencer as consequences of the missed Completion Date. The exercise of any of these rights by the Town shall not be interpreted to prejudice any other rights the Town may have under any agreement or in law or equity.

Sec. 5. Cancellation for Non-Conformity or Breach.

A. In the event of the Contractor's failure to deliver or perform in accordance with the terms and conditions set forth herein, the Town shall have the right to nullify this Agreement or any part hereof, without prejudice to its other rights, and the Contractor agrees that the Town may return part or all of any delivery and may charge the Contractor with any loss or expense sustained as a result of such failure to deliver or to perform.

B. In the event of a violation of any material term of this Agreement, the non-violating party may terminate the Agreement upon written notice. Such notice shall state the violation with specificity and shall give ten (10) business days to cure the violation. The cure period shall be measured as ten (10) business days from the date of receipt of notice by the violating party, or, if the date is not known, then thirteen (13) consecutive days from the date the notice is placed in the United States Post. If the violation remains uncorrected at the end of the cure period, the Agreement shall be terminated without any further action by the non-violating party.

Sec. 6. Insurance and Liability. Contractor shall maintain and cause all consultants to maintain insurance policies at all times with minimum limits as follows:

<u>Coverage</u>	<u>Minimum Limits</u>
Workers' Compensation	\$500,000 each accident, \$500,000 bodily injury by disease each employee, \$500,000 bodily injury by disease policy limit
General Liability	\$1,000,000 per occurrence regardless of the contract size
Automobile Liability	\$1,000,000 per occurrence regardless of the contract size
Umbrella	<input type="checkbox"/> \$1,000,000 per occurrence if contract does not exceed 180 days and does not exceed \$500,000 otherwise; <input type="checkbox"/> \$2,000,000

Sec. 7. Documentation Requirements:

A. Contractor shall provide the Town with a **Certificate of Insurance** for review prior to the issuance of any contract or Purchase Order. All Certificates of Insurance will require written notice by the insurer or contractor's agent in the event of cancellation, reduction or other modifications of coverage by the insurer. Such notice shall be not less than 30 days for nonrenewal by the insurer, not less than 10 days for cancellation due to nonpayment of the premium and as soon as possible for all other types of modifications. In addition to the notice requirement above, Contractor shall provide the Town with written notice of cancellation, reduction, or other modification of coverage of insurance whether instigated by the insurer or by the Contractor immediately upon Contractor's receipt of knowledge of such modifications. Upon failure of the Contractor to provide such notice, Contractor assumes sole responsibility for all losses incurred by the Town for which insurance would have provided coverage. The insurance certificate shall be for the insured period in which the initial contract period begins and shall be renewed by the contractor for each subsequent renewal period of the insurance for so long as the contract remains in effect.

The Town shall be named as an **additional insured** on all policies, and it is required that coverage be placed with "A" rated insurance companies acceptable to the Town. Statement should read, "Town of Spencer is added as an additional insured as evidenced by an endorsement attached to this certificate." Failure to maintain the required insurance in force may be cause for termination of this Agreement. In the event, the contractor fails to maintain and keep in force the insurance herein required, the Town has the right to cancel and terminate the Agreement without notice.

B. Contractor shall provide a completed W-9 form to the Town prior to execution by the Town of this Agreement.

Sec. 8. Indemnification. To the maximum extent allowed by law, the Contractor shall defend, indemnify, and hold harmless the Town of Spencer, its agents, officers, and employees, from and against all charges that arise in any manner from, in connection with, or out of this Agreement as a result of the acts or omissions of the Contractor or its subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable except for damage or injury caused solely by the negligence of the Town its agents, officers, or employees. In performing its duties under this section, the Contractor shall at its sole expense defend the Town of Spencer, its agents, officers, and employees with legal counsel reasonably acceptable to Town. As used in this subsection – "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, expenses, interest, reasonable attorney's fees, and amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders. Nothing in this section shall affect any warranties in favor of the Town that are otherwise provided in or arise out of this Agreement or by operation of law. This section is in addition to and shall

be construed separately from any other indemnification provisions that may be in this Agreement. This section shall remain in force despite termination of this Agreement (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this Agreement.

Sec. 9. Intellectual Property. If any claim based upon alleged infringement of rights in any patent, copyright, trademark, or trade name is asserted against the Town by virtue of the purchase or use of any good, service, or process hereunder, the Contractor shall indemnify and hold the Town harmless from all claims, demands, and legal obligations against the Town in preparation or in defense of such claims, or in settlement thereof.

Sec. 10. Documents. All documents, including but not limited to drawings, specifications, reports, boring logs, field notes, laboratory test data, calculations, and estimates, prepared by the Contractor pursuant to this Agreement, shall be the Town's sole property. The Contractor shall furnish or cause to be furnished to the Town any and all such as: reports, data, studies, plans, specifications, documents, computer files, and other information created or collected by the Contractor for the Project. The documents so provided will remain the property of the Town of Spencer. All documents prepared by the Contractor for the Town are subject to public records requirements, and the Town will not assume any responsibility for any third party's use of the documents that are produced.

Sec. 11. Attachments. Additional Exhibits may be used to further define this Agreement when the Contractor and Town so agree. Any additional exhibits shall be designated as exhibits to the Agreement with capitalized, sequential letters of the alphabet, shall be attached hereto and incorporated herein by reference as if the same were fully recited, and shall become terms of this Agreement upon execution by both parties.

The following attachments are made a part of this contract and incorporated herein by reference:

- (a) Exhibit "A" – Scope of Services / Fee for Scope of Services.
- (b) Exhibit "B" – Contractor must execute the Affidavit attached as Exhibit B, attesting to compliance with state and federal laws related to E-Verify.
- (c) Exhibit "C" – Tax Form(s).
- (d) Exhibit "D" - Certificate of Insurance.
- (e) Exhibit "E" – Exceptions & Supplementary Conditions

In the event any terms in any attachment hereto conflict with any terms in this Agreement without said attachment, the terms of this Agreement as written without said attachment shall control and take precedence over the contradictory language in the attachment, except in such case where the Town has expressly waived said conflicting terms by stating the specific term in this Agreement which is to be waived and the alternative term which is to be effective. The waiver must be in writing and signed by the Town Manager or a duly authorized representative of the Town Manager.

Sec. 12. Strict Compliance. The Town may at any time insist upon strict compliance with these terms and conditions notwithstanding any previous course of dealing or course of performance between the parties to the contrary.

Sec. 13. Corporate Status. If the Contractor experiences any change in corporate status whatsoever, including but not limited to incorporation, dissolution or suspension of incorporation, or any change in the status of partnership or sole proprietorship, and the Contractor does not notify the Town of such change in status within three (3) business days from the date of the change in status, and/or the status existing at the time of execution of this Agreement is not reinstated within thirty (30) days, The Town may, at its sole option, either declare the Agreement null and void or require execution by the Contractor of a new Agreement reciting the Contractor's correct legal entity and executed by a duly authorized agent of that entity.

Sec. 14. Notices.

A. All notices and other communications required or permitted by this Agreement shall be in writing and shall be given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the Town:

Town of Spencer
P.O. Box 45
Spencer, NC 28159

Jay Dees, Esq.
Town Attorney
PO Box 45
Spencer, NC 28026

To the Contractor:

B. Change of Address, Date Notice Deemed Given: A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this Agreement shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by US Mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the US Postal Service or upon actual delivery, whichever first occurs.

Sec. 15. Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the Town and the Contractor shall survive the completion of the services and the termination of this Agreement.

Sec. 16. Miscellaneous.

A. Choice of Law and Forum. This Agreement shall be deemed made in Rowan County, North Carolina, and shall be governed by and construed in accordance with the laws of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement shall be the appropriate division of the North Carolina General Court of Justice, in Rowan County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

B. Waiver. No action or failure to act by the Town shall constitute a waiver of any of its rights or remedies that arise out this Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

C. Performance of Government Functions. Nothing contained in this Agreement shall be deemed or construed so as to in any way estop, limit, or impair the Town from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

D. Severability. If any provision of this Agreement shall be unenforceable, the remainder of this Agreement shall be enforceable to the extent permitted by law.

E. Assignment, Successors and Assigns. Without the Town's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out this contract. Unless the Town otherwise agrees in writing, the Contractor and all assigns shall be subject to all of the Town's defenses and shall be liable for all of the Contractor's duties that arise out of this Agreement and all of the Town's claims that arise out of this Agreement. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this Agreement shall be binding upon it and its heirs, personal representatives, successors, and assigns.

F. Town Policy. THE TOWN OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER TOWN CONTRACTS.

G. EEO Provisions. During the performance of this Agreement the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall post in conspicuous places available to employees and applicants for employment, notices setting forth these EEO provisions.

(2) The Contractor in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.

H. No Third Party Right Created. This Agreement is intended for the benefit of the Town and the Contractor and not any other person.

I. Principles of Interpretation. In this Agreement, unless the context requires otherwise the singular includes the plural and the plural the singular. The pronouns “it” and “its” include the masculine and feminine. Reference to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The word “person” includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and any other legal entities.

J. Modifications, Entire Agreement. A modification of this Agreement is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the Town unless the Town Manager or other duly authorized official signs it for the Town. This Agreement, including all exhibits and attachments hereto, contains the entire agreement between the parties pertaining to the subject matter of this Agreement. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this Agreement.

K. Corporate seal. If a corporate seal is included by any party to this Contract, it is only for authentication purposes. This Contract is not signed under seal.

IN WITNESS WHEREOF, the Town of Spencer and the Contractor have caused this contract to be executed by their respective duly authorized agents or officers.

[SIGNATURE PAGE(S) FOLLOW]

TOWN OF SPENCER:

CONTRACTOR:

By: _____
Town Manager

By: _____
Signature of President/Vice President/Manager/Partner

Date: _____

Printed Name: _____

Title: _____

ATTEST BY:

Date: _____

Town Clerk

ATTEST:

BY: _____
Signature of Vice President, Secretary, or other officer

Printed Name: _____

APPROVED AS TO FORM:

Title _____

Attorney for the Town of Spencer

SEAL

APPROVAL BY TOWN FINANCE OFFICER

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Signature

EXHIBIT "A"

This document is an Exhibit to the Agreement for Professional Services between the TOWN OF SPENCER and _____, dated _____, 20__.

Scope of Services:

Fee for Scope of Services:

The fee for services shall not exceed \$_____ and shall be based on the schedule provided below, whereby fees would be invoiced based on the monthly base cost and by the amount of additional services provided. Fees for _____, staff time shall be based on the rate schedule provided below.

Invoices shall be directed to: Town of Spencer Attention: Accounts Payable, Post Office Box 45, Spencer, NC 28146. Should changes or extra services be needed, which will cause a cost overrun; _____, will consult with the Town for adjustments prior to conducting the work.

The budget for the scope of services is based on the following estimates:

(Copy of Bid Sheet)

EXHIBIT "B"

STATE OF NORTH CAROLINA

AFFIDAVIT

COUNTY OF ROWAN

I, _____ (the individual signing below), being duly authorized by and on behalf of _____ (the legal name of the entity entering the contract, "Employer")

after first being duly sworn hereby swears or affirms as follows:

- 1. Employer understands that E-Verify is the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with NCGS §64-25(5).
2. Employer understands that Employers Must Use E-Verify. Each employer, after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS§64-26(a). Employer attests that Employer is in compliance with the requirements of the federal and state laws relevant to E-verify.
3. Employer is a person, business entity, or other organization that transacts business in the State of North Carolina. Employer employs 25 or more employees in this State. (mark Yes or No)
a. YES _____, or b. NO _____.
4. Employer attests that all subcontractors employed by it as part of this contract comply with the requirements of E-Verify, and Employer will ensure compliance with E-Verify by any subcontractors subsequently hired by Employer as part of any contract with the Town of Spencer.
5. Employer shall have a continuing duty to inform the Town of Spencer of any changes to this sworn information.

This ___ day of _____, 20__.

Signature of Affiant
Print or Type Name: _____

State of North Carolina County of Rowan

Signed and sworn to (or affirmed) before me, this the ___ day of _____, 20__.

My Commission Expires:

____ Notary Public

(Affix Official/Notarial Seal)

EXHIBIT "C"

TAX FORM(S)

EXHIBIT "D"

CERTIFICATE OF INSURANCE

SAMPLE
SUPPLEMENTARY GENERAL CONDITIONS
For Streamflow Restoration Project

SGC I - TIME FOR COMPLETION AND LIQUIDATED DAMAGES

Time is of the essence. All work shall be completed no later within 365 calendar days from the receipt of the Notice to Proceed. It is hereby understood and mutually agreed by and between the Contractor and Owner, that the date of beginning, rate of progress, and the time for completion of the work to be done hereunder are ESSENTIAL CONDITIONS of this contract; and it is further mutually understood and agreed that the work embraced in this contract shall be commenced on a date to be specified in the Notice to Proceed with the work.

A. The Contractor agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such a rate of progress as will ensure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality. It is further agreed that in the event services are not completed, or equipment not delivered, within the time specified for completion that the Owner may retain from compensation due to the Contractor an amount of \$125.00 per day for each day thereafter, Sundays and holidays included, that the contract remains uncompleted.

B. It is further agreed that time is of the essence of each and every portion of this contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the contract is allowed an additional time for the completion of any work, the new time limit fixed by such extension shall be of the essence of this contract. Provided, that the Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due:

1. To any preference, priority, or allocation or order duly issued by the Government;
2. To any unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, acts of the Owner, acts of another contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, and unusually severe weather, and
2. To any delays of subcontractors occasioned by any of the causes specified in subsections 1) and 2) of this article. C. Provided, further that the Contractor shall, within ten (10) days from the beginning of such delay, notify the Owner, in writing, of the causes of the delay, who shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of its decision in the matter.

SGC II - WORK DURING INCLEMENT WEATHER

No work shall be done under these specifications except by permission of the Owner when the weather is unfit for good and careful work to be performed. Should the severity of the weather continue, the Contractor, upon the direction of the Owner, shall suspend all work until instructed to resume operations by the Owner, and the contract time shall be extended to cover the duration of the order. During periods of suspended work activity due to inclement weather, or any other suspension, the contractor may perform work to protect work completed or in progress. Work damaged during periods of suspension due to inclement weather shall be repaired and/or replaced by the Contractor at his/her own expense.

SGC III - ASSIGNMENTS

The Contractor shall not assign in whole or any part of this contract or any moneys due or to become due hereunder without the written consent of the Owner. In case the Contractor assigns all or any part of any monies due or to become due under this contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the Contractor shall be subject to prior liens of all persons, firms, and corporations for services rendered or materials supplied for the performance of the work called for in this contract.

SGC IV - INCIDENTAL WORK AT THE CONTRACTOR'S EXPENSE

The work to be done by the Contractor, specified, and enumerated under this contract, shall include any minor details of the work not specifically mentioned in the specifications or shown on the plans, but obviously necessary for the proper completion of the work, which shall be considered incidental and as being a part of and included with the work for which prices are given. The Contractor will not be entitled to any additional compensation therefor.

SGC V - SAFETY AND HEALTH REGULATIONS

The Contractor shall be solely responsible for the entire site and provide all the necessary protections as required by laws or ordinances governing such conditions as required by the Owner. He shall be responsible for any damage to the Owner's property, or that of others on the job, by himself, his personnel, or his subcontractors, and shall make good such damages. He shall be responsible for and pay for any claims against the Owner arising from such damages.

Accident Prevention and Safety Measures: The Contractor shall comply with OSHA Parts 1910 and 1926, Construction

Industry standards and Interpretations, in effect on the date of issuance of the invitation for bids and with the Natural Resources Conservation Service Supplement to OSHA Parts 1910 and 1926.

The Contractor shall comply with the Department of Labor Safety and Health Regulations for construction promulgated under the Occupational Safety and Health Acts of 1970 (PL 91-596) and under Section 107 of the Contract Work Hours and Safety Standards Act (PL 91-054).

The Contractor shall provide all necessary safety measures for the protection of all persons on the Work, and shall fully comply with all state laws or regulations and North Carolina State Building Code requirements to prevent accident or injury to persons on or about the location of the work. Contractor shall clearly mark or post signs warning of hazards existing, and shall barricade excavations and similar hazards. Contractor shall protect against damage or injury resulting from falling materials and shall maintain all protective devices and signs throughout the progress of the work.

Where work is adjacent to street, the Contractor shall conduct the Work in a manner that will avoid the accumulation of debris from its operations on the traffic areas of the adjacent streets or roadways.

Particular attention must be given to traffic safety. While it is incumbent upon the Contractor to provide for safety of his personnel and the general public, particular attention to safety, traffic flow, proper warning signs and direction shall be insisted upon throughout the duration of the work. Competent training signal people shall be employed and utilized as required to allow safe vehicular traffic movement through the project area at any time there is potential traffic hazard

directly or indirectly from work operations. The Contractor shall provide and be responsible for all barricades, warning light signs, signals, flagmen, and all else required to allow safe vehicular movement in the vicinity of the working area.

SGC VI - SANITARY PROVISIONS

The General Contractor shall furnish necessary toilet conveniences, secluded from public observation, for use of all personnel on the work, whether or not in his employ. They shall be kept in a clean and sanitary condition and shall comply with the requirements and regulations of the Public Authorities having jurisdiction. He shall neither create nor allow a public nuisance. Temporary sanitary facilities shall be removed upon completion of the work, and the premises shall be left clean.

SGC VII - RIGHTS-OF-WAY AND SUSPENSION OF WORK

The Owner will furnish all land and rights-of-way necessary for the carrying out of this contract and the completion of the work herein contemplated and will use due diligence in acquiring said land and rights-of-way as speedily as possible.

Should the Owner be prevented or enjoined from proceeding with the work, or from authorizing its prosecution, either before or after the commencement, by reason of any litigation, or by reason of its inability to procure any lands or rights-of-way for the said work, the Contractor shall not be entitled to make or assert any claim for damage by reason of said delay, or to withdraw from the contract except by consent of the Project Manager, but time for completion of the work will be extended to such time as the Project Manager determines will compensate for the lost time by such delay, such determination to be set forth in writing.

- A. The Contractor shall confine his construction operations to the immediate vicinity of the location shown on the plans and in no case shall he encroach beyond the limits of the Owner's property or rights-of-way. He shall place materials, equipment, supplies, etc., so as to cause the least possible damage to property and interference with traffic. His method of operation and placing of equipment and materials shall be subject to the approval of the Project Manager.
- B. It shall be the duty of the Contractor to locate the limits of the rights-of-way, or property lines, prior to beginning construction. He shall be solely responsible for damage to trees, crops, or other property outside the boundaries of the rights-of-way.
- C. Where timber is located on the property or rights-of-way, the Contractor shall preserve and protect from damage all trees that do not directly interfere with the prosecution of the work. The Contractor shall not cut any tree greater in diameter than 6" and located more than 8' from the centerline of a ditch or structure without first consulting the Project Manager.
- D. Where shrubbery or grass is located on the construction right-of-way the Contractor shall be fully responsible for any damage thereto. Contractor shall remove, protect, and replant all shrubbery to the full satisfaction of the Owner and the property owner and shall either remove and resod or replant all lawns or pasture grass damaged by the construction work. Topsoil shall be replaced and grass of the same type found shall be planted, fertilized, and watered in accordance with good practice, until a satisfactory stand of grass is secured.

SGC -VIII – OBSTRUCTIONS

The Contractor shall be responsible for removing and disposing of any obstructions or obstacles at the site of the work or along the right-of-way, to the satisfaction of the Owner. Minor obstructions shall be removed and properly disposed of or protected and re-erected to as good a condition as found, at the same or adjacent locations, as directed by the Owner.

A. Fences at the site or along the right-of-way, which interfere with the construction operations, shall be maintained by the Contractor until completion of the work unless written permission is obtained from the Owner thereof to leave the fence dismantled until construction is completed. He shall remove, rebuild, and extend fences as necessary to keep stock away from the construction area or from straying away.

B. Upon completion of work, all fences are to be restored to their original location and condition, unless shown differently on the Plans. The Contractor shall purchase new material, if necessary, to replace all material damaged, lost, or destroyed.

SGC IX - PUBLIC CONVENIENCE AND PROTECTION

During progress of the work, the convenience and protection of the public must be provided for, and interferences held to a minimum.

A. The Contractor shall, at all times, conduct the work in such a manner as to insure the least practicable obstruction to public travel. The convenience of the general public and of the residents along and adjacent to the area of the work shall be provided for in a satisfactory manner, consistent with the operation and local conditions. Roads and streets must be kept open at all times, or suitable detours provided. When necessary to close streets, "Streets Closed" signs shall be placed immediately adjacent to the work, at such locations as traffic demands, and the Contractor shall notify the Owner, law enforcement agencies, fire departments, and parties operating emergency vehicles before the street is closed and again as soon as it opened. Access to fire hydrants and other fire extinguishing equipment shall be provided and maintained at all times.

B. When necessary, the Contractor shall provide watchmen and lights to burn between twilight and sunrise, and shall erect and maintain barriers and all other necessary protection about the work at his own expense. He shall also take other precautions as may be necessary to protect life, limb, and property. The owner reserves the right to remedy and neglect on the part of the Contractor as regards to the protection of the work after twenty-four (24) hours' notice in writing; and in cases of emergency, the Owner shall have the right to remedy and neglect without previous notice and in either case deduct the cost of such remedy from money due the Contractor.

SGC X – CLEANUP

Immediately after completion of the work, or any substantial unit or portion of it, the Contractor shall remove all unused material, refuse, and dirt placed by him in the vicinity of the work and shall leave the premises in a neat and orderly condition, satisfactory to the Owner.

- A. Where work is along streets or highways, and dirt has been placed on the pavement, the pavement shall be swept clean of all dirt after backfill has been completed.
- B. Site: The Contractor shall clean up behind the work as much as is reasonably possible as the work progresses. Upon completion of the work, and before acceptance of and Final Payment for the project by the Owner, the Contractor shall remove all his surplus and discarded materials, excavated material and rubbish from the roadways, sidewalks, parking areas, lawns and all adjacent property; shall restore, in an acceptable manner, all property, both public and private,

which has been disturbed or damaged during the prosecution of the work; and shall leave the whole site in a neat and presentable condition.

C. General: In case of dispute, the Owner may remove the rubbish and charge the cost to the several contractors as the Owner shall determine to be just.

SGC XI - CONTRACTOR'S INSURANCE

A. The Contractor shall procure and shall maintain during the life of this contract the insurance limits as provided in the Sample Service Agreement, Paragraph 5. Insurance and Indemnity.

END OF SECTION