
Pre-Event Contract for Disaster Recovery Services

THIS PRE-EVENT CONTRACT FOR DISASTER RECOVERY SERVICES ("Contract") is entered into and effective as of this ____ day of _____, 2017 ("Effective Date"), by and between **AshBritt, Inc.**, a Florida corporation, whose address is 565 E. Hillsboro Boulevard, Deerfield Beach, Florida 33441 (hereinafter referred to as "**Contractor**") and **the City of Clearwater**, a political subdivision of the State of Florida, whose address is _____ (hereinafter referred to as "**City**").

RECITALS

WHEREAS, it is foreseen that it is in the public interest to provide for the expedient removal and disposal of storm and other disaster related debris within the corporate limits of the **City** and to provide disaster recovery technical assistance to the appointed and elected officials of the **City** resulting from a future natural or manmade disaster; and

WHEREAS, the **City** has in the past suffered the full force and effect of major storms or manmade disaster and the resulting destruction brought upon the **City** by such storms or manmade events; and

WHEREAS, the public health and safety of all the **City's** citizens will be at serious risk in the event of a storm or other disaster; and

WHEREAS, the immediate clean-up and economic recovery of the **City** and its citizens is a major concern and the primary priority for recovery; and

WHEREAS, the availability of experienced prime disaster response contractors may be severely limited in the event of a storm or other disaster; and

WHEREAS, **Contractor** has the experience, equipment, manpower, resources, permits and licenses to perform all storm or disaster related debris removal, remediation, disposal and recovery services; and

WHEREAS, the **City** and the **Contractor** have agreed to the scope of services, pricing schedule, terms, conditions and technical specifications as fully set out in this Contract, the City's Request for Proposals (RFP) #15-17, and Contractor's RFP Response, dated June 1, 2017; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration for the mutual covenants and agreements hereinafter set forth, **Contractor** and **City** agree as follows:

1.0 SERVICES

1.1 Scope of Contracted Services:

The recitals above are true and correct and are incorporated herein by reference. The **Contractor** shall provide all expertise, personnel, tools, materials, equipment, transportation, labor, supervision and all other services and facilities of any nature necessary to execute, complete and deliver the timely removal and lawful disposal of all *eligible storm-generated or other disaster related debris (hereinafter referred to as "Debris")*, including hazardous and industrial waste materials, and within the time specified in Section 3.3 of this Contract. Emergency Debris push, Debris removal and disposal, demolition of structures and hazard mitigation actions shall be limited to:

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

Contractor shall provide for the cost-effective and efficient removal and lawful disposal of Debris accumulated on all public properties, streets, roads, other rights-of-way, public school properties, and any other locally owned facility or site as may be directed by the **City**. Contracted services will only be performed after the delivery to the **Contractor** of an Approved Work Authorization and a Notice-to-Proceed by the **City**. The **Contractor** shall load and haul the debris collected from within the legal boundaries of the **City** to a site(s) specified by the **City** as set out in Section 4.8 of this Contract.

In the event of inconsistency between this Contract, the City's Request for Proposals (RFP) #15-17, and Contractor's RFP Response, dated June 1, 2017, then the RFP and/or the Contractor's RFP Response shall take precedence in clarifying such inconsistency.

1.2 Emergency Push / Road Clearance:

The **Contractor** shall accomplish the cutting, tossing, stacking and/or pushing of Debris from the primary transportation routes including hazardous hanging limbs and/or hazardous leaning trees as identified by and directed by the **City** or the Government's applicable representatives (the "Monitoring Team"). This operational aspect of the scope of contracted services shall be for the first 70 hours (plus or minus) after a disaster event and issuance of the **City's** Notice-to-Proceed, unless extended by the **City in accordance with FEMA Regulation 325**. Once this Debris push task is accomplished, the following additional tasks will begin as requested by the **City**.

1.3 Right-of-Way (ROW) Removal:

The **Contractor** shall mechanically remove, load and/or haul all Debris from the local ROW when directed to do so by the **City**. The Debris shall be delivered to a City designated Debris Management Site (DMS) for processing. The **Contractor** shall use

reasonable care to prevent damage to **City** or private property not already damaged by the disaster event in the process of ROW Debris removal. The **Contractor** shall only be liable for any damage caused by its negligence or intentional wrongdoing.

1.4 Right-of-Entry (ROE) Removal *(if implemented)*:

The **Contractor** will remove ROE Debris from private property with due diligence, as directed by the **City** or the Monitoring Team. The **Contractor** agrees to make reasonable efforts to save from destruction items that the property owners wish to save, (i.e., trees, small buildings, etc.) The **Contractor** will exercise reasonable care when working around public utilities (i.e., gas, water, electric, sewer, etc.). Every effort will be made by the **City** to mark these utilities. **Contractor** does not warrant that utility damages will not occur as a result of conducting the services provided under this Contract and shall be liable only for those damages caused by its negligence or intentional wrongdoing.

1.5 Demolition of Structures *(if implemented)*:

The **Contractor** will demolish any unsafe structures designated for removal only at the direction of the **City** or the Monitoring Team. The **Contractor** agrees to demolish and remove in a timely manner all unsafe structures as determined and directed by the **City** as set out in Section 1.1 of this Contract

1.6 Private Property Waivers:

The **City** will secure all necessary permissions, waivers and right-of-entry agreements from property owners for the removal of Debris and/or demolition of structures from private residential and/or commercial properties, as set out in Sections 1.4 and 1.5 above.

1.7 Management of the Debris Management Site (DMS):

The **Contractor** shall operate and manage all DMS as the **City** may require and authorize. In doing so, the **Contractor** will perform all of the following actions and services:

- A. Prepare a layout plan for each DMS;
- B. Provide the **City** with a pre-use condition report of the DMS, to include soil test, photos and other evidence of prior use and conditions;
- C. Provide site security, traffic control, fire safety, tower construction and any environmental safe guard requirements in compliance with applicable law;
- D. Process all Debris as directed by the **City**, to include grinding, incineration, and/or compaction with as much separation as may be practical;
- E. Separate white goods for specialized disposal as directed by the **City**; and
- F. Restore any DMS to as near pre-storm conditions as possible using the pre-use condition report as a basis.

1.8 Disaster Recovery Technical Assistance:

The **Contractor** will provide, upon request of the **City**, Disaster Recovery Technical Assistance to elected and appointed officials within the **City**. After such request is made, the Contractor must provide such technical assistance to the City's Emergency

Operations Center (EOC), pursuant to section 3.0 of this agreement. This service shall include reasonable support guidance on all aspects of the recovery process. Emphasis will be on Debris management and disaster grants. The **Contractor** will provide compliance and documentation support through the use of experienced specialists. These specialists will be supervised by a senior **Contractor** team member with the goal of assisting the **City** to receive the maximum reimbursement available from external sources.

1.9 Other Disaster Services:

The **City** may require, request and direct the **Contractor** to supply and/or perform other/additional services not set out in Section 1.0 of this Contract, provided reasonably related to the disaster recovery and remediation. The scope of these additional tasks, and the compensation to be paid therefore, including reasonable **Contractor** overhead and profit, as agreed by the parties, shall be conveyed in writing to the **Contractor** and any such writing shall become an amendment to this Contract upon approval and execution by the parties.

1.10 Additional Support Services:

The **Contractor** can/will provide *Additional Support Services* as requested by the **City**. The **Contractor** maintains an inventory of professional storm and disaster recovery service providers, which include but are not limited to: emergency power and generators, potable water, emergency ice, feeding facilities, disaster worker support (housing, laundry, and security), waterway clearing, preservation of historical sites, vessel recovery, hazardous waste remediation, and bio-terrorism remediation. In the event the **City** requests the **Contractor** to provide *Additional Support Services*, the **Contractor** will deliver in writing a price or cost for each service requested for consideration and negotiation with the **City**.

The multiple variables attending such services (i.e., timing, distance, units required, duration of service, etc.), makes the listing or pricing of each such *Additional Support Services* as an attachment to this Contract impractical. **Contractor** will provide such services at the lowest possible unit, hourly or lump sum price possible with a reasonable profit to **Contractor**. The provision of any such *Additional Support Services* shall be set forth in writing and signed by the parties, and shall become an amendment to this Contract.

2.0 PERFORMANCE OF SERVICES

2.1 Description of Service:

The **Contractor** agrees to perform the contracted services described in Section 1.0 in a professional and workmanlike manner and in compliance with all applicable laws, ordinances, rules, regulations and permits. Services, equipment and workmanship not conforming to this Contract and all applicable laws may be rejected. Replacement, repair and/or rework, as may be required, will be accomplished at no additional cost to the **City**.

2.2 Cost of Services:

The **Contractor** shall bear the costs of performing all contracted services hereunder, as directed by the **City**, including but not limited to that which is set out in Section 1.0. Such costs include applicable permits and license fees as well as all maintenance costs required to maintain its vehicles and other operating equipment in a condition adequate to accomplish the contracted services as set out in this Contract.

2.3 Matters Related to Performance:

2.3.1 Subcontractor(s):

The **Contractor** may utilize the service of subcontractors and shall be responsible for the acts or omissions of its subcontractors to the same extent the **Contractor** is responsible for the acts and omissions of its employees. The **Contractor** shall ensure that all its subcontracts have and carry the same major provisions as this Contract and that the work of its subcontractors is subject to said provisions. Nothing contained in this Contract shall create any contractual relationship between any subcontractor and the **City**. The **Contractor** shall supply the names and addresses of subcontractors and materials suppliers when requested to do so by the **City**, in writing.

2.3.2 Indemnification:

The **Contractor** agrees to indemnify, hold harmless and defend the **City** from and against any and all liabilities, suits, actions, legal proceedings, claims, demands, damages, costs and expenses (including reasonable attorney's fees) arising out of any negligent or intentional act or omission of the **Contractor**, its agents, subcontractors or employees in the performance of this Contract and the contracted services required hereunder. **Contractor** shall not be liable to indemnify the **City** from any claim arising out of the **City's** breach of this Contract or negligent or intentional act or omission. If any claim or demand is made against the **City** for any matter indemnified herein, **City** shall give notice thereof to the **Contractor** within seven (7) days, and **Contractor** shall assume the defense of such claim through counsel reasonably acceptable to the **City**. As separate consideration for this indemnification, defense and hold harmless obligation provided by **Contractor** hereunder, the parties acknowledge and agree that the first one hundred dollars (\$100.00) of the Contract sum to be paid to **Contractor** is paid as separate consideration for these indemnification obligations of **Contractor**. Nothing contained herein, however, shall be construed as the **City's** waiver of any immunity from or limitation of liability that it may be entitled to under the doctrine of sovereign immunity or section 768.28, Florida Statutes.

2.3.3 Insurance(s):

The **Contractor** agrees to keep the insurance specified below in full force and effect during the term of this Contract. Except for workers'

compensation, the **Contractor** must also name the **City** as an additional insured while working within the boundaries of the **City**.

2.3.4 Worker's Compensation:

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

- ◆ Coverage A Statutory State Requirements
- ◆ Coverage B \$1,000,000

2.3.5 Automobile Liability:

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

2.3.6 Comprehensive General Liability:

Bodily Injury \$1,000,000 each person
 \$2,000,000 aggregate
Property Damage \$1,000,000 each accident
 \$2,000,000 aggregate

2.3.7 Insurance Cancellation / Renewal:

The **Contractor** will notify the **City** at least sixty (60) days before June 1st of every year the contract is in effect, of the cancellation, non-renewal or adverse change to the required insurance. New certificates of insurance are to be provided to the **City** at least ten (10) days prior to June 1st.

2.3.8 Work under 2 CFR200

The Contractor shall follow all of the requirements of 2 C.F.R. §200.321 in the execution of this Contract, and shall require and enforce similar compliance with all sub-contractors for contracts awarded by non-Federal Entities under Federal Awards which are incorporated herein by reference as if enumerated herein in their entirety.

FHWA-ER Program and 2 CFR Part 200 Contract Requirements

The City intends to seek reimbursement from FHWA for the eligible debris removal performed on federal aid roads. Consequently, the City mandates compliance from the successful Contractor regarding the following:

FHWA Form 1273, titled Standard Federal-Aid Provisions. FHWA Form 1273 will be included in the final contract. ☒

Buy America Requirements ☒

49 CFR Part 26, Disadvantage Business Enterprise Program ☒

American with Disabilities Act of 1990 (ADA) ☒

All work must be properly grouped according to FEMA damage categories as specified in the contract.

FHWA-ER and 200 C.F.R. Program contract requirements are subject to any changes provided by FEMA or FHWA during the term of the contract. Based on the current guidance, FHWA will only reimburse the City for the initial collection, hauling and tipping fee, if applicable, of eligible debris. Debris reduction operations are not eligible for reimbursement unless the debris is being reduced as part of a rolling pickup operation. As a result, the FHWA-ER eligible debris that is collected during the first pass shall be hauled to the nearest Final Disposal Site unless otherwise directed by the City.

200 C.F.R. regulations may be found at

<http://www.ecfr.gov/cgi-bin/text-idx?SID=634b707069fd26e4847a948469ec4056&mc=tru&tpl=/ecfrbrowse/Title02/2chapterII.tpl>

FHWA-ER and 200 C.F.R. Program contract requirements are subject to any changes provided by FEMA or FHWA during the term of the contract. Based on the current guidance, FHWA will only reimburse the City for the initial collection, hauling and tipping fee, if applicable, of eligible debris. Debris reduction operations are not eligible for reimbursement unless the debris is being reduced as part of a rolling pickup operation. As a result, the FHWA-ER eligible debris that is collected during the first pass shall be hauled to the nearest Final Disposal Site unless otherwise directed by the City.

MINORITY / WOMEN'S / LABOR SURPLUS FIRMS PARTICIPATION: The City in accordance with the requirements as stated in C.F.R. 200.321 encourages the active participation of minority businesses, women's business enterprises and labor surplus area firms as a part of any subsequent agreement whenever possible. If subcontracts are to be let, through a prime contractor, that contractor is required to take the affirmative steps listed in items (1) through (5) below.

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits,

which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

3.0 STANDARDS OF PERFORMANCE

3.1 Contractor Representative:

The **Contractor** shall have a knowledgeable and responsible Manager/Supervisor report to the **City's** designated Contract Representative within twenty-four (24) hours following delivery of a Notice-to-Proceed by the **City**. The **Contractor's** Manager/Supervisor shall have the authority to implement all actions and commitments required to begin the performance of contracted services as set out in this Contract and the Contractor's General Operations Plan.

3.2 Mobilization:

When the written Notice to Proceed has been received by the Contractor and/or the on-site Contractor Manager/Supervisor, he/she will make all necessary arrangements to mobilize sufficient resources to begin work within forty-eight (48) hours. The balance of the maximum required resources will be mobilized as needed to support the most efficient workforce augmentation as possible.

3.3 Time to Complete:

The **Contractor** shall complete all directed work as set out in Section 1.0 of this Contract within one hundred eighty (180) working days from delivery of the Notice to Proceed and in accordance with Section 5.8 of this Contract, unless extended by the **City**.

The **Contractor** shall be responsible for removal of all Debris up to the point where remaining debris can only be described as storm litter and additional collection can only be accomplished by the use of hand labor.

3.4 Extensions:

In as much as this is a "time is of the essence" based Contract, the commencement of contracted services will be as set out in Section 3.2. If the completion of this Contract is delayed by actions of the **City** or force majeure events, then the time to complete specified in Section 3.3 shall be extended for such time as caused by the delay to allow the **Contractor** to complete the performance of the Contract. This Contract may also be extended by mutual consent of both the **City** and the **Contractor** for reasons of additional time, additional services and/or additional areas of work. Force majeure events shall include, but not be limited to, Acts of God, strikes, labor shortages, or other events beyond the reasonable control of Contractor or City.

3.5 Term of Contract:

The term of the Contract shall be for one (1) year beginning on the Effective Date, with the **City** having the option to extend the term of this Contract for two (2) additional one-year periods upon written notice delivered to the **Contractor** at least sixty (60) days prior to the expiration of the term or any extended term.

3.6 Contract Renewal:

This Contract may be renewed for additional one year terms after a written acceptance of both parties on the terms and specifications consistent with Contractor's RFP Response, dated June 1, 2017. Contractor's RFP Response, dated June 1, 2017 may be reviewed on an annual basis, at which time amended unit costs and rates may be submitted by the **Contractor** to the **City** to reflect the current disaster recovery market value of all contracted services in this Contract. Such amendments shall become part of this Contract after both parties sign any such written amendment(s).

3.7 Contract Termination:

This Contract shall terminate upon 30 days written notice from either party and delivered to the other party as set out in Section 8.1 of this Contract.

4.0 GENERAL RESPONSIBILITIES

4.1 Other Agreements:

The **City** may be required to enter into agreements with federal and/or state agencies for disaster relief. The **Contractor** shall be bound by the terms and conditions of such agreements. A copy of any such agreements or instructions shall be delivered to the **Contractor**, in writing, within seven (7) days of execution.

4.2 City Obligations:

The **City** shall furnish all information and documents necessary for the commencement of contracted services, to include a valid written Notice to Proceed delivered to Contractor. A representative will be designated by the **City** (City Representative) to be the primary point of contact for inspecting the work and answering any on site questions prior to and after the activation of this Contract via a written Notice to Proceed. The **City** Representative shall have full authority to act on behalf of the **City** on all matters required under this Contract. The **City** is responsible for issuing all Public Service Announcements (PSA) to advise citizens and agencies of the available storm Debris services. The **Contractor** may assist the **City** with the development of Debris-based PSA(s), if requested.

4.3 Conduct of Work:

The **Contractor** shall be responsible for planning and conducting all operations in a satisfactory, workmanlike manner. The **Contractor** shall exhibit respect for the citizens and their individual private properties. All operations shall be conducted under

the review of the **City** Representative. The **Contractor** shall have and require strict compliance with accepted ethical practices.

4.4 Supervision:

The **Contractor** will supervise and/or direct all contracted services. The **Contractor** is solely responsible for the means, methods, techniques, safety program and procedures utilized to perform the contracted services. The **Contractor** will employ and maintain on the work site a qualified Manager/Supervisor who shall have full authority to act on behalf of the Contractor on all communications given by the **City**, as further provided in Section 3.1.

4.5 Damages:

The **Contractor** shall be responsible for conducting operations in such a manner as to cause as minimal damage possible to existing public, private and commercial property and/or infrastructure. **Contractor** shall be responsible for any damages owing to the negligence or intentional wrongdoing of its employees and subcontractors as set out in Sections 1.0 and its relevant subsections.

4.6 Other Contractor(s):

The **Contractor** shall acknowledge the presence of other contractors involved in disaster response and recovery activities by the federal, state and local government and of any private utility, and shall not interfere with their work. **City** shall not, however, contract with any other contractor or subcontractor for the contracted services or *Additional Support Services* provided herein, unless the **Contractor** consents in writing.

4.7 Ownership of Debris:

All debris shall become the property of the Contractor for removal and lawful disposal. The Debris will consist of, but not be limited to vegetative, construction and demolition, white goods and household solid waste.

4.8 Disposal of Debris:

Unless otherwise directed by the **City**, the **Contractor** shall be responsible for determining and executing the method and manner for lawful disposal of all eligible Debris, including regulated hazardous waste. The location of the DMS and final disposal site(s) shall be determined by the **City**. Other additional sites may be utilized as directed and/or approved by the **City**.

5.0 GENERAL TERMS and CONDITIONS

5.1 Geographic Assignment:

The geographic boundary for work by the **Contractor** hereunder shall be as directed by the **City** and will be limited to properties located within the **City's** legal boundaries.

5.2 Multiple, Scheduled Passes:

The **Contractor** shall make no fewer than two scheduled and/or unscheduled passes of each area impacted by the storm or disaster event. The **City** shall direct the interval timing of all passes. Sufficient time shall be permitted between subsequent passes to accommodate reasonable recovery and additional Debris placement at the ROW by the citizens and the **City**. Upon agreement between the **City** and the **Contractor** the number of passes may be increased based on mutual agreement regarding the amount of additional Debris brought to the ROW.

5.3 Operation of Equipment:

The **Contractor** shall operate all trucks, trailers and all other equipment in compliance with any/all applicable federal, state and local laws, rules and regulations. Equipment shall be in good working condition. All loading equipment shall be operated from the road, street or ROW using buckets and/or boom and grapple devices to collect and load Debris. No equipment shall be allowed behind the curb or outside of the public ROW unless otherwise directed by the **City**. Should operation of equipment be required outside of the public ROW, the **City** will provide a Right-of-Entry Agreement, as set out in Section 1.6 of this Contract.

5.4 Certification of Load Carrying Capacity:

The **Contractor** shall submit to the **City** a certified report indicating the type of vehicle, make and model, license plate number, assigned Debris hauling number and measured maximum volume, in cubic yards, of the load bed of each piece of equipment to be utilized to haul Debris.

The measured volume of each piece of equipment shall be calculated from the actual physical measurement performed by the **City** or Monitoring Team and **Contractor** Representative(s). A standard measurement form certifying actual physical measurements of each piece of hauling equipment shall be an attachment to the certified report(s) submitted to the **City** by the **Contractor**.

5.5 Vehicle Information:

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

5.6 Security of Debris During Hauling:

The Contractor shall be responsible for the security of Debris on/in each vehicle or piece of equipment used to haul Debris. Prior to leaving the loading site(s), the Contractor shall ensure that each load is secure and trimmed so that the Debris does not extend horizontally beyond the bed of the hauler. All loose Debris shall be reasonably compacted and secured during transport.

5.7 Traffic Control:

The **Contractor** shall mitigate the impact on local traffic conditions to all extents possible. The **Contractor** is responsible for establishing and maintaining appropriate traffic control in accordance with the latest Manual of Uniform Traffic Control Devices and applicable law. The **Contractor** shall provide sufficient signing, flagging and barricading to ensure the safety of vehicular and pedestrian traffic at all Debris removal, reduction and/or disposal site(s).

5.8 Monitoring of Debris Operations

The Government may require that the **City** conduct a Debris monitoring program. The **Contractor** will assist the monitoring team, if this activity is by force account or contracted. The **Contractor** will cooperate and coordinate with the Debris monitoring team/firm in all aspects of the team activity. Logistical support and reports to the **City** on Debris monitoring activities are the responsibility of the team manager or monitoring contractor.

5.9 Work Days/Hours:

The **Contractor** may conduct Debris loading and hauling operations from sunup to sundown, seven days per week. Any mechanical, Debris reduction operations at the DMS may be conducted twenty-four hours per day, seven days per week. The work week is from the start of operations on Sunday am, thru the end of operations on Saturday pm. Adjustments to work days and/or work hours shall be as directed by the **City** following consultation with and notification to the **Contractor**.

5.10 Hazardous and Industrial Wastes:

The **Contractor** shall set aside and reasonably protect all hazardous or industrial materials encountered during Debris removal operations for collection and disposal in accordance with applicable local, state and federal guidelines governing the transportation and disposal of said hazardous or industrial materials. The **Contractor** will provide, operate and maintain a Hazardous Waste and Industrial Material Storage and Containment area until proper disposal of such waste is feasible. The **Contractor** may use the services of a subcontractor specializing in the management and disposal of such materials and waste, if the **Contractor** is directed to conduct such operations by the **City**.

5.11 Stumps:

All hazardous/eligible stumps identified by the **City** will be extracted, loaded, transported, stored, reduced and disposed in accordance with the standards of this Contract. Stump voids will be filled with clean fill material native to the geographical area. All stumps that are removed and the stump voids that are filled will be documented, and invoiced by the contractor for payment in accordance with the rates contained in Contractor's RFP Response, dated June 1, 2017.

5.12 Utilizing Local Resources:

The **Contractor** shall, to the extent practicable, give priority to utilizing resources within the **City**. This local preferences priority will include, but not be limited to, Debris hauling, procurement of services, supplies and equipment, and awarding other recovery service subcontracts and employment to the local work force.

5.13 Work Safety:

The **Contractor** shall provide and enforce a safe work environment, in compliance with applicable federal, state and local law, in all activities under this Contract. The **Contractor** will provide such safety equipment, training and supervision as may be required by the **City** and/or Government. The **Contractor** shall ensure that its subcontracts contain a similar safety provision.

5.14 Inspection and Testing:

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

5.15 Other Agencies:

The term "Government" as used in this Contract refers to those governmental agencies federal, state or local, which may have a regulatory or funding interest in this Contract and the contracted services provided hereunder.

6.0 REPORTS CERTIFICATIONS and DOCUMENTATION

6.1 Accountable Debris Load Forms:

The **City** shall accept the serialized copy of the Monitoring **Contractor's** Debris reporting ticket(s) as the certified, original source documents to account for the measurement and accumulation of the volume of Debris delivered and processed at the DMS. The serialized ticketing system will also be used in the event of additional Debris handling for volume reduction and/or the possible requirement for a Debris transfer station(s). These tickets will also be utilized for Debris haul out for final disposal. These tickets will be the basis of any electronic generated billing and/or report(s).

6.2 Reports:

The **Contractor** shall submit periodic, written reports to the **City** as requested or required, detailing the progress of Debris removal, processing and disposal. These reports may include, but not are limited to:

6.2.1 Daily Reports:

The daily reports will detail the location where passes for Debris removal were conducted, the quantity of Debris (by type) removed or disposed, the

total number of crews engaged in Debris management operations, the crew assignments by zone, the number of burners, grinders, chippers and mulching machines in operation, and their daily production. The **Contractor** will also report damages to private property caused by the Debris operation or damage claims made by citizens and such other information as may be required to completely describe the daily conduct of the Contractor's operations. This report will reflect close of business at 6 pm for the prior twenty-four (24) hours.

6.2.2 Weekly Summaries:

A weekly summary of all information contained in the daily reports as set out in Section 6.2.1 will be provided to the **City**. The **Contractor** will provide this report within two business days after the end of the week. The **Contractor** will provide both reports in written and electronic format if requested.

6.2.3 Report(s) Delivery:

The scheduled time and point of delivery for the Debris and other recovery operations reports will be directed by the **City** in consultation with the **Contractor**.

6.2.4 Final Project Closeout Report:

Upon final inspection and/or closeout of the project by the **City**, the **Contractor** shall prepare and submit a detailed description of all Debris management activities to include, but not limited to the total volume, by type of Debris hauled, reduced and/or disposed, plus the total cost of the project invoiced to the **City**. If requested, the **Contractor** will provide additional information to adequately document the conduct of the Debris management operations for the **City** and/or Government, to include electronic spread sheets.

6.3 Additional Supporting Documentation:

The **Contractor** shall submit reports and/or other documentation on Debris loading, hauling, disposal and load capacity measurements as may be required by the **City** and/or Government to support requests for Debris project reimbursement from external funding sources.

6.4 Report Maintenance:

Contractor may be subject to audit by federal, state and local agencies pursuant to this Contract. The **Contractor** will maintain all reports, records, and Debris reporting tickets and contract correspondence for a period consistent with chapter 119, Florida Statutes. These maintained reports may include electronic scanned copies of the daily load tickets and tower determination of percent full.

6.5 Contract File Maintenance:

The **Contractor** will maintain this Contract and the invoices that are generated for the contracted services for a period consistent with chapter 119, Florida Statutes.

7.0 UNIT PRICES and PAYMENTS

7.1 Unit Price for Emergency Push / Road Clearance:

The **Contractor** will invoice the **City** and be paid for this contracted service in accordance with the rates as set out Contractor's RFP Response, dated June 1, 2017.

7.2 Unit Price for Debris:

The unit price per cubic yard or ton includes all costs for mobilization, loading, transportation, storage, reduction, disposal, overall project management and demobilization as may be directed by the **City**. All eligible contracted Debris shall be invoiced in accordance with the rates set out in Exhibit A (Compensation Based on Multiple Tasking) or Exhibit B (Ashbritt Hourly/Service Rate Schedule).

7.3 Unit Prices for Stumps:

The **City** will determine the necessity and eligibility for ALL stump removal. The unit price of compensation for stump pulling, loading, transportation, storage, reduction and/or disposal shall be based on the stump size and corresponding rate as set out in Contractor's RFP Response, dated June 1, 2017.

7.4 Billing Cycle:

The **Contractor** shall invoice the **City** on a bi-weekly basis as of the close of business on the last working day of the billing period. Serialized Debris reporting tickets and disposal site verification of the actual cubic yardage for each load of Debris or itemized stumps will support all invoices.

7.5 Payment Responsibility:

The **City** agrees to accept the **Contractor's** invoice(s) and supporting documentation as set out in Section 6.0 and relevant subsections of this Contract and process said invoices for payment consistent with the Florida Prompt Payment Act. The **City** will advise the **Contractor** within five (5) working days of receiving any invoice that requires additional information for approval to process for payment. The **City** will make payment of any undisputed amounts consistent with the Florida Prompt Payment Act, and the balance, consistent with the Florida Prompt Payment Act, after the City has received clarification regarding the the requested additional information.

7.6 Ineligible Work:

The **Contractor** will not be paid for the removal, transportation, storage, reduction and/or disposal of any material that may be determined by the **City** and/or Government as ineligible Debris, or for stumps or other services that have not been requested or approved by City.

7.6.1 Eligibility Inspections:

The **Contractor** and **City** or the Monitoring Team will inspect each load to verify that the contents are in accordance with the accepted definition of eligible Debris, as set out in Section 1.1 of this Contract.

7.6.2 Eligibility Determinations:

If any load is suspected to contain material that does not conform to the definition of eligible Debris, the load will be ordered to be deposited at another landfill, receiving facility or at a special location at the DMS. The **Contractor** will not invoice the **City** for such load(s) until the issue of eligibility is resolved.

7.7 Specialized Services:

The **Contractor** may invoice the **City** for costs incurred to mobilize and demobilize specialized equipment required to perform services in addition to those specified under Section 1.0 of this Contract. Additional specialized services or equipment will only be performed or provided if/when directed by the **City**. The rate for specialized mobilization and demobilization shall be fair and reasonable and in accordance with Contractor's RFP Response, dated June 1, 2017.

8.0 MISCELLANEOUS

8.1 Notice:

Whenever in this Contract it is necessary to give notice or demand by either party to the other, such notice or demand shall be given in writing and forwarded by facsimile, recognized overnight delivery service or certified or registered mail, return receipt requested, and addressed as follows:

To Contractor at:

John Noble, COO
AshBritt, Inc.
565 E. Hillsboro Boulevard
Deerfield Beach, FL 33441
Telephone: (954) 545-3535
Facsimile: (954) 545-3585

To City at:

Earl Gloster, SW/Gen Svcs. Director
City of Clearwater, FL
1701 N. Hercules Ave.
Clearwater, FL 33765-1112
Telephone: (727)562-4990
Facsimile: (727) 562-4939

Notice by facsimile shall be deemed delivered on the date of transmission provided a receipt evidences same, and otherwise on the date of the signed receipt of delivery.

8.2 Litigation:

No party may commence litigation against the other party without providing written notice and demand to the other party setting forth the matters in dispute including the amounts in dispute and no party may commence litigation against the other party without first mediating the dispute before a certified mediator in Pinellas County, Florida. In the event, the mediation results in an impasse, the parties may commence litigation. With respect to any litigation, this Contract shall be construed and governed by the laws of the State of Florida, without giving effect to any choice or conflict of law provision or rule. The sole and exclusive venue for any suit, action or proceeding arising out of, relating to, to interpret or for breach of this Contract, or with respect to the Contract work (a "Related Proceeding") shall be in the courts of Pinellas County, Florida, federal or state. Each of the parties irrevocably consents and submits to the exclusive subject matter and personal jurisdiction of the courts of the State of Florida located in Pinellas County, and of the United States District Court for the Southern District of Florida located therein for the purposes of a Related Proceeding, and irrevocably waives, to the fullest extent it may effectively do so, (i) any objection it may have to the laying of venue of any Related Proceeding in the Courts of Pinellas County, Florida, federal or state, and (ii) the defense of any inconvenient forum to the maintenance of any Related Proceeding in such court.

CONTRACTOR AND CITY HEREBY SEVERALLY, VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY WAIVE ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY RELATED PROCEEDING, REGARDLESS OF WHETHER SUCH PROCEEDING CONCERNS ANY CONTRACTUAL, STATUTORY, TORTIOUS OR OTHER CLAIM. CONTRACTOR AND CITY SEVERALLY ACKNOWLEDGE THAT THEY HAVE BEEN REPRESENTED BY AN ATTORNEY OR HAVE HAD AN OPPORTUNITY TO CONSULT WITH AN ATTORNEY REGARDING THIS AGREEMENT AND UNDERSTAND THE LEGAL EFFECT OF THIS JURY TRIAL WAIVER.

8.3 Liquidated Damages ☒

Should the Contractor fail to complete requirements set forth in this scope of work, the City will suffer damage. The amount of damage suffered by the City is difficult, if not impossible to determine at this time. Therefore, the Contractor shall pay the City in addition to actual damages, the following, as liquidated damages:

- 8.3.1** The Contractor shall pay the City, as liquidated damages, \$500 per calendar day of delay to mobilize in the City with the resources required to begin debris removal operations, within seventy-two (72) hours of being issued Notice to Proceed. ☒
- 8.3.2** The Contractor shall pay the City, as liquidated damages, \$500.00 per load of disaster debris collected in the City that is not disposed of at a City approved DMS or City approved Final Disposal Site and/or any associated fines levied by a third party. Application of liquidated damages does not

release the Contractor of all liability associated with hauling and depositing material to an unauthorized location. ☒

- 8.3.3** The Contractor shall pay the City, as liquidated damages, \$500.00 per incident where the Contractor fails to repair damages that are caused by the Contractor or subcontractor(s). Application of liquidated damages does not release the Contractor from the responsibility of resolving or repairing actual damages. ☒

The amounts specified above are mutually agreed upon as reasonable and proper amount of damage the City should suffer by failure of the Contractor to complete requirements set forth in the scope of work. ☒

8.4 Entire Contract:

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

8.5 Waiver:

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

8.6 Severability:

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

8.6 Binding Effect

This Contract shall be binding on and inure to the benefit of the heirs, successors and permitted assigns of the parties hereto.

8.7 Headings

All sections and headings are used for convenience only and do not affect the construction or interpretation of this Contract.

8.8 Counterparts

This Contract may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same Contract. Electronic, facsimile or scanned signatures on this Contract shall be deemed to be

authentic and valid counterparts of such original document for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

IN WITNESS WHEREOF, the **Contractor** has caused this Contract to be signed in its corporate name by its authorized representative and the **City** has caused this Contract to be signed in its legal corporate name by persons authorized to execute said Contract as of the Effective Date.

AshBritt, Inc.

By: _____


John Noble

Title: _____

Chief Operating Officer

CITY OF CLEARWATER, FLORIDA,
A municipal corporation and
political subdivision of the State of Florida

George N. Cretekos
Mayor

William B. Horne, II
City Manager

Approved as to form:

Attest:

Camilo A. Soto
Assistant City Attorney

Rosemarie Call
City Clerk

Attachments: City's Request for Proposals (RFP) #15-17
Contractor's RFP Response, dated June 1, 2017