



AGREEMENT FOR DISASTER DEBRIS REMOVAL SERVICES
between
THE TOWN OF WINDERMERE
and

This Agreement is dated _____, 2023 (the “Effective Date”) and is between the **Town of Windermere, Florida**, a municipal corporation chartered and operating under the laws of the State of Florida (the “Town”), and _____ **[business name]**, a _____ **[type of corporation/company]**, (the “Contractor”).

The Town issued **RFP #2023-03 Disaster Debris Removal Services** (the “RFP”), pursuant to which the Town has selected the Contractor to perform some or all of the services set forth in the RFP.

The Town and the Contractor therefore agree as follows:

1. **Scope of Services; Agreement Documents.**

a. The Contractor shall diligently and timely perform the Scope of Services requested by the Town in **Exhibit B** under the terms of this Agreement and the Exhibits hereto. The Town may request changes or amendments to the Scope of Services. Such changes will not be binding unless mutually agreed to in writing and signed by the Town and the Contractor.

b. This Agreement, together with **Exhibits A-E** attached hereto and all of which are incorporated herein by this reference, shall comprise the entire Agreement. This Agreement and the following attachments shall together be referred to as the “Agreement Documents”:

- **Exhibit A** – Contractor’s Response to the RFP
- **Exhibit B** – Scope of Work
- **Exhibit C** -- Additional FEMA Contractual Provisions
- **Exhibit D** – Fee Schedule
- **Exhibit E** – Certification Regarding Lobbying (Byrd Anti-Lobbying)

Upon discovery the Town or the Contractor shall promptly notify the other in writing of any conflicts, ambiguities, inconsistencies, errors, or omissions in, between or among any of Agreement Documents and shall cooperate in effecting a resolution. In the event the parties disagree regarding the resolution, the Town shall make the final determination regarding which document and which terms and conditions govern.

2. **Term.** The initial term of this Agreement shall be for there (3) years, beginning on the Effective Date and ending on _____. This Agreement may, by mutual written agreement of the parties, be extended for two (2) additional years.

3. **Payment.** The Contractor is to provide with each invoice submitted to the Town, a detailed daily description of all work occurred, including, but not limited to, all hauling load/trip tickets - separated in an electronic format capable of saving and sending in a common electronic means, i.e., excel spreadsheet. All invoices received by the Town are payable within thirty days from the date of receipt, provided they have first been approved by the Town Manager or his designee. The amount of payment shall be based on the approved fee schedule attached hereto as **Exhibit D**.

4. **Taxes.** The Contractor shall pay all federal, state, and local taxes, to include sales tax, social security, workman's compensation, unemployment insurance, and other required taxes which may be chargeable against labor, material, equipment, real estate and any other items necessary to and in the performance of this Agreement.

5. **Termination for Convenience.** The Town may for any reason whatsoever terminate this Agreement upon ten days written notice to the Contractor. In the event of termination, the Contractor shall cease work and shall deliver to the Town all documents, including reports, surveys, plans, tracings, specifications, and all other data and material prepared or obtained by the Contractor in connection with this Agreement. The Town shall, upon delivery of the aforesaid documents, pay the Contractor for work completed through the date of termination and which is approved by the Town. Payment for work completed will constitute payment in full for services performed by Contractor.

6. **Indemnification and Limitation of Liability.**

a. The Contractor shall defend, indemnify, and hold harmless the Town, its officers, directors, agents, contractors, employees, and council members from and against all claims, damages, losses, and expenses, (including but not limited to fees and charges of attorneys or other professionals and court and arbitration or other dispute resolution costs) arising out of or resulting from: (i) the performance of services by the Contractor or any person or organization directly or indirectly employed by the Contractor to perform or furnish any of the services or anyone for whose acts any of them may be liable, (ii) breach of the terms of this Agreement by the Contractor or any person or organization directly or indirectly employed by the Contractor to perform or furnish any of the services or anyone for whose acts any of them may be liable, (iii) violations of applicable law by any person or organization directly or indirectly employed by the Contractor to perform or furnish any of the services or anyone for whose acts any of them may

be liable, (iv) disease or death of third parties (including Town employees and agents and those of the Contractor), or (v) damage to property to the extent attributable to the negligence or willful misconduct of the Contractor or any person or organization directly or indirectly employed by the Contractor to perform or furnish any of the services or anyone for whose acts any of them may be liable.

b. The Contractor expressly waives all claims against the Town, and its officers, directors, agents, contractors, employees, and council members for any loss, damage, personal injury or death occurring as a consequence of the Contractor's activities or the performance of services under this Agreement.

c. In no event shall the Town be liable to the Contractor for indirect, special, or consequential damages, including, but not limited to, loss of revenue, loss of profit, cost of capital, or loss of opportunity regardless of whether such liability arises out of contract, tort (including negligence), strict liability, or otherwise.

d. The Town shall not assume any liability for the acts, omissions, or negligence of the Contractor its agents, servants, employees, or subcontractors. In all instances, the Contractor shall be responsible for any injury or property damage resulting from any activities conducted by the Contractor.

e. The Town's limits of liability are set forth in Section 768.28 of the Florida Statutes, and nothing herein shall be construed to extend the liabilities of the Town beyond that provided in Section 768.28 of the Florida Statutes. Nothing herein is intended as a waiver of Town's sovereign immunity under Section 768.28 of the Florida Statutes. Nothing hereby shall inure to the benefit of any third party for any purpose, including but not limited to anything which might allow claims otherwise barred by sovereign immunity or operation of law.

7. **Insurance.**

a. The Contractor shall, at its expense, procure and maintain during the term of this Agreement insurance approved by Town of the following types or such other insurance as the Town may require from time to time:

- (1) **Worker's Compensation:** statutory benefits, as required by law.
- (2) **Employer's Liability:** limits of One Hundred Thousand Dollars (\$100,000) bodily injury by accident, injury and disease, and a Five Hundred Thousand Dollar (\$500,000) policy aggregate limit.
- (3) **Comprehensive General Liability:** in an amount of at least One Million Dollars (\$1,000,000.00) for injuries, including but not limited to wrongful and accidental death per person and Five Million Dollars (\$5,000,000.00) for any one accident, and property damage insurance in an amount of at least One Million Dollars (\$1,000,000.00).
- (4) **Comprehensive Automobile Liability:** in an amount of at least One Million Dollars (\$1,000,000.00) bodily injury for each person and Five Million Dollars (\$5,000,000.00) for each occurrence and One Million Dollars (\$1,000,000.00) Property Damage for each accident.

- (5) **Professional Liability/Errors and Omissions:** One Million Dollars (\$1,000,000.00), with a maximum deductible of One Hundred Thousand Dollars (\$100,000.00). The errors and omissions policy shall be in effect and shall insure against the Consultant's negligent acts, errors or omissions relating to the services performed under this Agreement. Consultant shall include the Town as an additional insured under the policy terms and conditions.

b. On or before the Effective Date, the Contractor shall furnish the Town certificates of insurance evidencing compliance with the coverage requirements in this section and allowing thirty days written notice of any change, cancellation, or non-renewal. The certificates must contain the following words: "*Should any of the above described policies be canceled before the expiration date, the issuing company will mail a thirty day notice to the certificate holder named herein.*" Thereafter the Contractor shall provide, annually, certificates evidencing that such insurance remains in effect to the extent required under this Agreement.

8. **Compliance with Federal, State, and Local Laws.** The Contractor shall comply with all applicable federal, state, and local laws and ordinances.

9. **Ownership of Documents.** All documents, including detailed reports, plans, original tracings, specifications, and all other data, prepared or obtained by the Contractor in connection with the services hereunder shall be delivered to, and shall become the property of the Town prior to the final payment to or upon completion of work by the Contractor.

10. **Public Records.** To the extent Contractor is acting on behalf of the Town as provided under Subsection 119.011(2) of the Florida Statutes, Contractor shall:

- (1) Keep and maintain public records required by the Town to perform the services under this Agreement.
- (2) Upon request from the Town's custodian of public records, provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 of the Florida Statutes or otherwise provided by law.
- (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Contractor does not transfer the records to the Town.
- (4) Upon completion of the Agreement, transfer, at no cost, to the Town all public records in possession of Contractor or keep and maintain public records required by the Town to perform the service. If the Contractor transfers all public records to the Town upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public

records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Town, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.

b. If the Contractor fails to provide the public records to the Town within a reasonable time the Contractor may be subject to penalties under Section 119.10 of the Florida Statutes. Further, the Town may exercise any remedies at law or in equity, including, without limitation, the right to (i) impose sanctions and assess financial consequences, (ii) withhold and/or reduce payment, and (iii) terminate this Agreement in accordance with the terms hereof.

c. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE TOWN'S CUSTODIAN OF PUBLIC RECORDS AT (407-876-2563 X 5323, DBURKHALTER@TOWN.WINDERMERE.FL.US, 614 MAIN STREET, WINDERMERE, FLORIDA 34786.**

11. **Ambiguities.** Both parties have been allowed equal input regarding the terms and wording of this Agreement and have had the benefit of consultation with legal counsel prior to its execution, such that all language herein shall be construed equally against the parties, and no language shall be construed strictly against its drafter.

12. **Headings.** The headings or captions of sections or paragraphs used in this Agreement are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or to be taken into consideration in interpreting this Agreement.

13. **Modification; Waiver.** No provision of this Agreement may be modified, waived, or discharged unless that modification, waiver, or discharge is agreed to in writing signed by both parties, and if necessary, approved by the Town Council of the Town of Windermere. No waiver by either party of any breach of this Agreement by the other party will constitute a waiver of any other breach occurring at the same time or before or after.

14. **Severability.** If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby and shall remain enforceable to the greatest extent permitted by law.

15. **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with laws of the State of Florida, and venue for any action arising out of or related to this Agreement shall be in the Circuit Court for the Ninth Judicial Circuit in Orange County, Florida.

16. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the services to be performed under the RFP. Previous agreements and understandings of the parties with respect to such matters are null and void and of no effect.

17. **Notices.**

a. For a notice, or other communication, under this Agreement to be valid, it must be in writing and signed by the sending party, and the sending party must use one of the following methods of delivery: (1) personal delivery; (2) registered or certified mail, in each case return receipt requested and postage prepaid; and (3) nationally recognized overnight courier, with all fees prepaid. Delivery via facsimile, or email, is also permitted provided it is followed by delivery via one of methods (1)-(3) above and any such delivery via facsimile or email shall not be deemed to have been received pursuant to subsection 17.c. until such delivery pursuant to methods (1)-(3) above shall be deemed to have been received pursuant to Section 17.c.

b. For a notice, or other communication, under this Agreement to be valid, it must be addressed to the receiving party at the addresses listed below for the receiving party, or to any other address designated by the receiving party in a notice in accordance with this Section 17.

As to Town:

Town of Windermere
Robert Smith, Town Manager
Town of Windermere
614 Main Street
Windermere, Florida 34786
rsmith@town.windermere.fl.us
407-876-2563 x 5324

As to Contractor:

c. Subject to Section 17.d., a valid notice or other communication under this Agreement is effective when received by the receiving party. A notice, or other communication, is deemed to have been received as follows:

- (1) if it is delivered in person, or sent by registered or certified mail, or by nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt; and

(2) if the receiving party rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address for which notice was not given, then upon that rejection, refusal, or inability to deliver.

d. If a notice or other communication is received after 5:00 p.m. on a business day at the location specified in the address for the receiving party, or on a day that is not a business day, then the notice is deemed received at 9:00 a.m. on the next business day.

e. Any notice requiring prompt action shall be contemporaneously sent by facsimile transmission or electronic mail.

18. **Assignability**. The Contractor shall not assign any interest in this Agreement, and shall not transfer any interest in same, whether by assignment or novation, without the prior written approval of the Town.

19. **Independent Contractor**. The Contractor is and shall remain an independent contractor and not an employee of the Town.

Authorized parties are signing this Agreement as of the Effective Date stated in the introductory clause.

Town of Windermere:

_____ :

By: _____
Name: Robert Smith
Title: Town Manager

By: _____
Name: _____
Title: _____

Exhibit A – Contractor’s Response to the RFP

Exhibit B – Scope of Work

Exhibit C -- Additional FEMA Contractual Provisions

Exhibit D – Fee Schedule / Equipment List / Employee List

Exhibit E – Certification Regarding Lobbying (Byrd Anti-Lobbying)

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING (Byrd Anti-Lobbying)

**Certification for Contracts, Grants, Loans, and Cooperative Agreements
(To be submitted with each bid or offer exceeding \$100,000)**

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

Signature of Contractor’s Authorized Official _____

Name and Title of Contractor’s Authorized Official _____

Date _____