AGENDA

CALL TO ORDER

Invocation
Flag Salute

ROLL CALL

PUBLIC PARTICIPATION FOR ANY ITEMS NOT ON THE AGENDA (Citizen comments are limited to three (3) minutes per speaker. Speakers will be called when the item is introduced for discussion.)

DELETIONS OR AMENDMENTS TO THE AGENDA (City Charter Sec. 4.11)

PRESENTATIONS

Captain George Maddox, Volusia Sheriff's Office - 2021 End of Year Crime Report

PUBLIC HEARINGS

1. The applicant, Kimley-Horn & Associates, Inc., on behalf of Vaquero Ventures, is requesting City Council approve two variances from Land Development Code Section 3-129(6) and Land Development Code Section 5-8(a) to construct an O’Reilly Auto Parts Store. (Quasi-Judicial)

2. The applicant, Pepe’s Cantina, is requesting City Council approve a Special Exception to allow for outside service and consumption of alcoholic beverages. (Quasi-Judicial)

3. The applicant, Traderscove Corporation, is seeking Final Plat approval for Riviera Bella, Unit 9B, which consists of lots 190-238.

4. Staff is requesting City Council approval of the 2nd reading of Ordinance No. 05-2022, on behalf of the applicant, Cobb Cole, Attorneys at Law (herein referred to as Cobb Cole), on behalf of Empire Cattle, Ltd., who is petitioning for the expansion of the Rivington Community Development District (CDD) to include 30.17 acres of land that was recently annexed into the Rivington MPUD (Rivington East).

5. City Staff requests City Council approve the second reading of Ordinance No. 12-2021 amending the nuisance abatement code.

6. City Staff is requesting City Council approve the second reading of Ordinance No. 02-2022, which proposes to limit automotive sales locations, clarify the definition of automotive service stations, and create provisions for nonconforming uses.
NEW BUSINESS

7. Staff is requesting City Council approve Dredging & Marine Consultants, LLC's proposal to evaluate and replace up to 23 lake water level gauges.

8. Staff is requesting City Council approval of three standby contracts for disaster debris removal services

COUNCIL MEMBER REPORTS / COMMUNICATIONS

Member Reports/ Communications

A. Mayor and Council Members
B. City Manager
C. City Attorney

DATE OF UPCOMING MEETING / WORKSHOP

Regular City Council Meeting March 2, 2022, 6:30 p.m.

ADJOURN

If any person decides to appeal any decision made by the City Council with respect to any matter considered at this meeting or hearing he/she will need a record of the proceedings, and for such purpose he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based (FS 286.0105).

Individuals with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk at least three (3) working days in advance of the meeting date and time at (386) 668-2040.
Request

Applicant, Kimley-Horn & Associates, Inc., on behalf of Vaquero Ventures, is requesting two variances from Land Development Code Section 3-129(6) and Land Development Code Section 5-8(a) to construct an O’Reilly Auto Parts store.

Purpose

The applicant needs the two variances from the off-street loading space regulations and vehicular use area landscaping standard of 10% to construct an O’Reilly Auto Parts store.

Considerations

The applicant is requesting variances from Land Development Code Section 3-129(6) and Land Development Code Section 5-8(a) to construct an O’Reilly Auto Parts store.

In Land Development Code Section 3-129(6), it states that off-street loading spaces shall not interfere with the public use of streets or off-street parking spaces, and that said parking spaces may not be used to meet off-street loading requirements. The applicant is requesting for the location of the loading space to be within the parking lot travel lane. The applicant has stated that loading would occur after operation hours when there is no customer traffic.

In Land Development Code Section 5-8(a), it states that required landscape areas in the vehicular use areas shall cover an area equivalent to at least 10% of the paved area. The applicant is requesting this requirement be reduced to 8.02% of the paved area.

The variance meets all three conditions of Chapter 1, Section 1-8(2), which states: Limitations on granting variances. The City Council shall not vary the provisions of this Code unless it includes within the record of its action findings based upon the evidence presented to it in each specific case that all of the following conditions are met:

1. The property in question cannot yield a reasonable and beneficial use if permitted to be developed only under the regulations and standards in this Code.
   a. The applicant is unable to build a store that meets the regulations of the Land Development Code due to a significant portion of the lot being hydrology.
2. The plight of the landowner is due to unique circumstances and not the result of his own action or failure to act.
   a. The circumstances surrounding the lots’ size was not the result of the actions of the property owner.
3. The variance, if granted, will be the minimum variance necessary to accomplish the objectives and will not alter the essential character of the area.
   a. If granted, this variance will be the minimum necessary to accomplish the objective and will not alter the essential character of the area.

Regarding Section 1-8(3), we also have the following comments:

Criteria for approval of a variance. For the purpose of implementing this provision, the City Council, in making its determination whether there are practical difficulties or particular hardships, also shall take into consideration the extent to which the following facts favorable to the applicant have been established by the evidence:

a. The particular physical surroundings, shape, topographical conditions, or other physical or environmental condition of the specific property involved would result in a particular hardship upon the owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out.

b. The conditions upon which the request for a variance is based are unique to the parcel and would not be applicable, generally, to other property within the vicinity.

c. The purpose of the variance request is not based exclusively upon an economic hardship.

d. The alleged difficulty or hardship has not been created by any act or failure to act by the person owning the property.

e. The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the vicinity.

f. The proposed variance will be consistent with the provisions of the Comprehensive Plan and the purposes of this Code. A variance shall meet any specific requirements identified in this Code and no variance shall be granted from these requirements.

If the strict letter of the regulations were enforced, it would result in a particular hardship upon the owner due to the amount of the area that is covered by hydrology.

The circumstances surrounding this site are unique to the site and would not be generally applicable to other parcels in the general vicinity.

The purpose of the variance request is not based exclusively upon an economic hardship.

The hardship has not been created by any act or failure to act by the property owner.

The granting of the variance would not be detrimental to the public welfare or injurious to other property or improvements in the vicinity.

The proposed variance will be consistent with the provisions of the Comprehensive Plan and the purposes of the Land Development Code.
FINDINGS OF FACT

- The applicant wishes to construct an O’Reilly Auto Parts store.
- The applicant is requesting a variance from Land Development Code Section 3-129(6) and Land Development Code Section 5-8(a).
- The applicant appears to meet all of the criteria from Land Development Code Section 1-8(2).
- The two subject parcels, which are currently addressed as 42 South Charles R. Beall Boulevard and 46 South Charles R. Beall Boulevard, respectively, shall be combined, eliminating two non-conforming lots and creating one legally conforming lot to be addressed as 46 South Charles R. Beall Boulevard.
- The Development Review Committee met on February 1st, 2022 and recommended approval of Case # 21-03-VAR-O’Reilly to the City Council.

COST/FUNDING

N/A

RECOMMENDATION

It is recommended that the City Council approve the request for variances from Chapter 3, Division 4, Section 3-129(6) of the Land Development Code, and Chapter 5, Article I, Section 5-8(a) of the Land Development Code and allow for the construction of an O’Reilly Auto Parts store as depicted in the attached site plan.

IMPLEMENTATION

If the proposed variance is approved by City Council, then the Development Review Committee will not be prevented from approving the final site plan for this project due to the requirements of Section 3-129(6) and Section 5-8(a) not being met.

ATTACHMENTS

- Site plan
- Architectural elevations
- Elevation renderings
REQUEST

The applicant, Pepe’s Cantina, is requesting that City Council approve a Special Exception to allow for outside service and consumption of alcoholic beverages.

PURPOSE

The purpose of the proposed Special Exception is to allow the applicant to provide outside service and consumption of alcoholic beverages to customers.

CONSIDERATIONS

The subject site is located at 54 South Charles Richard Beall Boulevard. The applicant is requesting a Special Exception to permit them to provide outside service and consumption of alcoholic beverages to customers. The Future Land Use for the subject property is Commercial/Retail and the zoning is General Commercial (B-4).

Land Development Code Sec 3-102(c), allows for bars with outside service and consumption of alcoholic beverages to be permitted as Special Exceptions (pursuant to Land Development Code Section 3-134(9)).

Pursuant to Land Development Code Section 1-9, Special Exceptions are certain uses or development situations that may involve consideration of special circumstances or factors to determine that they are appropriate to the specific location and property. In considering a request for a special exception, the City Council shall evaluate the request against the criteria put forth in Section 1-9 (2) Criteria for Special Exceptions attached as Exhibit A.

(2) Criteria for special exceptions. All applications for special exceptions shall be reviewed and approved in accordance with the following criteria:

a. The proposal shall be consistent with the Comprehensive Plan. The proposed use does not conflict with the Comprehensive Plan.

b. The establishment, maintenance, or operation of the proposed use shall not be detrimental to or endanger the public health, safety, or general welfare. The proposed use will not likely cause undue harm to the public health, safety or welfare.
c. The proposed use shall not impede the normal and orderly development and improvement of surrounding properties for uses permitted in the district and shall be consistent with the character of the immediate neighborhood. The proposed use will not affect the character of the area.

d. Adequate measures shall be taken for ingress, egress and parking in a manner consistent with traffic operations and safety. There are no proposed changes to parking.

e. The proposal shall not have a substantial adverse effect on any known archaeological, historical, or cultural resource located on or off the site. The subject site is already developed.

f. The proposed design shall minimize adverse effects of the use on adjacent property, including visual impacts. The proposed use would not have any substantial adverse effects on the use of adjacent property.

g. Adequate provision shall be made for buffers, landscaping, public open space, and other improvements necessitated by the proposal. The proposed structure would be naturally buffered from surrounding residential structures.

h. The use shall meet the lot and building requirements of the district in which it is located unless the requirements are specifically modified by the City Council. A special exception shall meet any specific requirements identified in this Code and no variance shall be granted from these requirements. The applicant is able to meet the lot and building requirements of the district in which it is located.

i. The use shall comply at all times with the approved development plan, and any conditions imposed for establishment and operation of the use. The use will comply if the Special Exception is approved.

Land Development Code Section 3-134(9) requires the following:

- Sufficiency of setbacks, screens, buffers and general amenities to preserve internal and external harmony and compatibility with uses inside and outside the proposed development and to control adverse effects of noise, lights, and other nuisances.

- Sufficiency of delineation of outdoor portions of licensed premises from public rights-of-way, sidewalks and other public areas, including without limitation, use of fencing, screens or buffers.

- The proposed use is compatible with the surrounding uses and outside services shall not negatively impact adjacent residential uses.

- The designated space shall meet fire code and American Disability Act (ADA) requirements.

- Area shall have direct access to the building containing the restaurant or to a sidewalk network and be placed in a visible location that is convenient for use by the general public.

- The establishment shall carry liquor liability insurance at its own expense and liability.

- There shall be adequate parking for the outside seating area.

- License from Division of Alcoholic Beverages and Tobacco and Bureau of Licensing shall include outside service area.
A building permit shall be required for any exterior modifications to accommodate outside seating.

The proposed Special Exception was noticed in the Daytona Beach News Journal on Saturday, February 5, 2022. Additionally, the applicant has sent out notification to all neighbors within 1,000 feet as required by the City Ordinance.

**FINDINGS OF FACT:**

- Land Development Code Section 3-102(c) allows for bars with outside service and consumption of alcoholic beverages to be permitted as Special Exceptions.
- The Proposed Special Exception meets the review criteria provided by Land Development Code Sec 1-9.
- Land Development Code Section 3-134(9) provides restrictions to bars with outside service and consumption of alcoholic beverages.
- The proposed Special Exception meets the criteria of Land Development Code Section 3-134(9).

**COST/FUNDING**

N/A

**RECOMMENDATION**

It is recommended that the City Council approve the proposed Special Exception for outside service and consumption of alcoholic beverages for Pepe’s Cantina.

**IMPLEMENTATION**

The applicant would be required to apply for a building permit for any exterior modifications to accommodate outside seating.

**ATTACHMENTS**

- Sketch floor plan
- Business Tax-Receipt application
BUSINESS TAX RECEIPT APPLICATION
City of DeBary
16 Colomba Rd. DeBary, FL 32713 – 3264
(386) 601 - 0238
FILING THIS APPLICATION FOR LOCAL BUSINESS TAXES DOES NOT ALLOW APPLICANT TO OPERATE OR ENGAGE IN ANY TYPE OF BUSINESS UNTIL A LOCAL BUSINESS TAX RECEIPT IS ISSUED TO THE APPLICANT. ANY PERSON, FIRM OR CORPORATION WHO SHALL ENGAGE IN ANY BUSINESS, PROFESSION OR OCCUPATION WITHOUT A LOCAL BUSINESS TAX RECEIPT SHALL BE PUNISHED IN ACCORDANCE WITH THE CITY CODE.

PLEASE COMPLETE THE FRONT & BACK OF EACH PAGE AS APPLICABLE

ONLY CASH OR CHECK ACCEPTED

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</table>

1. Name of Business: **PEPE'S CANTINA DEBARY**, LLC

2. Owner Name: **FRANKLIN CHAVEZ**
   - Phone: 407-230-7843

3. Email Address: **FRANKCHAVEZ@PEPESCANTINA.COM**

4. Business Address: **5456 CHARLES RICHARD BEALL BLVD**
   - City: **DeBary**
   - State: **FL**
   - Zip Code: **32713**

5. Mailing Address: **659 FORT FLORIDA POINT RD**
   - City: **DeBary**
   - State: **FL**
   - Zip Code: **32713**

6. Business / Profession Description: **RESTAURANT**

7. Square Footage of Building/Tenant Space: **4472 SF**

8. Number of Employees: **15**

9. Anticipated Opening Date: **FEB 21, 22**

CERTIFICATION: I CERTIFY THAT ALL THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. I ACKNOWLEDGE THAT A LOCAL BUSINESS TAX RECEIPT ISSUED PURSUANT TO THIS APPLICATION DOES NOT WAIVE REQUIREMENTS OF ANY CITY, COUNTY, STATE OR FEDERAL ORDINANCES, STATUTE OR REGULATION THAT I MUST MEET PRIOR TO ENTERING INTO THE BUSINESS, PROFESSION OR OCCUPATION FOR WHICH THE LOCAL BUSINESS TAX RECEIPT IS SOUGHT. I WILL COMPLY WITH ALL SUCH REQUIREMENTS, AND UNDERSTAND THAT FAILURE TO DO SO IS PUNISHABLE IN ACCORDANCE WITH CITY CODE. UNDER PENALTIES OF PURJURY, I DECLARE I HAVE READ THE FOREGOING DOCUMENT AND THAT THE FACTS STATED IN IT ARE TRUE.

**Signature**: **Franklin Chavez**

**Date**: **2/8/22**

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**FOR OFFICE USE ONLY**

<table>
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<tr>
<th>Parcel #: <strong>8034-13-08-0040</strong></th>
<th>Property Owner: <strong>LESVIA &amp; ROBERTO RODRIGUEZ</strong></th>
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<td>Zoning Classification: <strong>B-4</strong></td>
<td>Service ID: <strong>BRESTAUR</strong></td>
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<td>Planning Dept: <strong>KB</strong></td>
<td>Fire Marshall:</td>
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<tr>
<td>Date: <strong>2/9/22</strong></td>
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<tr>
<td>□ Half Year Fee (Applying between April 1 &amp; June 30)</td>
<td><strong>$49.00</strong> Business Tax Fee</td>
</tr>
<tr>
<td>□ Full Year Fee (Applying between July 1 &amp; March 31)</td>
<td><strong>$50.00</strong> Fire Inspection Fee</td>
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**Valid Through**: **SEPTEMBER 30, 2022**

**Total Fee**: **$99.00**
REQUEST
The applicant, Traderscove Corporation, is seeking Final Plat approval for Riviera Bella, Unit 9B, which consists of lots 190-238.

PURPOSE
The Applicant is requesting approval of a Final Plat for the purpose of recording the plat and permitting sellable lots.

CONSIDERATIONS
On March 2, 2016 the DeBary City Council adopted Ordinance No. 04-16, approving Traderscove Corporation’s Residential Planned Unit Development Amendment (RPUD), known as the Riviera Bella project. With this approval, City Council authorized the development of no more than 300 residential units. On February 7, 2017, the City of DeBary’s Development Review Committee (DRC) approved the Riviera Bella East Unit 8-9 Preliminary Plat and Construction Plans and a Development Order was issued on March 14, 2017 to begin site work construction.

The Applicant is now requesting Final Plat approval for Riviera Bella, Unit 9B, which includes lots 190-238. The Applicant wishes to develop the collective lots into single family homes, as previously permitted in the Preliminary Plat and Construction Plans.

FINDINGS OF FACT
The City of DeBary Development Review Committee and City Attorney reviewed the request and provide for the following findings of fact:

- All requirements per local and state codes have been addressed;
- The City’s Surveyor, in conformity with Chapter 177 of the Florida Statutes, has reviewed the final plat and the City Attorney has conducted a legal review of the final plat and the title opinion.
- On December 21st, 2021, the City’s Development Review Committee reviewed and recommended approval to the City Council of the proposed plat contingent on addressing outstanding comments.
COST/FUNDING
N/A

RECOMMENDATION

It is recommended that the City Council approve the Final Plat for Riviera Bella, Unit 9B subject to staff conditions of approval including the following:

- Payment of all required fees, deposits, and costs as may be applicable or required pursuant to the Land Development Code, and other applicable laws, ordinances, and regulations shall be paid to the City prior to final plat approval and recording. The applicant shall be responsible for all recording costs associated with the plat and related documents.
- The original signed plat Mylar and all original executed plat related documents are to be promptly recorded in the Public Records of Volusia County, Florida, after final plat approval and only after satisfaction of all conditions of plat approval. Upon recording of the plat and plat related documents, the applicant shall provide the City with a recorded copy of the plat and plat documents to evidence proper recording.
- It is the responsibility of the entity subdividing the land to ensure that all applicable requirements of the Land Development Code and Florida Statutes relative to the subdividing and development of property are met prior to the final plat approval and recording. The lots on the plat shall not be conveyed unless and until the conditions of approval have been satisfied and the plat as well as the plat related documents have been fully executed and recorded in the public records.

IMPLEMENTATION

The Plat will be recorded with the Volusia County Clerk of the Courts.

ATTACHMENTS

- Riviera Bella, Unit 9B Final Plat
REQUEST

Staff is requesting City Council approval of the 2nd reading of Ordinance No. 05-2022, on behalf of the applicant, Cobb Cole, Attorneys at Law (herein referred to as Cobb Cole), on behalf of Empire Cattle, Ltd., who is petitioning for the expansion of the Rivington Community Development District (CDD) to include 30.17 acres of land that was recently annexed into the Rivington MPUD (Rivington East).

PURPOSE

The applicant wishes to expand the Rivington CDD to include Rivington East.

CONSIDERATIONS

Staff is requesting City Council approval of the second reading of Ordinance # 05-2022, on behalf of the applicant, Cobb Cole. The Florida Legislature created and amended Chapter 190, Florida Statutes, to allow for CDDs in order to provide an alternative method to finance and manage basic services for community development. The proposed CDD would be the financing and managing body for the proposed Rivington East development project, which is on approximately 30.17 acres of land located at the southeast corner of Fort Florida Road and Barwick Road.

Proposed facilities to be funded include roads and storm drainage (on- and off-site), ponds, utilities for water and sewer, reclaimed utilities, mitigation, site landscaping, entry features, amenity centers, parks and greens, and trails. The total estimated capital costs are $8,784,749.20. No bond, debt or other obligation of the CDD, nor any default, shall constitute a debt or obligation by the City.

FINDINGS OF FACT

- The applicant proposes to add approximately 30 acres into the Rivington Community Development District.

- The proposed Community Development District is consistent and compatible with the City of DeBary Comprehensive Plan.
• The Development Review Committee recommended approval to the DeBary City Council on December 21, 2021, contingent on addressing any remaining outstanding comments.

• The City Council approved the first reading of Ordinance #09-2021 (Item # 6), approving and revising the existing Rivington MPUD in order to annex 30.17 acres of land, on July 21st, 2021. The City Council approved the second reading of Ordinance #09-2021 (Item # 9) on September 1st, 2021.

COST/FUNDING

N/A

RECOMMENDATION

It is recommended that the City Council approve the second reading of Ordinance 05-2022, expanding the Rivington Community Development District expansion.

IMPLEMENTATION

If the City Council approves the proposed Community Development District expansion, then the subject property will be added into the Rivington Community Development District.

ATTACHMENTS

Ordinance #05-2022
Petition to expand Rivington Community Development District
Ordinance #09-2021 (recorded)
ORDINANCE NO. 05-2022

AN ORDINANCE OF THE CITY OF DEBARY, FLORIDA, GRANTING THE PETITION FOR AND EXPANDING THE RIVINGTON COMMUNITY DEVELOPMENT DISTRICT PURSUANT TO CHAPTER 190, FLORIDA STATUTES, CONCERNING THAT CERTAIN APPROXIMATELY 30 +/- ACRES OF LAND; DESCRIBING THE EXPANDED BOUNDARIES OF THE RIVINGTON COMMUNITY DEVELOPMENT DISTRICT; PROVIDING FOR DISTRICT NAME, POWERS, AND DUTIES; PROVIDING DISTRICT DESCRIPTION AND BOUNDARIES; CONSENTING TO THE EXERCISE OF CERTAIN SPECIAL POWERS BY THE DISTRICT BOARD OF SUPERVISORS; PROVIDING FOR CONFLICTS, SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Florida Legislature created and amended Chapter 190, Florida Statutes, to provide an alternative method to finance and manage basic services for community development; and

WHEREAS, Reader & Partners, LLC, a Florida limited liability company, has petitioned the City Council of the City of DeBary, a Florida municipal corporation, to adopt an ordinance expanding the existing Rivington Community Development District (the “District”) pursuant to Chapter 190, Florida Statutes; and

WHEREAS, Empire Cattle, LTD, is the owner of approximately 30 +/- acres of land legally described in Exhibit “A,” attached hereto (“Subject Property”); and

WHEREAS, Empire Cattle, LTD, has consented to Petitioner’s request for the expansion of the District for the Subject Property and having the Subject Property represent the District’s expanded boundary; and

WHEREAS, the City Council of the City of DeBary, Florida (the “City”), has conducted a public hearing on the petition for the expansion of the District in accordance with the requirements and procedures of Section 190.046(1)(c), Florida Statutes, as amended; and
WHEREAS, the City Council has considered the record of the public hearing and the facts set forth in Section 190.046, Florida Statutes, as amended, in making its determination to grant the petition for the expansion of the District; and

WHEREAS, the City Council has determined that; the statements within the petition were true and correct; that the expansion of the District is not inconsistent with the Comprehensive Plan; that the land within the District, is of sufficient size, is sufficiently compact, and sufficiently developable as a functionally interrelated community; that the District is the best alternative available for delivering community development services and facilities to the area served by the District; that the community development services and facilities will be compatible with the capacity and use of existing local and regional community development services and facilities; and the area to be served by the District is amenable to separate special-district governance; and

WHEREAS, the City Council desires to consent to the District’s exercise of certain special powers as requested by the petition and for such to be governed by Chapter 190, Florida Statutes.

IT IS HEREBY ORDAINED BY THE CITY OF DeBARY AS FOLLOWS:

SECTION 1. Recitals. The above recitals are true and accurate and are incorporated herein as the legislative findings of the City Council.

SECTION 2. Authority. This Ordinance is adopted pursuant to Chapter 190, Florida Statutes, as amended.

SECTION 3. District Name/Petition Granted. There is hereby expanded a community development district situated entirely within the City of DeBary, which shall be known as the "Rivington Community Development District," and which is sometimes referred to in this Ordinance as the "District." The Petitioner's petition to expand the District over the Subject Property is hereby granted.
SECTION 4. District External Boundaries. The external boundaries of the District are described in Exhibit "A," attached hereto and incorporated herein, said expanded boundaries encompassing approximately 30 +/- acres.

SECTION 5. Initial Board Members. The initial members of the District's Board of Supervisors shall be as follows: Jeffrey M. Reader, Debra Dremann Ushkowitz, Marlene DeMarco, Steven Costa and Tisha Barberree.


SECTION 7. No Debt of City. No bond, debt or other obligation of the District, nor any default thereon, shall constitute a debt or obligation of the City of DeBary.

SECTION 8. Severability. If any portion of this Ordinance is finally determined by a court of competent jurisdiction to be invalid, unconstitutional, unenforceable or void, the balance of the Ordinance shall continue in full force and effect.

SECTION 9. Effective Date. This Ordinance shall take effect ten (10) days after adoption.
FIRST READING: ______________________, 20____

SECOND READING: ______________________, 20____

ADOPTED this _________ day of _______________, 20_____, by the City Council of the City of DeBary, Florida.

CITY COUNCIL
CITY OF DeBARY

______________________________
ATTEST:
Karen Chasez, Mayor

______________________________
Annette Hatch, CMC, City Clerk

Date: ______________________

SEAL

Attachments – Exhibit “A” – Legal Description of Subject Property (also being the same as the expanded District Boundaries)
EXHIBIT A

PETITION
REQUEST

City Staff requests that City Council approve the second reading of Ordinance 12-2021 amending the nuisance abatement code.

PURPOSE

The purpose of the proposed ordinance is to allow for faster turn-around times when City Staff addresses nuisance code enforcement cases.

CONSIDERATIONS

Currently, Section 30-39 of Article II of Chapter 30 of the Code of Ordinances provides property owners that have been provided a notice of violation of Article II of Chapter 30 of the Code of Ordinances 21 days from receipt or delivery of the notice to correct the cited nuisance. Section 30-40 of Article II of Chapter 30 provides property owners 21 days to appeal the violation. Section 30-41 of Article II of Chapter 30 states that the City shall not be required to have any lot mowed or cleared or the nuisance abated by its contractors or agents more than three (3) times per year.

The proposed ordinance decreases the timeline for abatement and appeal from 21 days to 10. The language in Section 30-41 stating the city shall not be required to have any lot mowed or cleared or the nuisance abated by its contractors or agents more than three times per year would be struck out and replaced with the following provision: “In no event shall the city’s actions to cause the mowing or clearing of a lot or a nuisance obligate the city to cause similar actions to occur in the future”. In the past, there has been confusion on whether the city has the obligation and not merely the right to have any nuisance abated. Additionally, the significantly long wait time of 21 days from the time a violation like “high grass and weeds” is identified, has the potential to cause additional stress and harm to the surrounding area. This amended language clarifies that the city causing the mowing or clearing of a lot or a nuisance does not create any future obligations to cause similar actions, as well as, reduce lag time in addressing nuisance abatement.
COST/FUNDING
None

RECOMMENDATION
It is recommended that the City Council approve the second reading of Ordinance 12-2021

IMPLEMENTATION
If approved, City Staff will update the Code of Ordinance language.

ATTACHMENTS
Ordinance 12-2021
ORDINANCE NO. 12-2021

AN ORDINANCE OF THE CITY OF DEBARY, FLORIDA, AMENDING ARTICLE II, CHAPTER 30, CITY OF DEBARY CODE OF ORDINANCES RELATING TO PROPERTY MAINTENANCE; AMENDING CORRECTIVE ACTION PERIOD AND CLARIFYING CITY’S OBLIGATIONS; PROVIDING FOR CONFLICTS, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VIII, § 2(b) of the Florida Constitution and § 166.021, Florida Statutes, the City of DeBary may regulate and govern property maintenance to ensure the well-being of its citizens; and

WHEREAS, the City Council has determined that this Ordinance is in the best interest of the public health, safety and welfare.

NOW THEREFORE, IT IS HEREBY ORDAINED BY THE CITY OF DEBARY THAT:

SECTION 1. Recitals. The findings set forth in the recitals above are hereby adopted as legislative findings pertaining to this Ordinance.

SECTION 2. Amendment. Article II, Chapter 30, City of DeBary Code of Ordinances is hereby amended as follows (struck out text indicates deletions while underlined text indicates additions; provisions not referenced are not modified):

Sec. 30-39. - Notice to correct violation.

The code enforcement officer is empowered to enter upon and inspect lots on which a nuisance declared by this article is suspected to exist. In the event inspection reveals the presence of a nuisance, the code enforcement officer shall notify the record owners by registered or certified mail, return receipt requested, of such nuisance, or by hand delivery by the code enforcement officer or deputy sheriff. Said notice shall be sent to the last available address of the owners of record as found in the public records. Said notice shall advise the owner that a nuisance exists on said owner's lot or lots and said nuisance shall be abated by the owner. The notice shall specify what corrective action shall be taken by the owner to abate the nuisance and that failure to abate the nuisance will result in the code enforcement officer's abating said nuisance and that a lien for the costs and administrative expenses of said abatement shall be recorded against the property for failure to abate the nuisance. The owner shall have 10 calendar days from receipt or delivery of the notice to correct the nuisance. The notice shall also state that the owner has a right to appeal the determination of the code enforcement officer to the special master and that said appeal, upon payment of the fee in accordance with section 30-40, shall be filed within 15 days of receipt or delivery of the notice from the code enforcement officer.

Sec. 30-40. - Appeals.
Within 15 days after the receipt or delivery of the notice from the code enforcement officer pursuant to section 30-39, the owner of the lot may make written request for a hearing before the special master to appeal the decision of the code enforcement officer and to show that the condition alleged in the notice does not exist or that such condition does not constitute a nuisance. Filing of such appeal shall toll the 10 calendar 24-day period to correct the nuisance until the decision of the special master is rendered. Failure to notify or to timely appear for the hearing shall be deemed a waiver of the lot owner's right to appeal. The code enforcement officer shall give the owner seeking such hearing written notice of the date and location of the scheduled hearing. At the hearing before the special master, the city and the lot owner may introduce such competent, substantial evidence as is deemed relevant and necessary. Thereafter the special master shall render a decision on said hearing. In order to defray the expense of processing an appeal to the special master, the fee for said appeal shall be as established by resolution and listed in appendix A; provided, however, that the city shall refund the appeal fee to the applicant if the special master concurs with the applicant in its decision. Following review by the special master, or waiver of the right to appeal by the owner, the owner shall have exhausted his administrative remedies.

Sec. 30-41. - Posting of lot; abatement of nuisance.

In the event no appeal is filed as provided in section 30-40 or the notice is returned undelivered, upon the expiration of the 10 calendar day 24-day period after receipt or attempted delivery of the notice to correct the nuisance, the code enforcement officer shall re-inspect the lot to ascertain whether or not the nuisance has been abated. Should the code enforcement officer determine that the subject lot still constitutes a nuisance as defined in this article, and has notified the owner as such, and the owner has failed to abate said nuisance within the allowed time, the code enforcement officer shall abate said nuisance; provided, however, if the notice to abate said nuisance, sent by certified or registered mail, is returned, undelivered, the code enforcement officer shall post a copy of the notice on the lot in a conspicuous place. After ten days following the posting of said notice, the code enforcement officer shall abate said nuisance. In no case will the nuisance be abated by the code enforcement officer earlier than 10 24 days from the mailing of the notice. The code enforcement officer, through his agents or authorized contractors, is authorized to enter upon the lot and take such steps as are reasonably necessary to effect abatement. The city shall not be required to have any lot mowed or cleared or the nuisance abated by its contractors or agents more than three times per year. In no event shall the city’s actions to cause the mowing or clearing of a lot or a nuisance obligate the city to cause similar actions to occur in the future.

SECTION 3. Conflicts. In the event of any conflict between this Ordinance and other ordinances or parts thereof, this Ordinance shall govern and control to the extent any such conflict exists.

SECTION 4. Codification. It is the intention of the city council of the City of DeBary, Florida, and it is hereby ordained that Section II of this Ordinance shall become and be made a part of the Code of Ordinances of the City of DeBary, Florida, and city staff is directed to cause the codification of the amendments set forth in this Ordinance. So that the provisions of
this Ordinance may be renumbered or relettered to accomplish such intention; the word “Ordinance” may be changed to “Section”, “Article”, or other appropriate word.

SECTION 5. Severability. If any clause, section, or other part of this Ordinance is held by any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part will be considered eliminated and have no effect with regard to the validity of the other provisions of this Ordinance.

SECTION 6. Effective Date. This Ordinance takes effect immediately upon its adoption.

FIRST READING AND PUBLIC HEARING: ____________, 2021.
SECOND READING AND PUBLIC HEARING: ____________, 2022.

APPROVED:

CITY OF DEBARY CITY COUNCIL

___________________________________
Karen Chasez, Mayor

ATTESTED:

___________________________________
Annette Hatch, City Clerk
# City Council Meeting  
## City of DeBary  
### AGENDA ITEM

<table>
<thead>
<tr>
<th>Subject:</th>
<th>Ordinance 02-2022 Automotive Sales</th>
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<tr>
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<td>Amye King, Growth Management</td>
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## REQUEST

City Staff is requesting City Council to approve the second reading of Ordinance 02-2022, which proposes to limit automotive sales locations, clarifying the definition of automotive service stations, and creating provisions for nonconforming uses.

## PURPOSE

The purpose of this item is to limit automotive sales to industrial zoning districts, amend the definition of automotive service stations, and to provide for discontinuance of nonconforming uses.

## CONSIDERATIONS

The City has identified, during its previous strategic planning session, that it would like to revitalize the US 17-92 corridor. Much of this area is developed with antiquated uses and structures that will likely not conform with the City’s vision for future revitalization.

More specifically, automotive sales are permitted in the B-4 (General Commercial), B-5 (Heavy Commercial), and I-1 (Light Industrial) classifications. This use would likely conflict with revitalization efforts and future investment in the area. Therefore, a proposed ordinance, if adopted, would remove automotive sales as a permitted use in the B-4 and B-5 classifications. This would primarily affect the US 17-92 corridor.

While the City may phase out automobile sales in certain areas, it should be noted that existing automobile sales would be vested, or “grandfathered” in their right to continue between users (owners and/or operators) for a grace period. Any amended language to the existing permitted uses would need to provide for discontinuance of nonconforming uses. If the operation of a nonconforming use has been discontinued for a period of six (6) months or greater, the use would be considered abandoned and would not be permitted to be reestablished on the property.

Proposed language was presented to City Council on November 17, 2021. At that meeting, it was agreed that the language stating that Automotive sales would become nonconforming uses shall cease operations prior to the 10th anniversary of the code amendment causing them to be nonconforming.
uses, would be stricken. Additionally, greater clarification has been added to state that the six-month grace period applies “regardless of whether ownership of the property has changed or not”. This is to ensure that even if an auto sales establishment discontinues use, it may not be vested simply because the same owner continues to own the property.

**COST/FUNDING**

None.

**RECOMMENDATION**

It is recommended that the City Council approve the second reading of Ordinance 02-2022.

**IMPLEMENTATION**

If approved, City Staff will update the relevant sections of the Land Development Code.

**ATTACHMENTS**

Ordinance 02-2022
ORDINANCE NO. 02-2022

AN ORDINANCE OF THE CITY OF DEBARY, FLORIDA, AMENDING CHAPTER 1, SECTION 1-3 OF THE CITY OF DEBARY LAND DEVELOPMENT CODE TO AMEND THE DEFINITION OF AUTOMOBILE SERVICE STATION; AMENDING CHAPTER 1, SECTION 1-12 OF THE CITY OF DEBARY LAND DEVELOPMENT CODE CONCERNING DISCONTINUANCE OF NON-CONFORMING USES; AMENDING CHAPTER 3, ARTICLE III, DIVISION 3, SECTIONS 3-102, 3-103 AND 3-107 OF THE CITY OF DEBARY LAND DEVELOPMENT CODE TO AMEND THE PERMITTED PRINCIPAL USES AND STRUCTURES OF THE B-4 GENERAL COMMERCIAL, B-5 HEAVY COMMERCIAL, AND I-1 LIGHT INDUSTRIAL ZONING DISTRICTS REGARDING AUTOMOTIVE, BOAT, MOTORCYCLE, MOBILE HOMES AND RECREATIONAL VEHICLE SALES; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.

WHEREAS, the City Council desires to amend the Land Development Code to amend Section 1-12 to amend the definition of automobile service station, to provide for discontinuance of certain non-conforming uses and to amend the permitted use sections of the B-4, B-5 and I-1 zoning districts to address automotive, boat, motorcycle, mobile homes and recreational vehicle sales; and

WHEREAS, the City Council finds that the amendment to the City’s Land Development Code set forth herein is in the interests of the public health, safety, and welfare; and

WHEREAS, the City Council finds that the amendment to the City’s Land Development Code set forth herein is consistent with the Comprehensive Plan; and

WHEREAS, this Ordinance has been adopted after the required notice and public hearings in accordance with general law and the Charter and Land Development Code of the City of DeBary.

IT IS HEREBY ORDAINED BY THE CITY OF DEBARY AS FOLLOWS:

SECTION 1. RECITALS. The foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a part of this Ordinance.

SECTION 2 ADOPTION. Chapter I, Section 1-3 of the City of DeBary Land Development Code is hereby amended as follows (words that are stricken out are deletions; words that are underlined are additions; provisions not being included are not being amended):
Sec. 1-3. – Definitions and rules of construction

(c) Words and terms defined. The following words and phrases, as used in this Code, shall have the following meanings:

Automobile service station.

(1) Type A shall mean any premises used for the servicing of motor vehicles, including engine tune ups and repair; wheel balancing, alignment, brake service; the retail sale of fuel, lubricants and other products necessary to the operation and maintenance of motor vehicles, and the installation of such products, plus the sale of refreshments, but excluding the rebuilding or reconditioning of engines, and body repair. Automobile, boat, motorcycle, mobile home and recreational vehicles sales not included.

(2) Type B shall mean in addition to Type A uses, any repair, rebuilding or reconditioning of any motor vehicle. Automobile, boat, motorcycle, mobile home and recreational vehicle sales not included.

SECTION 3 ADOPTION. Chapter I, Section 1-12 of the City of DeBary Land Development Code is hereby amended as follows (words that are struck out are deletions; words that are underlined are additions; provisions not included are not being amended):

Sec. 1-12. - Nonconforming lots, structures, and uses.

(a) Nonconforming lots.

(1) A lot or parcel of land is nonconforming if it does not meet the minimum area and dimensional requirements of the district in which it is located.

(2) Any lot or parcel made nonconforming solely as a result of eminent domain proceedings instituted by any governmental agency, or through a voluntary conveyance in lieu thereof, shall be deemed to be a conforming lot or parcel for all purposes. However, all development activity on such a lot or parcel shall be in accordance with district yard requirements at the time of development.

(3) Where two or more existing nonconforming lots with continuous frontage are under the same ownership, or where a nonconforming lot has continuous frontage with a large tract under the same ownership, nonconforming lots shall be combined to form one or more building sites meeting the lot requirements of the district.

(4) Development of a single-family dwelling shall be permitted on a nonconforming lot of at least 5,000 square feet and 50 feet or more in width at the front building line in any district in which the use is permitted, if remedy of the nonconformity by combination with other lots under the same owner is not available.

(5) The City Council shall have jurisdiction to authorize variances from the requirements of this subsection.
(b) **Nonconforming buildings and structures.**

1. A building or structure is nonconforming if it does not meet the building setback, height, or bulk limitations of this Code.

2. An existing nonconforming building or structure may be maintained and repaired, but shall not be structurally added onto or altered to further the nonconformance unless the additions or alterations are for the purpose of a conforming use of the building or structure.

3. Existing nonconforming buildings and structures shall be made to comply with these regulations if the value of the buildings and structures on a lot after the damage is less than 50 percent of the value immediately preceding the damage as determined by the county property appraiser. This provision shall not apply to the reconstruction of a legal nonconforming single-family dwelling.

(c) **Nonconforming uses.**

1. A use of land or of any building or structure is nonconforming if any of the following conditions apply:
   a. The use is not currently permitted in the district in accordance with this Code.
   b. The density of the use exceeds the density currently permitted in the district in accordance with this Code.
   c. The site does not meet the applicable off-street parking requirements of this Code.

2. An existing nonconforming use of any building or structure shall not be extended, enlarged, or expanded.

3. An existing nonconforming use of any building or structure shall not be rebuilt or repaired if the value of the buildings and structures on a lot after the damage is less than 50 percent of the value immediately preceding the damage as determined by the county property appraiser. This provision shall not apply to the reconstruction of a legal nonconforming single-family dwelling.

4. Modifications shall not be granted from any of these restrictions. No modification shall be permitted from dimensional and density restrictions in order to reestablish a nonconforming use.

5. **Discontinuance.** If the operation or use of a lawful nonconforming use on any property (or portion thereof) has been discontinued for a continuous period of six (6) months, such nonconforming use will be deemed abandoned, regardless of whether ownership of the property has changed or not, and may not be reestablished on such property (or portion thereof) without further action by the city. Upon abandonment of a nonconforming use, the use of the land, buildings and accessory structures (or portions thereof) shall be subject to all regulations specified by this code for the zoning district in which such property is located. The vacating of premises or a building or non-operative status of the use shall be evidence of a discontinued use. The city manager shall have the authority to render a decision as to whether there is a discontinuance of a lawful nonconforming use upon a property for the proscribed period. The city manager’s written decision pursuant to this subsection may be appealed to the city council pursuant to section 1-7.
(d) **Vested development.** There are within the City, various properties, the development of which was previously declared to be "vested" under the regulations of the county. It is the intent of this Code that such "vested" status shall not be changed solely by virtue of the adoption of this Code.

(e) For vested developments that are legal non-conforming uses, the City Manager may permit the addition of accessory structures including fences as well as aesthetic site improvements such as landscaping, if such improvements meet the following conditions and are not for the purpose of expanding or enlarging the nonconforming use.

1. The non-conforming use shall not be enlarged or increased nor extended to occupy a greater area of land than was originally occupied.
2. The improvement must comply with all other applicable laws and regulations including overlay district requirements and required setbacks.
3. No new non-conformities shall be created.
4. The maximum lot coverage must not exceed that required by the site's zoning classification.

(f) **Nonconforming site improvements (not including structure).** Where an existing site improvement (landscaping, parking lot layout, etc.) is non-conforming with the current regulations related to such, nothing in this section shall prohibit minor site improvements that result in the reduction of this non-conformity.

(g) **Illegal uses.** This section does not authorize the continuance of any use or nonconformity which was not validly in existence at the time of the adoption of this Code.

***

**SECTION 4 ADOPTION.** Chapter 3, Article III, Division 3, Sections 3-102, 3-103 and 3-107 of the City of DeBary Land Development Code is hereby amended as follows (words that are stricken out are deletions; words that are underlined are additions; provisions not included are not being amended):

Sec. 3-102. – B-4 General Commercial Classification.

(b) **Permitted principal uses and structures.** In the B-4 General Commercial Classification, no premises shall be used except for the following uses and their customary accessory uses or structures unless a use is found to be substantially similar in nature by the City Manager. Also, reference Article II, Overlay Districts, for any additional applicable regulations.

***

**Automobile and motorcycle vehicles sales.**

* * * * *

Sec. 3-103 – B-5 Heavy Commercial Classification.

(b) **Permitted principal uses and structures.** In the B-5 Heavy Commercial Classification, no premises shall be used except for the following uses and their customary accessory uses or
structures unless a use is found to be substantially similar in nature by the City Manager. Also, reference Article II, Overlay Districts, for any additional applicable regulations.

***

Automotive, boat, motorcycle, mobile home and recreational vehicle sales.

***

Sec. 3-107. – I-1 Light Industrial Classification.

(b) Permitted principal uses and structures. In the I-1 Light Industrial Classification, no premises shall be used except for the following industrial uses and their customary accessory uses or structures unless a use is found to be substantially similar in nature by the City Manager. Permitted and special exception uses must also be consistent with the uses permitted by the property’s future land use designation on the City’s adopted Future Land Use Map. Also, reference Article II, Overlay Districts, for any additional applicable regulations.

***

Automotive, boat, motorcycle, mobile homes and recreational vehicles sales.

SECTION 5. CODIFICATION. Sections 2 through 4 of this Ordinance shall be incorporated into the DeBary Land Development Code. Grammatical, typographical and similar or like errors may be corrected, and additions, alterations, and omissions not affecting the construction or meaning of this ordinance or the Land Development Code may be freely made.

SECTION 6. SEVERABILITY. If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 7. CONFLICTS. In the event of a conflict or conflicts between this Ordinance and any other ordinance or provision of law, this Ordinance controls to the extent of the conflict, as allowable under the law.

SECTION 8. EFFECTIVE DATE. This Ordinance shall become effective immediately upon adoption by the City Council of the City of Debary, Florida.

FIRST READING: __________, 2021

SECOND READING: __________, 2022
ADOPTED this ____ day of _________, 2022, by the City Council of the City of Debary, Florida.

CITY COUNCIL
CITY OF DEBARY

____________________________
Karen Chazez, Mayor

ATTEST:

____________________________
Annette Hatch, City Clerk


REQUEST

Staff is requesting City Council approve Dredging & Marine Consultants LLC proposal to evaluate and replace up to 23 lake water level gauges.

PURPOSE

This request is needed at this time due to the poor condition of existing lake gauges.

CONSIDERATIONS

- The City of DeBary is required to monitor lake levels as a condition of permits through the St. Johns River Water Management District.

- The lake gauges are needed to provide lake elevations identified within the permit which dictate emergency pump on and pump off elevations.

- Pump on and pump off elevations are utilized during emergency flood protection events.

- 23 of the lake gauges currently in place are faded, worn, and illegible.

- In order to comply with permit requirements, the lake elevations must be documented when responding to emergency flood protection events.

- There are 40 lake gauges, however 23 gauges are in poor condition.

- Site visits will be conducted to evaluate, and replace or relocate the 23 gauges in poor condition.

- In January of 2021 Dredging & Marine Consultants LLC was approved as a Professional Continuing Services Contractor for the City of DeBary.

COST/FUNDING

Lump sum fee not to exceed $35,200.00
**RECOMMENDATION**

It is recommended that the City Council approve the Dredging & Marine Consultants LLC lake level gauge evaluation and repair for a lump sum fee not to exceed $35,200.00

**IMPLEMENTATION**

Services will be completed within 120 days of authorization

**ATTACHMENTS**

Dredging & Marine Consultants LLC proposal
Mr. Alan Williamson  
Public Works Director  
City of DeBary  
16 Colomba Road  
DeBary, FL 32713

RE: Professional Services for Lake Gauge Evaluation, Recommendation, and Replacement

Mr. Williamson;

Dredging & Marine Consultants LLC (DMC) is pleased to submit this proposal to evaluate and replace up to 23 lake water level gauges maintained by the City to monitor water levels in lakes throughout the City as required by permits issued by the St. Johns River Water Management District (SJRWMD). A number of the gauges are missing, are weathered and difficult to see, or mounted far into the water and difficult to see over the distance. Under this proposal, DMC will provide the following services.

Scope of Services:

Task 1 Field Evaluation and Recommendations: – Under this task, DMC staff will visit the locations of all lake gauges, accompanied by City staff members responsible for reading and maintaining the gauges present, to assist in locating the gauges and to provide input for recommendations. At each location the gauge will be visually observed (if present), and its condition documented with written comments and photographs. The range of level readings on the gauge face will also be recorded at each site for comparison with recorded historical high and low water levels for the lakes in which the gauges are mounted. DMC will provide a summary of the field notes collected and a selection of the photographs taken, along with our recommendations for addressing the site.

Task 2 Field Installation – Under this task, DMC will install the gauges that the City has approved for replacement, as well as the removal and disposal of the existing gauges. At each location a Florida licensed surveyor will establish horizontal and vertical control for the placement and calibration of each new staff gauge; to maintain consistency with existing historical records the surveys will utilize the North American Datum of 1927 (NAD 27) as the horizontal datum, and the National Geodetic vertical datum (NGVD 29) as the vertical datum. The gauge replacements will include new gauge faces, pre-drilled steel U-channel posts installed with a slide hammer and new hardware. Gauges mounted far in the water will be relocated to locations closer to shore for easier visibility.

Task 3 Automated Lake Gauge Measurement System – The City has expressed interest in looking into the feasibility of replacing or supplementing some or all of the gauges with an automated system that will measure water levels at desired intervals and relay the data to a central location via a telemetry or modem system. Under this task DMC will contact vendors of this type of equipment to obtain pricing information for the components and materials, as well as estimated installation costs, and provide this information to the City to provide budgeting guidance if the City wishes to pursue this option further.

Budget: DMC will perform the tasks detailed above for a lump sum fee not to exceed $35,200.00. The project will be invoiced on a monthly basis.

Schedule: These professional services will be completed within 120 days of authorization.
If these terms are acceptable, please execute by signing this proposal in the spaces below and return to the DMC by e-mail or US Mail. We will consider receipt of the signed proposal letter as Notice to Proceed on the work detailed in this letter.

Should you have any further questions please call 386-304-6505. We look forward to your authorization (Notice-to-Proceed) and to working with you on this project. Thank you.

Respectfully,

Dredging & Marine Consultants, LLC

[Signature]

Stephen J. Kuhn
Project Engineer

_____________________________________________________
Signature of Authorizing Official

_____________________________________________________
Date

_____________________________________________________
Name of Authorizing Official

_____________________________________________________
Title
REQUEST

Staff is requesting approval of three standby contracts for disaster debris removal services

PURPOSE

The City of DeBary is vulnerable to a host of hazards that may cause significant debris, and may exceed the city’s capabilities to respond. It is in the public interest to provide for the expedient removal of storm debris within the city, and to provide recovery technical assistance to the appointed and elected officials resulting from any future natural or manmade disasters.

The City of DeBary currently has standby contracts in place, but FEMA appreciates periodic renewals and updates. This contract will satisfy FEMA disaster reimbursement requests during a Presidential declared disaster.

CONSIDERATIONS

- Request for Proposal # 07-21 for Disaster Debris Removal and Recovery Services was advertised for competitive bid.
- A total of eight company’s submitted sealed bids, and staff reviewed the bids for content and ability to complete the scope of work.
- Bid packages were scored on a number of criteria, and the top three companies are: Ceres Environmental Services, DRC Emergency Services, and TFR Enterprises Inc.
- Three companies are being requested to provide redundancy in disaster recovery efforts in the event one company may not be available.
- Since we currently have DRC Emergency Services under contract and they have provided the City of DeBary with positive results the primary company will remain DRC Emergency Services with Ceres Environmental Services, Inc as secondary and TFR Enterprises, Inc as our third.

COST/FUNDING

There are no costs associated with entering into the agreements. Costs will incur after a disaster and the need arises for debris pick up.
**RECOMMENDATION**

It is recommended that the City Council: approve standby contracts for disaster debris removal services from DRC Emergency Services, Ceres Environmental Services, Inc., and TFR Enterprises, Inc.

**IMPLEMENTATION**

Implementation upon fully executed contracts and a notice to proceed after a disaster

**ATTACHMENTS**

Attachment A: Bid Evaluation  
Attachment B: DRC Emergency Services agreement  
Attachment C: Ceres Environmental Services, Inc agreement  
Attachment D: T.F.R Inc. agreement
## RFP #07-21 Disaster Debris Removal and Recovery Services
### Bid Evaluation

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### Score #2

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AGREEMENT FOR DEBRIS REMOVAL, REDUCTION, AND DISPOSAL

This Agreement for Debris Removal, Reduction, and Disposal ("Agreement") is hereby made and entered into by and between DRC Emergency Services, LLC, a Foreign Limited Liability Company, whose principal address is 6702 Broadway Street, Galveston, TX 77554 ("Contractor") and the City of DeBary, a Florida municipal corporation, whose primary address is 16 Colomba Road, DeBary, FL 32713 ("City").

RECITALS:

WHEREAS, the City desires to retain the services of a competent and qualified Contractor to provide debris removal, reduction, and disposal services within the City in the wake of a natural disaster such as a hurricane; and

WHEREAS, the City has issued Bid # 07-21 for such emergency debris removal, reduction, and disposal services and has received responses from various potential vendors; and

WHEREAS, the City has determined that the Contractor is fully qualified to render the required services; and

WHEREAS, it has been determined that the execution of this Agreement is beneficial to the people of the City of DeBary, Florida.

NOW THEREFORE, in consideration of the foregoing recitals, which are deemed true and correct and are incorporated herein by reference, and other consideration as called for in this Agreement, the receipt and sufficiency of which is acknowledged by the City and the Contractor, the parties agree and stipulate as follows:

1 DEFINITIONS.

For this Agreement and any incorporated exhibits, addenda, or attachments, the following terms, phrases, words, and their respective derivations will have the meaning set forth below. Any additional terms not contained herein are as defined in Part 1 RFP Terms and Acronyms of RFP No. 07-21, which is attached hereto and incorporated herein as Exhibit A.

1.1. **Agreement.** This Agreement for Debris Removal, Reduction, and Disposal, including any exhibits, addenda, or attachments appended thereto.

1.2. **Amendment.** An amendment to this Agreement in writing, approved by the City Manager, and executed by the City and Contractor authorizing a modification or revision to one or more terms or conditions of this Agreement.

1.3. **Change Order.** A written change or modification to this Agreement approved by the City and the Contractor authorizing an addition, deletion, or revision in the Scope of Services, or an adjustment in the pricing or timing of this Agreement, without changing or altering any other terms or conditions of this Agreement.

1.4. **Compensation.** The amount paid by the City to Contractor for Services, regardless of whether stated as compensation or stated as hourly rates, overhead rates, or other
figures or formulas from which compensation due to the Contractor can be calculated, which includes the total monetary amount payable to the Contractor under the terms of this Agreement for all Services, labor, materials, supplies, travel, training, profit, overhead, costs, expenses, and any other costs necessary to complete the Services as set forth in the Scope of Services.

1.5. **City.** The City of DeBary, Florida.

1.6. **Contract Administrator / Project Manager.** The City Manager or his/her designee who is responsible for addressing any concerns arising from this Agreement on behalf of the City.

1.7. **Contractor.** DRC Emergency Services, LLC.

1.8. **Day.** The word “day” means each calendar day or, when used in the plural, accumulation of calendar days.

1.9. **Deliverable.** The products or Services provided through the Scope of Services for this Agreement, including, but not limited to: other services, reports, written documentation, training, systems, or processes.

1.10. **Effective Date.** The date that this Agreement is fully executed by the Contractor and the City.

1.11. **FEMA.** Federal Emergency Management Agency.

1.12. **Geodatabase.** Special database storing data referenced by spatial or geographic coordinates.

1.13. **GIS.** Geographic Information System, which is a system that works with data referenced by spatial or geographic coordinates.

1.14. **GPS.** Global Positioning System, which is a satellite based navigation system that provides time and location data anywhere on the Earth to those with a compatible server.

1.15. **Incident.** Each disaster for which the City issues a Notice to Proceed (“NTP”).

1.16. **Notice to Proceed.** A written notice issued to the Contractor by the City’s Property Manager, fixing the date upon which the Contract times will commence to run and on which the Contractor must start to perform the Services and provide the Deliverables as set forth in this Agreement Agreement.

1.17. **Project.** The task or tasks assigned under a particular Notice to Proceed (“NTP”).
1.18. **Proposal.** The document(s) submitted by the Contractor in response to the City's Bid #07-21.

1.19. **Run-out Period.** Upon expiration of this Agreement, the Run-out Period will begin upon such expiration date and expire upon completion and provision of the Services or Deliverables due in connection with the declared disaster event/project commencing on or before the date of expiration.

1.20. **Services.** Those services defined in the Scope of Services to be performed by the Contractor pursuant to this Agreement and its attached exhibits, addenda, and attachments, including: the work, duties, and obligations to be carried out by the Contractor under the Agreement and the Exhibits attached hereto and incorporated herein.

1.21. **Subcontractor.** A person or entity other than a materialman or laborer who enters into an Agreement with the Contractor for the performance of any part of this Agreement.

2 **EXHIBITS.**

2.1. The Exhibit(s) listed below are incorporated into and made a part of this Agreement.

2.1.1 Exhibit A- RFP No. 07-21, including the Parts 1, 2, 3, 4, and 9 setting forth definitions, description of services, Scope of Work, technical specifications, and indemnification and insurance obligations.

2.1.2 Exhibit B – Pricing Schedule.

3 **ORDER OF PRECEDENCE.**

3.1 If the Contractor finds any potential or possible inconsistency, conflict, error, or discrepancy in the Agreement, Contractor shall immediately communicate in writing the nature of any such issue to the City's Contract Administrator or Project Manager, requesting the City's interpretation and direction prior to proceeding with the provision of Services or Deliverables affected thereby. If any conflicts or inconsistencies arise between any exhibit to this Agreement or between any such exhibit and the body of this Agreement itself, such conflict or inconsistency will be resolved by giving precedence to the following contract documents in the following order:

3.1.1 If any conflicts or inconsistencies arise between Exhibit A and any other exhibit of the Agreement with regard to the Scope of Work, Project specifications, performance criteria, or management metrics, the Description of Services, Scope of Work, and Technical Specifications set forth in Exhibit A will govern and control to the extent any such conflict may exist.

3.1.2 If any conflicts or inconsistencies arise between Exhibit B, the Pricing Schedule, and any other exhibit regarding the pricing of Services or Deliverables to be provided pursuant hereto, such Exhibit B shall govern and control to the extent any such conflict may exist.
3.1.3 If any conflicts or inconsistencies arise between the body of this Agreement and any exhibits attached hereto, the terms contained in the body of this Agreement shall govern and control to the extent any such conflict may exist.

4. SCOPE OF SERVICES. Contractor shall provide debris removal, reduction, and disposal Services and Deliverables pursuant to this Agreement as generally set forth herein and more specifically set forth in Exhibit A to this Agreement.

4.1. Contractor shall provide debris removal, reduction, and disposal Services and Deliverables consistent with Parts 2, 3, and 4, pertaining to the Description of Services, Scope of Work, and Technical Specifications, of RFP 07-21, which is attached hereto and incorporated herein as Exhibit A.

4.2. Performance Criteria:

4.2.1. All services must be performed in accordance with the Agreement and carried out under the direction of the City’s Contract Administrator / Project Manager.

4.2.2. All labor necessary to complete the Services and provide the Deliverables required under this Agreement must be performed in a good and competent workmanlike manner, in accordance with industry standards, and to the satisfaction of the City.

4.2.3. Time is of the Essence. Time is of the essence for all Services performed under this Agreement and all Projects performed in accordance herewith.

4.2.4. Authority to Act on Behalf of the City. The City Manager shall have the authority to approve, award, and execute all documents or other instruments required to effectuate changes, modifications, or additional Services, so long as the then-cumulative financial obligation of the City for such additional items does not exceed the City Manager’s authority under the City’s purchasing ordinances, policies, or procedures. Any change, modification, or additional service that causes the cumulative financial obligation of the City to exceed the City Manager’s authority under the City’s ordinances, policies, or procedures is not effective unless approved by the DeBary City Council.

5 RESPONSIBILITY OF CONTRACTOR

5.1 Where questions exist as to the Scope of Services, Contractor shall promptly confer with the Project Manager to ascertain the functional criteria of the Scope of Services.

5.2 Supervision. Contractor shall direct and supervise competent and qualified personnel and shall devote time and attention to the direction of the operation to ensure performance of obligations and duties as set forth herein. Contractor shall hire, compensate, supervise, and terminate members of its work force, and Contractor shall direct and control the manner in which Services are performed, including conditions under which individuals shall be assigned duties, how individuals will report, and the hours individuals shall perform. Contractor will be responsible for all income tax, social security, and Medicare taxes, federal unemployment taxes, and any other withholdings
from the company's employees' and/or subcontractors' wages or salaries. Benefits, if
any, for Contractor's employees and/or subcontractors will be the sole responsibility of
Contractor, including, but not limited to, health and life insurance, retirement,
liability/risk coverage, and worker's and unemployment compensation. Contractor will
be solely responsible for the means, methods, techniques, sequences, and procedures in
delivering Services and Deliverables pursuant to this Agreement. Further, Contractor will
be responsible for assuring the City that Services and Deliverables accurately comply with
the requirements of this Agreement and the Scope of Services contained therein.

5.3 **Assurance.** Contractor gives City its assurance that all Services performed under this
Agreement will be timely performed in a competent and workmanlike manner and in
accordance with the specifications and requirements of the Agreement and any approvals
required under the Agreement. All Services not conforming to the specifications and
requirements of the Scope of Services will be considered materially defective and
constitute a breach of this Agreement.

5.4 **Accuracy of Reports / Summaries.** Contractor will be responsible for the professional
and technical accuracy and the coordination of all data, reports, summaries, and any
other Services furnished by Contractor under this Agreement. Contractor shall, without
additional cost to the City, correct or revise any errors or deficiencies in its Services or
Deliverables for which it is responsible.

5.5 **Services to Comply with Specifications and Law.** All Services performed by the
Contractor pursuant to this Agreement, including all general provisions, special
provisions, job specifications, addenda, amendments, written interpretations, and any
written change orders issued pursuant thereto, shall comply with the Scope of Services
and all applicable laws, codes, ordinances, regulations, and statutes.

5.6 **Subcontractors.**

5.6.1 **Employment or Substitution of Subcontractors.** Contractor may not employ any
subcontractor, other person, or organization of against whom the City may have
reasonable objection, nor may Contractor be required to employ any
subcontractor against whom the Contractor has reasonable objection.
Contractor may not make any substitution for any subcontractor who has been
accepted by the City without obtaining the City's approval thereof.

5.6.2 **Disapproval of Subcontractors.** City's disapproval or requirement of removal or
replacement of Contractor's subcontractor will be deemed for lawful reasons if
in City's reasonable judgment, such Contractor's subcontractor has been
previously debarred by the City or another governmental agency or otherwise
poses a threat or causes harm to the health, welfare, or safety, or morale of the
City or its agencies, personnel, or property.

5.6.3 **Contractor Responsible for Subcontractors.** Contractor remains fully responsible
for all negligent acts and omissions of its subcontractors and of any individuals or
entities directly or indirectly employed by them and of persons for whose
negligent acts any of them may be liable to the same extent that it is responsible
for the negligent acts and omissions of persons directly employed by it. Nothing
in this Agreement may create or be interpreted to create any contractual relationship between any subcontractor and the City or any obligation on the part of the City to pay or to ensure the payment of any monies due to any subcontractor or other entity employed or otherwise retained by the Contractor to perform work under this Agreement, except as may otherwise be required by law. The City may furnish to any subcontractor to the extent practicable, evidence of amounts paid to Contractor for the performance of any or all tasks under this Agreement.

5.6.4 **Subcontractors to Act Pursuant to this Agreement.** Contractor agrees to bind specifically every subcontractor to the applicable terms and conditions of this Agreement for the benefit of the City, and shall require all subcontractors or other entities employed or otherwise engaged by the Contractor in connection with this Agreement to comply fully with the terms and conditions of this Agreement as such may apply to the Services being performed for Contractor.

6 **TERM OF AGREEMENT**

6.1 The term of this Agreement commences on the Effective Date of this Agreement or when this Agreement is fully executed by all parties and terminates three (3) years from the Effective Date. Two (2) subsequent two (2) year renewals are permissible upon mutual written agreement between the parties and the approval of the DeBary City Council.

6.2 The Contractor will commence the provision of Services as specified in this Agreement or as may be requested by the City and complete any such Services within the time specified therein or in any applicable Task Assignment as may be issued by the City.

6.3 Effect of Expiration of Agreement. Upon expiration of the Agreement, (1) no new Services may be commenced; (2) For Services commenced prior to the expiration of the Agreement that cannot be completed until after the expiration of the Agreement, this Agreement will expire on the completion date of said Services, and after all work or Services associated with such event/project have been approved and accepted by the City’s Project Manager. As such, the obligations entered therein by both parties under this Agreement for such Services will remain in full force and effect until completion of all Services performed and Deliverables provided under this Agreement during the Run-out Period.

7 **AGREEMENT PRICE AND COMPENSATION**

7.1 **Payment Pursuant to Fee Schedule.** Contractor will be paid Compensation for all Services. Total Compensation for this Agreement will be comprised of the total cost of all projects, materials, equipment, labor, expenses (including reimbursable expenses), and all mark-ups for overhead and profit, as more particularly described in Exhibit “B” – Price Schedule attached hereto and incorporated herein. The City agrees to pay Contractor in current funds, as compensation for its Services.

7.2 **Errors and Omissions in Pricing.** Compensation may not be adjusted due to errors or omissions not attributable to the City in computing the costs of the Services that result in an increase in the cost of this Agreement or because the time for completion varies from
the original estimate, including completion or substantial completion of this Agreement or any tasks issued pursuant thereto prior to the scheduled completion date or on account of City’s election to furnish any of the Services. In addition, Contractor certifies that the original Agreement price or Compensation for the Scope of Services and any additions thereto will be adjusted to exclude any sums by which the City determines the price or Compensation was increased due to inaccurate, incomplete, or noncurrent wage rates, and other factual unit costs.

7.3 **Reimbursable Expenses.** City’s payment to Contractor pursuant to the Price Schedule, attached hereto and incorporated herein as Exhibit B, shall be full compensation for Services rendered and any expenses incurred in connection therewith, and Contractor shall not be eligible for reimbursement for any expenses incurred in connection with the performance of this Agreement.

7.4 **Payments.** Charges and payments must be made in accordance with Exhibit B – Price Schedule. The rates expressed in Exhibit B shall govern Compensation and provide for payments against specified Services and Deliverables.

7.4.1 **Approval of Payment.** If, on the basis of the City Project Manager’s observation and review of Contractor’s Services, the City Project Manager is satisfied that the Services have been completed and that the Contractor has fulfilled all of its obligations under the Agreement, the City Project Manager, after receipt of a proper invoice, will either approve or deny such invoice in accordance with the applicable provisions of Part VII of Chapter 218, Florida Statutes. If City Project Manager rejects the invoice in whole or in part, he/she shall return the invoice to Contractor, indicating in writing the reasons for refusing to approve final payment, in which case Contractor will make the necessary corrections and resubmit the invoice. Regardless of the foregoing, approval of payment pursuant to this section will not operate as a waiver or otherwise prevent the City from recovering amounts paid when the City subsequently discovers material defects or deficiencies in the Services or Deliverables provided by Contractor, which defects or deficiencies would have otherwise caused the City to withhold payment.

7.4.2 **Invoice Detail.** Contractor shall submit an invoice for professional Services rendered to the City upon the completion of such Services. Each invoice must show detailed descriptions of the Services provided in accordance with the Agreement pricing.

7.4.3 **Retainage.** A ten percent (10%) retainage may be withheld from each reconciled invoice until the end of the project or task assigned. In order to recover the retainage, the Contractor must successfully complete and receive a letter of completion from the City, for all work performed. Retainage may be held until final reconciliation is complete. Portions of the retainage may be held by the City as compensation for the repair of damage caused to public or private property by the Contractor.

7.5 **Invoices.** Invoices or payment requests must be received from the Contractor and
submitted to the City's Project Manager. All invoicing and payments, including the practices and procedures pertaining thereto, are governed by the applicable provisions of Part VII of Chapter 218, Florida Statutes.

7.5.1 **Documentation.** Contractor's Invoice(s) must be accompanied by supporting data as may be required by the City Project Manager. City Project Manager shall review Contractor's Invoice and supporting data and notify Contractor in writing within ten (10) days from receipt of the statement if any amounts requested are disputed or otherwise lack adequate support or documentation.

7.5.2 **Invoicing Pursuant to Agreement.** Pursuant to Exhibit B, Contractor shall invoice City for all payments due Contractor under this Agreement. City shall pay invoices in accordance with this Agreement. Invoices must be sent to the address specified by the City in order to be paid.

7.5.3 **Withholding.** The City may withhold payment of any specific invoiced charges that it disputes in good faith while paying all undisputed charges on the invoice.

7.5.4 **Payment Due.** Within forty-five (45) days of acceptance by the City Project Manager of all the Services for which Contractor has submitted an invoice of professional Services, Contractor shall be paid the unpaid balance of any money due for any undisputed Services covered by said invoice.

7.5.5 **Taxes.** City is a tax-exempt entity and may not be charged or invoiced for the payment of taxes for Services performed or any Deliverables provided under this Agreement.

7.6 **Contractor's Continuing Obligations.** Contractor's obligation to perform the Services and provide any Deliverables in accordance with the terms of the Agreement is absolute. Nothing, including without limitation, the following, will constitute an acceptance of Services or Deliverables not completed or provided in accordance with the Agreement: (1) approval of any progress; (2) final payment to Contractor; (3) documentation confirming acceptance of the Work by the City; (4) any payment by the City to Contractor under the Agreement; (5) any act of acceptance by the City; (6) any failure to do so; or (6) any correction of defective Services or Deliverables by the City.

7.7 **Unusual Costs:** The Contractor may petition the City at any time for an additional rate adjustment on the basis of extraordinary and unusual changes in the costs of operation that could not reasonably be foreseen by a prudent operator and which, by all reasonable expectations, will continue for at least one (1) year. The Contractor's request must contain substantial proof and justification to support the any such need for the rate adjustment. The City may request from the Contractor and the Contractor must provide any additional information as may be reasonably necessary to assist the City in making its determination as to whether the adjustment may be granted. The City shall approve or deny any such request, in whole or in part, within sixty (60) days of receipt of the request and all other additional information as may be required by the City. Any price redetermination must be based upon the documentation provided, and the City reserves the right to rescind any price relief granted if circumstances change and a decrease in
price is warranted.

7.8 **Non-appropriation.** Notwithstanding any other term or provision of this Agreement, the continuation of this Agreement beyond a single fiscal year of City is subject to the appropriation and availability of funds in accordance with Chapter 129, Florida Statutes. Termination by the City due to non-appropriation will be without penalty or additional charge to the City. The City will not be obligated to pay Contractor under this Agreement beyond the date of termination except as set forth in this Agreement. City’s obligation to pay Contractor is limited to the budgeted amount for a fiscal year approved by the DeBary City Council for the then-current fiscal year of this Agreement and is otherwise limited to legally available non-ad valorem tax revenues.

8 PAYMENT OF SUBCONTRACTORS

8.1 **Payment.** Contractor shall pay its subcontractors and suppliers within thirty (30) days following receipt of payment from the City for such subcontracted Services or supplies. Contractor agrees that if it withholds an amount as retainage from such Subcontractors or suppliers, that it shall release such retainage and pay same within thirty (30) days following receipt of payment of retained amounts from City.

8.2 **Indemnification as to Payment of Subcontractors.** Contractor shall indemnify, defend, and hold the City harmless from and against any and all claims and actions from Contractor’s subcontractors for payment for Services and Deliverables provided by its subcontractors in connection with this Agreement. Regardless of the foregoing, nothing in this Agreement creates or may be deemed to create any contractual relationship between any subcontractor and the City or any obligation on the part of the City to pay or ensure the payment of any moneys due to any subcontractor, except as may otherwise be required by law.

9 LIMITATION OF LIABILITY AND INDEMNIFICATION OF CITY

9.1 **Indemnification.** Contractor shall indemnify, defend, and hold harmless the City, including its districts, authorities, separate units of government established by law, ordinance, or resolution, including its partners, elected and non-elected officials, employees, agents, volunteers, and any party with whom the City has agreed by contract to provide additional insured status, from and against all claims, damages, losses, and expenses, including, but not limited to, attorney’s fees arising out of, resulting from, or incident to Contractor’s performance of its obligations in whole or part of this Agreement, unless such injury or damage is occasioned solely by the fault, negligence, or willful misconduct of the City.

9.2 In all claims against the City, Contractor’s indemnification obligations are not limited in any way by any limitation on the amount or type of damages, compensation, or any benefits or insurance payable by or on behalf of the Contractor, including its employees, agents, contractors, or subcontractors.

9.3 **Sovereign Immunity.** The City expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Regardless of anything set forth in any section of this Agreement to the contrary, nothing in this
Agreement may be deemed a waiver of the City’s immunity or limits of liability beyond any statutory limited waiver of immunity or limits of liability that may have been or may be adopted by the Florida Legislature, and the cap on the amount and liability of the City for damages, regardless of the number or nature of claims in tort, equity, or contract, may not exceed the dollar amount set by the legislature for tort. Nothing in this Agreement may inure to the benefit of any third party for the purpose of allowing any claim against the City, which claim would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

10 INSURANCE

Contractor shall provide insurance in accordance with the provisions and requirements of Part 9, Indemnification and Insurance Requirements of RFP# 07-21, which is attached hereto and incorporated herein as Exhibit A.

11 PERFORMANCE AND PAYMENT BONDS

11.1 As security for the faithful performance and payment of all of Contractor’s obligations under the Contract, Contractor shall furnish Construction Performance and Payment Bonds in conformance with § 255.05, Florida Statutes, within seven days after a Notice to Proceed is issued. Such bonds must remain in effect at least until one year after the date when final payment becomes due, except as otherwise may be required by law or excused in writing by the City. Any such bonds must be issued by an agency authorized to do business in the State of Florida with a rating of “A” or higher, as listed in the A.M. Best & Company latest published rating. An attorney in fact who signs Performance and Payment Bonds must file with the bond a certified copy of his/her power of attorney to assign said bond.

11.2 Concurrently with an assessment of the damage immediately following a disaster event, the City, in consultation with the Contractor, will determine the Contractor’s Scope of Services to be performed and an estimated dollar value of the work for the event, based upon the best data available at the time. The initial Task Order issued by the City for each specific event will require the Contractor to provide appropriate Performance and Payment Bonds, each equal in sum to the estimated dollar value of the work. If the value of the contracted work increases, the Contractor will be required to provide an updated Performance and Payment Bond in an amount equal to the new value.

11.3 Performance and Payment Bonds for each event must comply with all other requirements unless otherwise stated. If the catastrophic event diminishes after the notice to proceed is issued, a stop work order will be issued to cancel the Performance and Payment Bonds tied to such event. Performance and Payment Bonds for each event must comply with all other requirements unless otherwise stated. If the catastrophic event diminishes after the Event notice to proceed is issued, a stop work order will be issued to cancel the Performance and Payment Bonds tied to such event.

12 DAMAGES/LIQUIDATED DAMAGES

12.1 Damages: Due to the nature of the services to be provided and the potential impact to the City for loss, the Contractor cannot disclaim consequential or special damages related
to the performance of this Contract. The Contractor will be responsible and accountable for any and all damages, directly or indirectly, caused by the actions or inaction of its employees, staff, or Subcontractors. There are no limitations to this liability.

12.2 Liquidated Damages: If the Contractor fails 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, as liquidated damages, the following:

12.2.1 The Contractor shall pay the City, as liquidated damages, $5,000.00 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 start date issued by the City’s Project Manager.

12.2.2 The Contractor shall pay the City, as liquidated damages, $1,000.00 per load of disaster debris collected in the City that is not disposed of at a City approved DMS or City Designated Final Disposal Site. Application of liquidated damaged does not release the Contractor of all liability associated with hauling and depositing material to an unauthorized location.

12.2.3 The Contractor shall pay the City, as liquidated damages, $100.00 per incident where the Contractor fails to sufficiently clean collection site(s) so that no loose leaves and small debris in excess of one bushel basket remain, no debris is left on the road surface and no single piece of debris larger than six (6) inches remains on site. Application of liquidated damages does not release the Contractor from the responsibility of sufficiently cleaning collection site(s).

12.2.4 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 damages.

13 TERMINATION

13.1 The Contract may be terminated by either party upon the material breach by the other party if such breach is not cured within thirty (30) days written notice from the non-breaching party.

13.2 City may terminate this Agreement upon at least thirty (30) days prior written notice to Contractor for convenience or non-appropriation.

13.3 Contractor may terminate this Agreement upon at least one hundred eighty (180) days prior written notice to City.

13.4 Upon receipt of notice of termination by the City from Contractor or upon delivery of
notice of termination from the City to Contractor, Contractor shall:

13.4.1 Stop work under the Agreement on the date and to the extent specified in City's Notice of Termination.

13.4.2 Inform the City, in writing, of the extent to which performance is completed.

13.4.3 Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the Services under the Agreement that is in progress but not yet completed.

13.4.4 Assign to the City, in the manner, at the times, and to the extent directed by the City, all of the right, title and interest of Contractor under the orders and subcontracts so terminated.

13.5 For all undisputed outstanding invoices submitted to the City prior to the effective date of the termination and subject to Article 6 - Term of Agreement, Article 7 – Agreement Price and Compensation, and this Article 13 - Termination, the City shall cause payments to be made to Contractor within forty five (45) days of receipt of invoice. Contractor shall invoice the City for any sums Contractor claims to be owed by City under this Agreement for work performed from the last invoice to the effective date of termination. City will review such invoice for payment and pay any undisputed amount within forty five (45) days.

13.6 With the approval of the City and to the extent required by the City, the Contractor will settle all outstanding liabilities and all claims arising out of any termination of this Agreement. City's approval of such settlement will be final for all the purposes of a termination under this Article 13 - Termination. In addition, Contractor shall transfer title and deliver to the City, in the manner, at the times, and to the extent, if any, directed by the City of Deliverables, work-in-progress, reports, and other materials produced as a part of, or acquired in connection with the performance of the Services terminated.

13.7 If the Contractor fails to cure a breach within ten (10) calendar days after receipt of notice from the City of said breach, the City may take over the Services and complete the Services on its own or through another contractor, and Contractor will be liable to the City for any increased costs of the Project reasonably incurred by the City in completing the Contractor's unfinished Services. As such, City may apply unpaid Compensation due and owing to Contractor prior to the default as a set off against the costs incurred by the City for taking over such Services.

13.8 The right of termination provided to the City and Contractor herein will be cumulative of all other remedies available at law.

13.9 All provisions of this Agreement that impose or contemplate continuing obligations on a party will survive the expiration or termination of this Agreement.

14 **DISPUTE RESOLUTION**

14.1 **Good Faith Efforts to Resolve.** The parties to this Agreement shall exercise their best
efforts to negotiate and settle promptly any dispute that may arise with respect to this Agreement in accordance with the provisions set forth in this Section 14, Dispute Resolution. Contractor and City Project Manager shall use reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, to address and work toward resolution of issues that arise in performance of this Agreement and any applicable statement of Services. Issues will be escalated to successive management levels as needed.

14.2 **Informal Dispute Resolution.** If a dispute develops between the parties concerning any provision of this Agreement, or the interpretation thereof, or any conduct by the other party under these agreements, and the parties are unable to resolve such dispute within five (5) business days or longer, that party, known as the Invoking Party, through its applicable Project Manager, shall promptly bring the disputed matter to the attention of the non-Invoking Party’s Project Manager or designated representative, as the case may be, of the other party in writing (“Dispute Notice”) in order to resolve such dispute.

14.3 **Discovery and Negotiation / Recommended Procedures.** Upon issuance of a Dispute Notice, the Project Managers or designated representative shall furnish to each other all non-privileged information with respect to the dispute believed by them to be appropriate and germane. The Project Managers shall negotiate in an effort to resolve the dispute without the necessity of any formal proceeding.

14.4 **Formal Dispute Resolution.** At any point after issuance of a Dispute Notice under this section, either party may request and initiate formal non-binding mediation before a single mediator, which mediation shall be completed within thirty (30) days of initiation or such longer time as may be agreed upon by both parties as being necessary for the mutual selection of a mediator and scheduling of such mediation. Any such mediation shall be convened and conducted in accordance with the rules of practice and procedure adopted by the Supreme Court of Florida for court-ordered mediation, Rule 1.700 et seq. of the Florida Rules of Civil Procedure, and Chapter 44, Florida Statutes. If the dispute remains unresolved after conducting such mediation, then either party may proceed to finalize any pending termination remedies and commence litigation in a court of competent jurisdiction. Each party shall bear its own costs and attorney’s fees for mediation or arbitration of an issue arising under this Agreement.

14.5 **Right to Terminate Reserved.** Regardless of the dispute resolution procedures provided for in this Section 14, Dispute Resolution, nothing herein will affect, delay, or otherwise preclude a party from terminating this Agreement in accordance with the provisions of Section 13, Termination, it being understood that these dispute resolution procedures are intended as a means of resolving disputes both during the term of this Agreement and after termination or expiration thereof.

15 **CITY DATA**

15.1 Contractor agrees and understands that all files and other information and data created in connection with the administration of this Agreement constitute a public record, except to the extent any such record is exempt from disclosure or identified as confidential under Florida or federal law (e.g., Chapter 119, Florida Statutes). Contractor
agrees to maintain access to such records and keep and maintain such records after termination of this Contract to the extent required by applicable law.

15.2 THE ABOVE DUTIES AND OBLIGATIONS SURVIVE THE CANCELLATION, EXPIRATION, OR TERMINATION OF THIS CONTRACT.

16 LOCAL GOVERNMENT REQUIREMENTS

16.1 Public Records Law. Pursuant to section 119.0701(2)(a), Florida Statutes, the City is required to provide Contractor with this statement and establish the following requirements as contractual obligations pursuant to the Agreement:

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 386-668-2040, AHatch@Debary.org, by mail, City Clerk, City of DeBary, 16 Colomba Road, Debary, FL 32713.

By entering into this Contract, Contractor acknowledges and agrees that any records maintained, generated, received, or kept in connection with, or related to the performance of services provided under, this Contract are public records subject to the public records disclosure requirements of section 119.07(1), Florida Statutes, and Article I, section 24 of the Florida Constitution. Pursuant to section 119.0701, Florida Statutes, any Contractor entering into a contract for services with the City is required to:

A. Keep and maintain public records required by the City to perform the services and work provided pursuant to this Contract.

B. Upon request from the City’s custodian of public records, provide the City 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, Florida Statutes, or as otherwise provided by law.

C. 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 Contract term and following completion or termination of the Contract if Contractor does not transfer the records to the City.

D. Upon completion or termination of the Contract, transfer, at no cost, to the City all public records in the possession of Contractor or keep and maintain public records required by the City to perform the service. If Contractor transfers all public records to the City upon completion or termination of the Contract, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion or termination of the Contract, Contractor shall meet all applicable requirements for retaining
public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

Requests to inspect or copy public records relating to the City's Contract for services must be made directly to the City. If Contractor receives any such request, Contractor shall instruct the requestor to contact the City. If the City does not possess the records requested, the City shall immediately notify Contractor of such request, and Contractor must provide the records to the City or otherwise allow the records to be inspected or copied within a reasonable time.

Contractor acknowledges that failure to provide the public records to the City within a reasonable time may be subject to penalties under section 119.10, Florida Statutes. Contractor further agrees not to release any records that are statutorily confidential or otherwise exempt from disclosure without first receiving prior written authorization from the City. Contractor shall indemnify, defend, and hold the City harmless from and against any and all claims, damage awards, and causes of action arising from Contractor's failure to comply with the public records disclosure requirements of section 119.07(1), Florida Statutes, or from Contractor's failure to maintain public records that are exempt or confidential from disclosure, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Contractor authorizes City to seek declaratory, injunctive, or other appropriate relief against Contractor from a Circuit Court in Volusia County on an expedited basis to enforce the requirements of this section.

16.2 **No Code Violation or Past Due Debt.** Contractor warrants and represents that neither the business, nor any officer or significant stakeholder of the business is in violation of the City of DeBary Code of Ordinances, and does not owe the City any past due debt. Any breach of the foregoing warranty and representation is a material breach of this Agreement, and the City shall have the right to terminate this Agreement therefore.

16.3 **Changes Due to Public Welfare.** The City and Contractor agree to enter into good faith negotiations regarding modifications to this Agreement that may be required in order to implement changes in the interest of the public welfare or due to change in law or ordinance.

16.4 **Compliance with Applicable Laws.** Contractor shall perform its obligations hereunder in accordance with all applicable federal, state, local laws, ordinances, rules, regulations (including, but not limited to, the Americans with Disabilities Act (ADA), including Titles I, II and III of the ADA as applicable; the Federal Immigration Reform and Control Act of 1986 (as amended); and Title VII of the Civil Rights Act of 1964 (as amended), and all orders and decrees of bodies or tribunals having jurisdiction or authority which in any manner affect the performance of this Agreement. Contractor shall indemnify, defend, and hold harmless the City and all its officers, agents, servants and employees against any claim or liability arising from or based on the violation of any such law, ordinance, rule, regulation, order, or decree where such liability is attributable to an act or omission committed by the Contractor, including its representatives, subcontractors, professional associates, agents, servants, or employees. Additionally, Contractor shall obtain and maintain at its own expense all applicable licenses and permits to conduct business.
pursuant to this Agreement from the federal government, State of Florida, County of Volusia, or any municipalities when legally required and maintain same in full force and effect during the term of this Agreement.

16.5 **Nondiscrimination and Americans with Disabilities Act.** Contractor shall not unlawfully discriminate against any person in the operations and activities in the use or expenditure of the funds or any portion of the funds provided by this Agreement or in the provision of goods or Services pursuant to this Agreement. Contractor agrees it shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing all goods and Services funded or paid for by City, including Titles I, II and III of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. For internet/web Services: For the purposes of this paragraph, any Services or products offered to public via the internet or online must comply with WCAG 2.0 AA in order to be deemed ADA compliant. The City will provide Contractor with prompt written notice with respect to any ADA deficiencies of which the City is aware and Contractor will promptly correct such deficiencies. If the City, the Department of Justice or other governmental entity tasked with the enforcement of the ADA ("Enforcement Agency") notes any deficiency in the facilities, practices, services, or operations of Contractor furnished or provided in connection with this Agreement, Contractor shall, at no additional charge or cost to the City, immediately cure any such deficiencies without delay to the satisfaction of such Enforcement Agency. Contractor further agrees that it shall, to the extent permitted by law, indemnify, defend, and hold harmless the City from and against any and all claims, sanctions, or penalties assessed against the City, which claims, sanctions, or penalties arise or otherwise result from Contractor's failure to comply with the ADA or WCAG 2.0 AA with regard to any online or internet Services or products. In performing under this Agreement, Contractor agrees that it shall not commit an unfair employment practice in violation of any state or federal law and that it will not discriminate against any member of the public, employee, or applicant for employment for work under this Agreement because of race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability.

16.6 **Drug Free Workplace.** The City of DeBary is a drug-free and smoke-free workplace. Contractor agrees that it shall provide a drug-free environment to its personnel during the term of this Agreement and will comply, subject to the prior receipt thereof, with the City’s policies on drug-free and smoke-free work place, as amended from time to time, during the term of this Agreement.

16.7 **Employment of Illegal Aliens / E-Verify.** Contractor certifies that it does not knowingly or willingly and will not during the performance of the Agreement employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986, as amended. Contractor shall comply with § 448.095, Florida Statutes, effective January 1, 2021, and register with and utilize the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of all new employees hired by Contractor. Furthermore, any subcontract Contractor enters into with a subcontractor to perform work or Services under this Agreement must contain the
following language: “The subcontractor must comply with § 448.095, Florida Statutes, and register with and utilize the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of all new employees hired by Contractor on or after the effective date of this contract and thereafter during the remaining term of such contract.” If Contractor fails to comply with the foregoing or § 448.095 or § 448.09(1), Florida Statutes, the City will take action as required by § 448.095(2)(c), Florida Statutes, which may include termination of this Agreement. If the City terminates this Agreement due to Contractor’s or a subcontractor’s failure to comply with § 448.095 or § 448.09(1), Florida Statutes, Contractor will be liable to the City for any additional costs or expenses incurred by the City as a result of the termination of this Agreement. Furthermore, Contractor agrees to indemnify, defend, and hold harmless the City from and against any fines, sanctions, or penalties levied against the City by a governmental agency arising from the Contractor’s failure or alleged failure to comply with this paragraph, including, but not limited to, the City’s loss or repayment of grant funds. Pursuant to § 448.095(2)(d), Florida Statutes, any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination.

16.8 **Equal Opportunity; Disadvantaged Business Enterprises.** Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, gender, sexual orientation, age, national origin, political affiliation, disability, or family status. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

16.9 **Scrubinized Companies-FL Statute sections 287.135 and 215.473.** Contractor certifies that neither the undersigned entity, nor any of its wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for the purpose of making profit have been placed on the Scrubinized Companies that Boycott Israel List created pursuant to s. 215.4725 of the Florida Statutes, or are engaged in a boycott of Israel.

In addition, if the value of the compensation to be paid under this Agreement equals or exceeds one million dollars, Contractor certifies that neither the undersigned entity, nor any of its wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for the purpose of making profit are on the Scrubinized Companies with Activities in Sudan List or the Scrubinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s.215.473 of the Florida Statutes, or are engaged in business operations in Cuba or Syria as defined in said statute.

Contractor understands and agrees that the City may immediately terminate this Agreement upon written notice if the undersigned entity (or any of those related entities of respondent as defined above by Florida law) are found to have certified falsely or if any of the following occur with respect to the company or a related entity: (i) it has been placed on the Scrubinized Companies that Boycott Israel List, or is engaged in a boycott of
Israel, or (ii) for any contract for goods or services of one million dollars or more, it has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or it is found to have been engaged in business operations in Cuba or Syria.

17 COMPLIANCE WITH FEMA 2 CFR 200.318-326 AND APPENDIX II CONTRACT PROVISIONS

17.1 Compliance with the Contract Work Hours and Safety Standards Act.

17.1.1 Overtime requirements. No contractor or subcontractor contracting for any part of the work under this Agreement, which may require or involve the employment of laborers or mechanics, may require or permit any such laborer or mechanic in any workweek in which he or she is employed to perform such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such work week.

17.1.2 Violation; liability for unpaid wages; liquidated damages. If any violation of subsection 17.1.1 Overtime requirements occurs, the Contractor and any subcontractor responsible therefore will be liable for the unpaid wages. In addition, such Contractor and subcontractor will be liable to the United States, for liquidated damages. Such liquidated damages will be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of subsection 17.1.1 Overtime requirements in the sum of $27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages as required by subsection 17.1.1 Overtime requirements.

17.1.3 Withholding for unpaid wages and liquidated damages. The City or State of Florida shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided for in subsection 17.1.2 Violation; liability for unpaid wages; liquidated damages.

17.1.4 Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in subsections 17.1.1 through 17.1.4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subsections 17.1.1 through 17.1.4 of this section.
17.2 **Clean Air Act and the Federal Water Pollution Control Act:** Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

17.2.1 The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

17.2.2 The Contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

17.3 **Suspension and Debarment.**

17.3.1 This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

17.3.2 The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

17.3.3 This certification is a material representation of fact relied upon by City. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

17.4 **Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended):** Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency (See Exhibit D).

17.5 **Access to Records:**

17.5.1 The Contractor agrees to provide the State of Florida, City of DeBary, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records
of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

17.5.2 The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

17.5.3 The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

17.5.4 In compliance with the Disaster Recovery Act of 2018, the City of DeBary and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

17.6 **DHS SEAL, LOGO, AND FLAGS:** The Contractor may not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

17.7 **Compliance with Federal Law, Regulations, and Executive Orders:** This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

17.8 **No Obligation by Federal Government:** The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

17.9 **Program Fraud and False Claims Fraudulent Statements or Related Acts:** The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor’s actions pertaining to this contract.

### MISCELLANEOUS PROVISIONS

18.1 **Independent Contractor.** Contractor shall provide the services required herein strictly in an independent contractor relationship with the City and, except as otherwise expressly set forth herein, is not, nor may be, construed to be an agent or employee of the City. Nothing herein creates any association, partnership, joint venture or agency relationship between Contractor and the City. The City will not provide vehicles or equipment to Contractor to perform the duties required under this Agreement nor will the City pay for any business, travel, office, or training expense or any other Agreement performance expense not specifically set forth in the Scope of Services of this Agreement. Contractor is not exclusively bound to the City and may provide Services to other private and public entities, but agrees and covenants that any such service provided by Contractor or for such entities will not conflict or otherwise interfere with Contractor’s provision of Services to the City under this Agreement.

18.2 **Other Agencies.** Contractor may, upon mutual agreement, permit any municipality or other governmental agency to participate in the Contract under the same prices, terms,
and conditions. At no time will any city or municipality or other agency be obligated to place any order for any other city, municipality, or agency, nor will any city, municipality, or agency be obligated for any liabilities, costs, invoices, or bills incurred by any other city, municipality, or agency. Furthermore, each agency will independently manage its contractual relationship with the Contractor and issue its own purchase orders or task assignments to Contractor.

18.3 **Third Party Beneficiaries.** Neither Contractor nor City intends to directly, incidentally, or substantially benefit a third party via this Agreement. The Parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement. Therefore, the Parties agree that there are no third party beneficiaries to this Agreement and that no third party is entitled to assert a claim against either of the parties based upon this Agreement.

18.4 **Waiver of Claims.** Once the Agreement expires, or final payment has been made, Contractor has no more than thirty (30) calendar days to present or file any claims against the City concerning the Agreement. After that period, the Contractor will be deemed to have waived any right to claims against the City concerning the Agreement.

18.5 **Safety.** Contractor shall take the necessary precautions and bear the sole responsibility for the safety of the methods employed in performing the work. Contractor shall at all times comply with the regulations set forth by federal, state, and local laws, rules, and regulations concerning "OSHA" and all other applicable state labor laws, regulations, and standards. Contractor shall indemnify, defend, and hold harmless the City from and against all liabilities, suits, damages, costs, and expenses (including attorney's fees and court costs) which may be imposed against or upon the City due to the Contractor's, Subcontractor's, or supplier's failure to comply with the regulations.

18.6 **Notice.** All notice required under this Agreement shall be in writing and shall be sent by certified United States Mail or national parcel service, postage prepaid, return receipt requested, or by hand-delivery with a written receipt of delivery, addressed to the party for whom it is intended at the place last specified. When sent in accordance with the foregoing, notice shall be deemed delivered the sooner of (i) when received by the addressee or (ii) five (5) days after being deposited in the mail or with the parcel service. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this article. For the present, the parties designate the following:
<table>
<thead>
<tr>
<th>In the case of City:</th>
<th>with a copies of legal notices to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of DeBary</td>
<td>City of DeBary</td>
</tr>
<tr>
<td>Attn: City Manager</td>
<td>Attn: City Attorney</td>
</tr>
<tr>
<td>Address: 16 Colomba Road</td>
<td>Address: 16 Colomba Road DeLand, Florida 32713</td>
</tr>
<tr>
<td>DeBary, Florida 32713</td>
<td>Phone: 386-668-2040</td>
</tr>
<tr>
<td>Phone: 386-668-2040</td>
<td></td>
</tr>
<tr>
<td>In the case of Contractor:</td>
<td>with a copy of legal notices to:</td>
</tr>
<tr>
<td>DRC Emergency Services, LLC</td>
<td>DRC Emergency Services, LLC</td>
</tr>
<tr>
<td>Attn: John R. Sullivan</td>
<td>Attn: Cogency Global, Inc.</td>
</tr>
<tr>
<td>Address: 6702 Broadway Street</td>
<td>Address: 115 North Calhoun Street, Ste. 4</td>
</tr>
<tr>
<td>Galveston, TX 77554</td>
<td>Tallahassee, FL 32301</td>
</tr>
<tr>
<td>Phone: 504 482-2848</td>
<td>Phone: 800 221-0102</td>
</tr>
</tbody>
</table>

18.7 **Assignment.** Contractor may not assign or otherwise convey Contractor’s rights and/or obligations under this Agreement without obtaining the City’s prior written consent, which consent the City may withhold, limit, and/or condition in the City’s sole discretion, including, but not limited to, requiring Contractor or his/her proposed successor in interest to post a new or revised performance bond, whichever is appropriate to ensure performance pursuant to this Agreement. Any consent by the City to assignment under this article must be by written Amendment to the Agreement in a form and substance specified by the City in its sole discretion. If Contractor desires to assign or otherwise convey its rights and/or obligations under this Agreement, Contractor shall provide the City with a written request for City’s consent no less than thirty (30) days prior to the assignment’s proposed effective date. Failure to provide such notice may result in the City assessing a processing fee of Five Hundred Dollars (US $500.00); however, payment of such fee shall not entitle Contractor to the City’s acceptance or approval of its request for assignment. Nothing herein shall preclude the right of the City to waive its rights under this Section but no waiver shall be granted by the City without a written and duly executed amendment to the Agreement.

18.8 **Conflicts.** Neither Contractor nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Contractor’s loyal and conscientious exercise of judgment related to its performance under this Agreement. Contractor further agrees
that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against City in any legal or administrative proceeding in which he, she, or Contractor is not a party, unless compelled by court process. Further, Contractor agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of City in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Contractor or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding. In the event Contractor is permitted pursuant to this Agreement to utilize Subcontractors to perform any Services required by this Agreement, Contractor agrees to require such Subcontractors, by written Agreement, to comply with the provisions of this section to the same extent as Contractor.

18.9 **Audit Right and Retention of Records.** The City shall have the right to audit the books, records, and accounts of Contractor and its subcontractors that are related to this Agreement. Contractor and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Agreement. Contractor shall preserve and make available, at reasonable times for examination and audit by the City, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for a retention period of five (5) years after completion or termination of this Agreement, and any renewals, or as required by Item 65, General Records Schedule GS1-SL for State and Local Government Agencies, effective February 19, 2015 and the Florida Public Records Act (Chapter 119, Florida Statutes), whichever provides for the longer retention period. Contractor shall, by written Agreement, require its subcontractors to agree: (i) to the requirements and obligations of this Article 18.9—Audit Right and Retention of Records, (ii) to be subject to applicable privacy and confidentiality laws and regulations, and (iii) to be subject to Contractor's privacy and confidentiality policies and procedures. All audits must be performed at Contractor's home office in Galveston, Texas. Nothing in this Article 18.9—Audit Right and Retention of Records may require Contractor to violate any laws applicable to Contractor as a provider of Disaster Management Services.

18.10 **Location of City Data.** Contractor may not out-source any development and/or support for this Agreement or transfer any City Data outside the territorial limits of the United States of America, without the written approval of the City’s Contract Administrator.

18.11 *Intentionally left blank.*

18.12 **References to City or Contractor.** Contractor agrees that during the term of this Agreement, except as provided herein, Contractor may not reference City in Contractor’s website, and/or press releases, and, may not place City's name or logo on Contractor's website or in collateral marketing materials relating to Contractor's products and Services without prior review and written approval by City. Further, Contractor agrees that it may not use City's name, logo or any trademarks (including in any press releases, customer "case studies," and the like) without City’s prior written consent. Termination or expiration of this Agreement shall not affect Contractor's obligation in this regard and such obligation shall survive the termination or cancellation of this Agreement.
18.13 **Force Majeure.** Neither party will be liable for any failure or delay in the performance of its obligations under the Agreement to the extent such failure or delay necessarily results from the occurrence of a Force Majeure Event beyond the control or reasonable anticipation of either party, including, but not limited to, compliance with any unanticipated government law or regulation not otherwise in effect at the time of execution of this Agreement, acts of God, acts of domestic or international terrorism, unforeseeable governmental acts or omissions, fires, strikes, natural disasters, wars, riots, transportation problems, and/or any other unforeseeable cause whatsoever beyond the reasonable control of the parties (and such cause being referred to as a “Force Majeure Event”). Due to the nature of this Agreement (**i.e., debris removal, reduction, and disposal in the wake of a hurricane or other major storm event**), the recent occurrence of a hurricane or major storm event does not qualify as a Force Majeure event excusing performance or delay under this Agreement. Accordingly, the parties further agree that:

18.13.1 Upon the occurrence of Force Majeure Event, the non-performing party shall be excused from any further performance of those obligations under this Agreement that are affected by the Force Majeure Event for as long as (a) the Force Majeure Event continues; and (b) the non-performing party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

18.13.2 Upon the occurrence of a Force Majeure Event, the non-performing party shall notify the other party of the occurrence of such event and describe in reasonable detail the effect(s) of such event upon the party’s performance of its obligations and duties pursuant to this Agreement. Such notice must be delivered or otherwise communicated to the other party within three (3) business days following the failure or delay caused by the Force Majeure Event, or as soon as possible after such failure or delay if the Force Majeure Event precludes the non-performing party from providing notice within such time period.

18.13.3 In the event of a Force Majeure Event, the time for performance by the parties under the applicable statement of work shall be extended for a period of time equal to the time lost by reason of such cause through execution of a Change Order pursuant to the terms of the Agreement.

18.14 *Intentionally left blank.*

18.15 **Waiver of Breach and Materiality.** Failure to enforce any provision of this Agreement may not be deemed a waiver of such provision or a modification of this Agreement, nor may a waiver of any breach of a provision of this Agreement be deemed a waiver of any subsequent breach and will not be construed to be a modification of the terms of this Agreement.

18.16 **Severance.** In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions will continue to be effective to the extent practicable unless City or Contractor elects to terminate this Agreement.

18.17 **Entire Agreement.** This Agreement contains the entire agreement between Contractor
and City. Any modifications to this Agreement shall not be binding unless in writing and signed by both parties.

18.18 **Applicable Law, Venue and Waiver of Jury Trial.** This Agreement will be interpreted and construed in accordance with and governed by the laws of the State of Florida. Jurisdiction over and venue for any controversies or legal issues arising out of this Agreement will, if in state court, be exclusively in the 7th Judicial Circuit in and for the County of Volusia, Florida, or, if in federal court, be exclusively in the Middle District of Florida, Orlando Division. By entering into this Agreement, Contractor and the City hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to this Agreement, and, unless otherwise expressly provided herein, each agrees to bear its own costs and attorney’s fees relating to any dispute arising under this Agreement.

18.19 **Prior Agreements.** This document represents the final and complete understanding of the Parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The Parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

18.20 **Survival.** Any provisions of this contract, including those pertaining to indemnity, warranties, dispute resolution, post-termination claims, maintenance of public records, and other matters in which the parties contemplate continuing obligations beyond the term of this Agreement survive the termination, cancellation, or expiration of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY BLANK – SIGNATURE PAGE TO FOLLOW]
19 SIGNATURES

IN WITNESS WHEREOF, the parties have made and executed this Agreement for Debris Removal, Reduction and Disposal on the date last written below.

Attest:

Carmen Rosamonda  
City Manager  

Date: _________________

CITY OF DEBARY

BY: _________________  
Karen Chasez  
Mayor  

Date: _________________

Attest:

Signature  

Lisa Walsh, Contracts Manager  
Name and Title  

Date: 1/24/2022  

DRC EMERGENCY SERVICES, LLC

BY: _________________  
Signature  

Kristy Fuentes, Vice President, Secretary, Treasurer  
[TITLE]  

Date: 1/24/2022  

CC Date: ____________________
AGREEMENT FOR DEBRIS REMOVAL, REDUCTION, AND DISPOSAL

This Agreement for Debris Removal, Reduction, and Disposal ("Agreement") is hereby made and entered into by and between Ceres Environmental Services, Inc., a Florida Profit Corporation, whose principal address is 6968 Professional Parkway East, Sarasota, FL 34240 ("Contractor") and the City of DeBary, a Florida municipal corporation, whose primary address is 16 Colomba Road, DeBary, FL 32713 ("City").

RECITALS:

WHEREAS, the City desires to retain the services of a competent and qualified Contractor to provide debris removal, reduction, and disposal services within the City in the wake of a natural disaster such as a hurricane; and

WHEREAS, the City has issued Bid # 07-21 for such emergency debris removal, reduction, and disposal services and has received responses from various potential vendors; and

WHEREAS, the City has determined that the Contractor is fully qualified to render the required services; and

WHEREAS, it has been determined that the execution of this Agreement is beneficial to the people of the City of DeBary, Florida.

NOW THEREFORE, in consideration of the foregoing recitals, which are deemed true and correct and are incorporated herein by reference, and other consideration as called for in this Agreement, the receipt and sufficiency of which is acknowledged by the City and the Contractor, the parties agree and stipulate as follows:

1 DEFINITIONS.

For this Agreement and any incorporated exhibits, addenda, or attachments, the following terms, phrases, words, and their respective derivations will have the meaning set forth below. Any additional terms not contained herein are as defined in Part 1 RFP Terms and Acronyms of RFP No. 07-21, which is attached hereto and incorporated herein as Exhibit A.

1.1. Agreement. This Agreement for Debris Removal, Reduction, and Disposal, including any exhibits, addenda, or attachments appended thereto.

1.2. Amendment. An amendment to this Agreement in writing, approved by the City Manager, and executed by the City and Contractor authorizing a modification or revision to one or more terms or conditions of this Agreement.

1.3. Change Order. A written change or modification to this Agreement approved by the City and the Contractor authorizing an addition, deletion, or revision in the Scope of Services, or an adjustment in the pricing or timing of this Agreement, without changing or altering any other terms or conditions of this Agreement.
1.4. **Compensation.** The amount paid by the City to Contractor for Services, regardless of whether stated as compensation or stated as hourly rates, overhead rates, or other figures or formulas from which compensation due to the Contractor can be calculated, which includes the total monetary amount payable to the Contractor under the terms of this Agreement for all Services, labor, materials, supplies, travel, training, profit, overhead, costs, expenses, and any other costs necessary to complete the Services as set forth in the Scope of Services.

1.5. **City.** The City of DeBary, Florida.

1.6. **Contract Administrator / Project Manager.** The City Manager or his/her designee who is responsible for addressing any concerns arising from this Agreement on behalf of the City.

1.7. **Contractor.** Ceres Environmental Services, Inc.

1.8. **Day.** The word “day” means each calendar day or, when used in the plural, accumulation of calendar days.

1.9. **Deliverable.** The products or Services provided through the Scope of Services for this Agreement, including, but not limited to: other services, reports, written documentation, training, systems, or processes.

1.10. **Effective Date.** The date that this Agreement is fully executed by the Contractor and the City.

1.11. **FEMA.** Federal Emergency Management Agency.

1.12. **Geodatabase.** Special database storing data referenced by spatial or geographic coordinates.

1.13. **GIS.** Geographic Information System, which is a system that works with data referenced by spatial or geographic coordinates.

1.14. **GPS.** Global Positioning System, which is a satellite based navigation system that provides time and location data anywhere on the Earth to those with a compatible server.

1.15. **Incident.** Each disaster for which the City issues a Notice to Proceed ("NTP").

1.16. **Notice to Proceed.** A written notice issued to the Contractor by the City’s Property Manager, fixing the date upon which the Contract times will commence to run and on which the Contractor must start to perform the Services and provide the Deliverables as set forth in this Agreement Agreement.

1.17. **Project.** The task or tasks assigned under a particular Notice to Proceed ("NTP").
1.18. **Proposal.** The document(s) submitted by the Contractor in response to the City’s Bid #07-21.

1.19. **Run-out Period.** Upon expiration of this Agreement, the Run-out Period will begin upon such expiration date and expire upon completion and provision of the Services or Deliverables due in connection with the declared disaster event/project commencing on or before the date of expiration.

1.20. **Services.** Those services defined in the Scope of Services to be performed by the Contractor pursuant to this Agreement and its attached exhibits, addenda, and attachments, including: the work, duties, and obligations to be carried out by the Contractor under the Agreement and the Exhibits attached hereto and incorporated herein.

1.21. **Subcontractor.** A person or entity other than a materialman or laborer who enters into an Agreement with the Contractor for the performance of any part of this Agreement.

2 **EXHIBITS.**

2.1. The Exhibit(s) listed below are incorporated into and made a part of this Agreement.

2.1.1 Exhibit A- RFP No. 07-21, including the Parts 1, 2, 3, 4, and 9 setting forth definitions, description of services, Scope of Work, technical specifications, and indemnification and insurance obligations.

2.1.2 Exhibit B – Pricing Schedule.

3 **ORDER OF PRECEDENCE.**

3.1 If the Contractor finds any potential or possible inconsistency, conflict, error, or discrepancy in the Agreement, Contractor shall immediately communicate in writing the nature of any such issue to the City’s Contract Administrator or Project Manager, requesting the City’s interpretation and direction prior to proceeding with the provision of Services or Deliverables affected thereby. If any conflicts or inconsistencies arise between any exhibit to this Agreement or between any such exhibit and the body of this Agreement itself, such conflict or inconsistency will be resolved by giving precedence to the following contract documents in the following order:

3.1.1 If any conflicts or inconsistencies arise between Exhibit A and any other exhibit of the Agreement with regard to the Scope of Work, Project specifications, performance criteria, or management metrics, the Description of Services, Scope of Work, and Technical Specifications set forth in Exhibit A will govern and control to the extent any such conflict may exist.

3.1.2 If any conflicts or inconsistencies arise between Exhibit B, the Pricing Schedule, and any other exhibit regarding the pricing of Services or Deliverables to be
provided pursuant hereto, such Exhibit B shall govern and control to the extent any such conflict may exist.

3.1.3 If any conflicts or inconsistencies arise between the body of this Agreement and any exhibits attached hereto, the terms contained in the body of this Agreement shall govern and control to the extent any such conflict may exist.

4. SCOPE OF SERVICES. Contractor shall provide debris removal, reduction, and disposal Services and Deliverables pursuant to this Agreement as generally set forth herein and more specifically set forth in Exhibit A to this Agreement.

4.1. Contractor shall provide debris removal, reduction, and disposal Services and Deliverables consistent with Parts 2, 3, and 4, pertaining to the Description of Services, Scope of Work, and Technical Specifications, of RFP 07-21, which is attached hereto and incorporated herein as Exhibit A.

4.2. Performance Criteria:

4.2.1. All services must be performed in accordance with the Agreement and carried out under the direction of the City’s Contract Administrator / Project Manager.

4.2.2. All labor necessary to complete the Services and provide the Deliverables required under this Agreement must be performed in a good and competent workmanlike manner, in accordance with industry standards, and to the satisfaction of the City.

4.2.3. **Time is of the Essence.** Time is of the essence for all Services performed under this Agreement and all Projects performed in accordance herewith.

4.2.4. **Authority to Act on Behalf of the City.** The City Manager shall have the authority to approve, award, and execute all documents or other instruments required to effectuate changes, modifications, or additional Services, so long as the then-cumulative financial obligation of the City for such additional items does not exceed the City Manager’s authority under the City’s purchasing ordinances, policies, or procedures. Any change, modification, or additional service that causes the cumulative financial obligation of the City to exceed the City Manager’s authority under the City’s ordinances, policies, or procedures is not effective unless approved by the DeBary City Council.

5 RESPONSIBILITY OF CONTRACTOR

5.1 Where questions exist as to the Scope of Services, Contractor shall promptly confer with the Project Manager to ascertain the functional criteria of the Scope of Services.

5.2 **Supervision.** Contractor shall direct and supervise competent and qualified personnel and shall devote time and attention to the direction of the operation to ensure performance of obligations and duties as set forth herein. Contractor shall hire, compensate, supervise, and terminate members of its work force, and Contractor shall direct and control the manner in which Services are performed, including conditions under which individuals shall be assigned duties, how individuals will report, and the
hours individuals shall perform. Contractor will be responsible for all income tax, social security, and Medicare taxes, federal unemployment taxes, and any other withholdings from the company’s employees’ and/or subcontractors’ wages or salaries. Benefits, if any, for Contractor’s employees and/or subcontractors will be the sole responsibility of Contractor, including, but not limited to, health and life insurance, retirement, liability/risk coverage, and worker’s and unemployment compensation. Contractor will be solely responsible for the means, methods, techniques, sequences, and procedures in delivering Services and Deliverables pursuant to this Agreement. Further, Contractor will be responsible for assuring the City that Services and Deliverables accurately comply with the requirements of this Agreement and the Scope of Services contained therein.

5.3 **Assurance.** Contractor gives City its assurance that all Services performed under this Agreement will be timely performed in a competent and workmanlike manner and in accordance with the specifications and requirements of the Agreement and any approvals required under the Agreement. All Services not conforming to the specifications and requirements of the Scope of Services will be considered materially defective and constitute a breach of this Agreement.

5.4 **Accuracy of Reports / Summaries.** Contractor will be responsible for the professional and technical accuracy and the coordination of all data, reports, summaries, and any other Services furnished by Contractor under this Agreement. Contractor shall, without additional cost to the City, correct or revise any errors or deficiencies in its Services or Deliverables for which it is responsible.

5.5 **Services to Comply with Specifications and Law.** All Services performed by the Contractor pursuant to this Agreement, including all general provisions, special provisions, job specifications, addenda, amendments, written interpretations, and any written change orders issued pursuant thereto, shall comply with the Scope of Services and all applicable laws, codes, ordinances, regulations, and statutes.

5.6 **Subcontractors.**

5.6.1 **Employment or Substitution of Subcontractors.** Contractor may not employ any subcontractor, other person, or organization of against whom the City may have reasonable objection, nor may Contractor be required to employ any subcontractor against whom the Contractor has reasonable objection. Contractor may not make any substitution for any subcontractor who has been accepted by the City without obtaining the City’s approval thereof.

5.6.2 **Disapproval of Subcontractors.** City’s disapproval or requirement of removal or replacement of Contractor’s subcontractor will be deemed for lawful reasons if in City’s reasonable judgment, such Contractor’s subcontractor has been previously debarred by the City or another governmental agency or otherwise poses a threat or causes harm to the health, welfare, or safety, or morale of the City or its agencies, personnel, or property.

5.6.3 **Contractor Responsible for Subcontractors.** Contractor remains fully responsible for all negligent acts and omissions of its subcontractors and of any individuals or entities directly or indirectly employed by them and of persons for whose
negligent acts any of them may be liable to the same extent that it is responsible for the negligent acts and omissions of persons directly employed by it. Nothing in this Agreement may create or be interpreted to create any contractual relationship between any subcontractor and the City or any obligation on the part of the City to pay or to ensure the payment of any monies due to any subcontractor or other entity employed or otherwise retained by the Contractor to perform work under this Agreement, except as may otherwise be required by law. The City may furnish to any subcontractor to the extent practicable, evidence of amounts paid to Contractor for the performance of any or all tasks under this Agreement.

5.6.4 **Subcontractors to Act Pursuant to this Agreement.** Contractor agrees to bind specifically every subcontractor to the applicable terms and conditions of this Agreement for the benefit of the City, and shall require all subcontractors or other entities employed or otherwise engaged by the Contractor in connection with this Agreement to comply fully with the terms and conditions of this Agreement as such may apply to the Services being performed for Contractor.

6 **TERM OF AGREEMENT**

6.1 The term of this Agreement commences on the Effective Date of this Agreement or when this Agreement is fully executed by all parties and terminates three (3) years from the Effective Date. Two (2) subsequent two (2) year renewals are permissible upon mutual written agreement between the parties and the approval of the DeBary City Council.

6.2 The Contractor will commence the provision of Services as specified in this Agreement or as may be requested by the City and complete any such Services within the time specified therein or in any applicable Task Assignment as may be issued by the City.

6.3 Effect of Expiration of Agreement. Upon expiration of the Agreement, (1) no new Services may be commenced; (2) For Services commenced prior to the expiration of the Agreement that cannot be completed until after the expiration of the Agreement, this Agreement will expire on the completion date of said Services, and after all work or Services associated with such event/project have been approved and accepted by the City’s Project Manager. As such, the obligations entered therein by both parties under this Agreement for such Services will remain in full force and effect until completion of all Services performed and Deliverables provided under this Agreement during the Run-out Period.

7 **AGREEMENT PRICE AND COMPENSATION**

7.1 **Payment Pursuant to Fee Schedule.** Contractor will be paid Compensation for all Services. Total Compensation for this Agreement will be comprised of the total cost of all projects, materials, equipment, labor, expenses (including reimbursable expenses), and all mark-ups for overhead and profit, as more particularly described in Exhibit “B” – Price Schedule attached hereto and incorporated herein. The City agrees to pay Contractor in current funds, as compensation for its Services.

7.2 **Errors and Omissions in Pricing.** Compensation may not be adjusted due to errors or
omissions not attributable to the City in computing the costs of the Services that result in an increase in the cost of this Agreement or because the time for completion varies from the original estimate, including completion or substantial completion of this Agreement or any tasks issued pursuant thereto prior to the scheduled completion date or on account of City's election to furnish any of the Services. In addition, Contractor certifies that the original Agreement price or Compensation for the Scope of Services and any additions thereto will be adjusted to exclude any sums by which the City determines the price or Compensation was increased due to inaccurate, incomplete, or noncurrent wage rates, and other factual unit costs.

7.3 **Reimbursable Expenses.** City's payment to Contractor pursuant to the Price Schedule, attached hereto and incorporated herein as Exhibit B, shall be full compensation for Services rendered and any expenses incurred in connection therewith, and Contractor shall not be eligible for reimbursement for any expenses incurred in connection with the performance of this Agreement.

7.4 **Payments.** Charges and payments must be made in accordance with Exhibit B – Price Schedule. The rates expressed in Exhibit B shall govern Compensation and provide for payments against specified Services and Deliverables.

7.4.1 **Approval of Payment.** If, on the basis of the City Project Manager's observation and review of Contractor's Services, the City Project Manager is satisfied that the Services have been completed and that the Contractor has fulfilled all of its obligations under the Agreement, the City Project Manager, after receipt of a proper invoice, will either approve or deny such invoice in accordance with the applicable provisions of Part VII of Chapter 218, Florida Statutes. If City Project Manager rejects the invoice in whole or in part, he/she shall return the invoice to Contractor, indicating in writing the reasons for refusing to approve final payment, in which case Contractor will make the necessary corrections and resubmit the invoice. Regardless of the foregoing, approval of payment pursuant to this section will not operate as a waiver or otherwise prevent the City from recovering amounts paid when the City subsequently discovers material defects or deficiencies in the Services or Deliverables provided by Contractor, which defects or deficiencies would have otherwise caused the City to withhold payment.

7.4.2 **Invoice Detail.** Contractor shall submit an invoice for professional Services rendered to the City upon the completion of such Services. Each invoice must show detailed descriptions of the Services provided in accordance with the Agreement pricing.

7.4.3 **Retainage.** A ten percent (10%) retainage may be withheld from each reconciled invoice until the end of the project or task assigned. In order to recover the retainage, the Contractor must successfully complete and receive a letter of completion from the City, for all work performed. Retainage may be held until final reconciliation is complete. Portions of the retainage may be held by the City as compensation for the repair of damage caused to public or private property by the Contractor.
7.5 **Invoices.** Invoices or payment requests must be received from the Contractor and submitted to the City’s Project Manager. All invoicing and payments, including the practices and procedures pertaining thereto, are governed by the applicable provisions of Part VII of Chapter 218, Florida Statutes.

7.5.1 **Documentation.** Contractor’s Invoice(s) must be accompanied by supporting data as may be required by the City Project Manager. City Project Manager shall review Contractor’s Invoice and supporting data and notify Contractor in writing within ten (10) days from receipt of the statement if any amounts requested are disputed or otherwise lack adequate support or documentation.

7.5.2 **Invoicing Pursuant to Agreement.** Pursuant to Exhibit B, Contractor shall invoice City for all payments due Contractor under this Agreement. City shall pay invoices in accordance with this Agreement. Invoices must be sent to the address specified by the City in order to be paid.

7.5.3 **Withholding.** The City may withhold payment of any specific invoiced charges that it disputes in good faith while paying all undisputed charges on the invoice.

7.5.4 **Payment Due.** Within forty-five (45) days of acceptance by the City Project Manager of all the Services for which Contractor has submitted an invoice of professional Services, Contractor shall be paid the unpaid balance of any money due for any undisputed Services covered by said invoice.

7.5.5 **Taxes.** City is a tax-exempt entity and may not be charged or invoiced for the payment of taxes for Services performed or any Deliverables provided under this Agreement.

7.6 **Contractor’s Continuing Obligations.** Contractor’s obligation to perform the Services and provide any Deliverables in accordance with the terms of the Agreement is absolute. Nothing, including without limitation, the following, will constitute an acceptance of Services or Deliverables not completed or provided in accordance with the Agreement: (1) approval of any progress; (2) final payment to Contractor; (3) documentation confirming acceptance of the Work by the City; (4) any payment by the City to Contractor under the Agreement; (5) any act of acceptance by the City; (6) any failure to do so; or (6) any correction of defective Services or Deliverables by the City.

7.7 **Unusual Costs:** The Contractor may petition the City at any time for an additional rate adjustment on the basis of extraordinary and unusual changes in the costs of operation that could not reasonably be foreseen by a prudent operator and which, by all reasonable expectations, will continue for at least one (1) year. The Contractor’s request must contain substantial proof and justification to support the any such need for the rate adjustment. The City may request from the Contractor and the Contractor must provide any additional information as may be reasonably necessary to assist the City in making its determination as to whether the adjustment may be granted. The City shall approve or deny any such request, in whole or in part, within sixty (60) days of receipt of the request and all other additional information as may be required by the City. Any price redetermination must be based upon the documentation provided, and the City reserves the right to rescind any price relief granted if circumstances change and a decrease in
price is warranted.

7.8 **Non-appropriation.** Notwithstanding any other term or provision of this Agreement, the continuation of this Agreement beyond a single fiscal year of City is subject to the appropriation and availability of funds in accordance with Chapter 129, Florida Statutes. Termination by the City due to non-appropriation will be without penalty or additional charge to the City. The City will not be obligated to pay Contractor under this Agreement beyond the date of termination except as set forth in this Agreement. City’s obligation to pay Contractor is limited to the budgeted amount for a fiscal year approved by the DeBary City Council for the then-current fiscal year of this Agreement and is otherwise limited to legally available non-ad valorem tax revenues.

8 **PAYMENT OF SUBCONTRACTORS**

8.1 **Payment.** Contractor shall pay its subcontractors and suppliers within thirty (30) days following receipt of payment from the City for such subcontracted Services or supplies. Contractor agrees that if it withholds an amount as retainage from such Subcontractors or suppliers, that it shall release such retainage and pay same within thirty (30) days following receipt of payment of retained amounts from City.

8.2 **Indemnification as to Payment of Subcontractors.** Contractor shall indemnify, defend, and hold the City harmless from and against any and all claims and actions from Contractor’s subcontractors for payment for Services and Deliverables provided by its subcontractors in connection with this Agreement. Regardless of the foregoing, nothing in this Agreement creates or may be deemed to create any contractual relationship between any subcontractor and the City or any obligation on the part of the City to pay or ensure the payment of any moneys due to any subcontractor, except as may otherwise be required by law.

9 **LIMITATION OF LIABILITY AND INDEMNIFICATION OF CITY**

9.1 **Indemnification.** Contractor shall indemnify, defend, and hold harmless the City, including its districts, authorities, separate units of government established by law, ordinance, or resolution, including its partners, elected and non-elected officials, employees, agents, volunteers, and any party with whom the City has agreed by contract to provide additional insured status, from and against all claims, damages, losses, and expenses, including, but not limited to, attorney’s fees arising out of, resulting from, or incident to Contractor’s performance of its obligations in whole or part of this Agreement, unless such injury or damage is occasioned solely by the fault, negligence, or willful misconduct of the City.

9.2 In all claims against the City, Contractor’s indemnification obligations are not limited in any way by any limitation on the amount or type of damages, compensation, or any benefits or insurance payable by or on behalf of the Contractor, including its employees, agents, contractors, or subcontractors.

9.3 **Sovereign Immunity.** The City expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Regardless of anything set forth in any section of this Agreement to the contrary, nothing in this
Agreement may be deemed a waiver of the City’s immunity or limits of liability beyond any statutory limited waiver of immunity or limits of liability that may have been or may be adopted by the Florida Legislature, and the cap on the amount and liability of the City for damages, regardless of the number or nature of claims in tort, equity, or contract, may not exceed the dollar amount set by the legislature for tort. Nothing in this Agreement may inure to the benefit of any third party for the purpose of allowing any claim against the City, which claim would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

10 INSURANCE

Contractor shall provide insurance in accordance with the provisions and requirements of Part 9, Indemnification and Insurance Requirements of RFP# 07-21, which is attached hereto and incorporated herein as Exhibit A.

11 PERFORMANCE AND PAYMENT BONDS

11.1 As security for the faithful performance and payment of all of Contractor’s obligations under the Contract, Contractor shall furnish Construction Performance and Payment Bonds in conformance with § 255.05, Florida Statutes, within seven days after a Notice to Proceed is issued. Such bonds must remain in effect at least until one year after the date when final payment becomes due, except as otherwise may be required by law or excused in writing by the City. Any such bonds must be issued by an agency authorized to do business in the State of Florida with a rating of “A” or higher, as listed in the A.M. Best & Company latest published rating. An attorney in fact who signs Performance and Payment Bonds must file with the bond a certified copy of his/her power of attorney to assign said bond.

11.2 Concurrently with an assessment of the damage immediately following a disaster event, the City, in consultation with the Contractor, will determine the Contractor’s Scope of Services to be performed and an estimated dollar value of the work for the event, based upon the best data available at the time. The initial Task Order issued by the City for each specific event will require the Contractor to provide appropriate Performance and Payment Bonds, each equal in sum to the estimated dollar value of the work. If the value of the contracted work increases, the Contractor will be required to provide an updated Performance and Payment Bond in an amount equal to the new value.

11.3 Performance and Payment Bonds for each event must comply with all other requirements unless otherwise stated. If the catastrophic event diminishes after the notice to proceed is issued, a stop work order will be issued to cancel the Performance and Payment Bonds tied to such event. Performance and Payment Bonds for each event must comply with all other requirements unless otherwise stated. If the catastrophic event diminishes after the Event notice to proceed is issued, a stop work order will be issued to cancel the Performance and Payment Bonds tied to such event.

12 DAMAGES/LIQUIDATED DAMAGES

12.1 Damages: Due to the nature of the services to be provided and the potential impact to the City for loss, the Contractor cannot disclaim consequential or special damages related
to the performance of this Contract. The Contractor will be responsible and accountable for any and all damages, directly or indirectly, caused by the actions or inaction of its employees, staff, or Subcontractors. There are no limitations to this liability.

12.2 **Liquidated Damages:** If the Contractor fails 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, as liquidated damages, the following:

12.2.1 The Contractor shall pay the City, as liquidated damages, $5,000.00 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 start date issued by the City’s Project Manager.

12.2.2 The Contractor shall pay the City, as liquidated damages, $1,000.00 per load of disaster debris collected in the City that is not disposed of at a City approved DMS or City Designated Final Disposal Site. Application of liquidated damaged does not release the Contractor of all liability associated with hauling and depositing material to an unauthorized location.

12.2.3 The Contractor shall pay the City, as liquidated damages, $100.00 per incident where the Contractor fails to sufficiently clean collection site(s) so that no loose leaves and small debris in excess of one bushel basket remain, no debris is left on the road surface and no single piece of debris larger than six (6) inches remains on site. Application of liquidated damages does not release the Contractor from the responsibility of sufficiently cleaning collection site(s).

12.2.4 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 damages.

13 **TERMINATION**

13.1 The Contract may be terminated by either party upon the material breach by the other party if such breach is not cured within thirty (30) days written notice from the non-breaching party.

13.2 City may terminate this Agreement upon at least thirty (30) days prior written notice to Contractor for convenience or non-appropriation.

13.3 Contractor may terminate this Agreement upon at least one hundred eighty (180) days prior written notice to City.

13.4 Upon receipt of notice of termination by the City from Contractor or upon delivery of
notice of termination from the City to Contractor, Contractor shall:

13.4.1 Stop work under the Agreement on the date and to the extent specified in City’s Notice of Termination.

13.4.2 Inform the City, in writing, of the extent to which performance is completed.

13.4.3 Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the Services under the Agreement that is in progress but not yet completed.

13.4.4 Assign to the City, in the manner, at the times, and to the extent directed by the City, all of the right, title and interest of Contractor under the orders and subcontracts so terminated.

13.5 For all undisputed outstanding invoices submitted to the City prior to the effective date of the termination and subject to Article 6 - Term of Agreement, Article 7 – Agreement Price and Compensation, and this Article 13 - Termination, the City shall cause payments to be made to Contractor within forty five (45) days of receipt of invoice. Contractor shall invoice the City for any sums Contractor claims to be owed by City under this Agreement for work performed from the last invoice to the effective date of termination. City will review such invoice for payment and pay any undisputed amount within forty five (45) days.

13.6 With the approval of the City and to the extent required by the City, the Contractor will settle all outstanding liabilities and all claims arising out of any termination of this Agreement. City's approval of such settlement will be final for all the purposes of a termination under this Article 13 - Termination. In addition, Contractor shall transfer title and deliver to the City, in the manner, at the times, and to the extent, if any, directed by the City of Deliverables, work-in-progress, reports, and other materials produced as a part of, or acquired in connection with the performance of the Services terminated.

13.7 If the Contractor fails to cure a breach within ten (10) calendar days after receipt of notice from the City of said breach, the City may take over the Services and complete the Services on its own or through another contractor, and Contractor will be liable to the City for any increased costs of the Project reasonably incurred by the City in completing the Contractor's unfinished Services. As such, City may apply unpaid Compensation due and owing to Contractor prior to the default as a set off against the costs incurred by the City for taking over such Services.

13.8 The right of termination provided to the City and Contractor herein will be cumulative of all other remedies available at law.

13.9 All provisions of this Agreement that impose or contemplate continuing obligations on a party will survive the expiration or termination of this Agreement.

14 DISPUTE RESOLUTION

14.1 Good Faith Efforts to Resolve. The parties to this Agreement shall exercise their best
efforts to negotiate and settle promptly any dispute that may arise with respect to this Agreement in accordance with the provisions set forth in this Section 14, Dispute Resolution. Contractor and City Project Manager shall use reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, to address and work toward resolution of issues that arise in performance of this Agreement and any applicable statement of Services. Issues will be escalated to successive management levels as needed.

14.2 **Informal Dispute Resolution.** If a dispute develops between the parties concerning any provision of this Agreement, or the interpretation thereof, or any conduct by the other party under these agreements, and the parties are unable to resolve such dispute within five (5) business days or longer, that party, known as the Invoking Party, through its applicable Project Manager, shall promptly bring the disputed matter to the attention of the non-Invoking Party’s Project Manager or designated representative, as the case may be, of the other party in writing (“Dispute Notice”) in order to resolve such dispute.

14.3 **Discovery and Negotiation / Recommended Procedures.** Upon issuance of a Dispute Notice, the Project Managers or designated representative shall furnish to each other all non-privileged information with respect to the dispute believed by them to be appropriate and germane. The Project Managers shall negotiate in an effort to resolve the dispute without the necessity of any formal proceeding.

14.4 **Formal Dispute Resolution.** At any point after issuance of a Dispute Notice under this section, either party may request and initiate formal non-binding mediation before a single mediator, which mediation shall be completed within thirty (30) days of initiation or such longer time as may be agreed upon by both parties as being necessary for the mutual selection of a mediator and scheduling of such mediation. Any such mediation shall be convened and conducted in accordance with the rules of practice and procedure adopted by the Supreme Court of Florida for court-ordered mediation, Rule 1.700 et seq. of the Florida Rules of Civil Procedure, and Chapter 44, Florida Statutes. If the dispute remains unresolved after conducting such mediation, then either party may proceed to finalize any pending termination remedies and commence litigation in a court of competent jurisdiction. Each party shall bear its own costs and attorney’s fees for mediation or arbitration of an issue arising under this Agreement.

14.5 **Right to Terminate Reserved.** Regardless of the dispute resolution procedures provided for in this Section 14, Dispute Resolution, nothing herein will affect, delay, or otherwise preclude a party from terminating this Agreement in accordance with the provisions of Section 13, Termination, it being understood that these dispute resolution procedures are intended as a means of resolving disputes both during the term of this Agreement and after termination or expiration thereof.

15 **CITY DATA**

15.1 Contractor agrees and understands that all files and other information and data created in connection with the administration of this Agreement constitute a public record, except to the extent any such record is exempt from disclosure or identified as confidential under Florida or federal law (e.g., Chapter 119, Florida Statutes). Contractor
agrees to maintain access to such records and keep and maintain such records after
termination of this Contract to the extent required by applicable law.

15.2 THE ABOVE DUTIES AND OBLIGATIONS SURVIVE THE CANCELLATION, EXPIRATION, OR TERMINATION OF THIS CONTRACT.

16 LOCAL GOVERNMENT REQUIREMENTS

16.1 Public Records Law. Pursuant to section 119.0701(2)(a), Florida Statutes, the City is required to provide Contractor with this statement and establish the following requirements as contractual obligations pursuant to the Agreement:

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 386-668-2040, AHatch@Debary.org, by mail, City Clerk, City of DeBary, 16 Colomba Road, Debary, FL 32713.

By entering into this Contract, Contractor acknowledges and agrees that any records maintained, generated, received, or kept in connection with, or related to the performance of services provided under, this Contract are public records subject to the public records disclosure requirements of section 119.07(1), Florida Statutes, and Article I, section 24 of the Florida Constitution. Pursuant to section 119.0701, Florida Statutes, any Contractor entering into a contract for services with the City is required to:

A. Keep and maintain public records required by the City to perform the services and work provided pursuant to this Contract.

B. Upon request from the City’s custodian of public records, provide the City 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, Florida Statutes, or as otherwise provided by law.

C. 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 Contract term and following completion or termination of the Contract if Contractor does not transfer the records to the City.

D. Upon completion or termination of the Contract, transfer, at no cost, to the City all public records in the possession of Contractor or keep and maintain public records required by the City to perform the service. If Contractor transfers all public records to the City upon completion or termination of the Contract, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion or termination of the Contract, Contractor shall meet all applicable requirements for retaining
Requests to inspect or copy public records relating to the City’s Contract for services must be made directly to the City. If Contractor receives any such request, Contractor shall instruct the requestor to contact the City. If the City does not possess the records requested, the City shall immediately notify Contractor of such request, and Contractor must provide the records to the City or otherwise allow the records to be inspected or copied within a reasonable time.

Contractor acknowledges that failure to provide the public records to the City within a reasonable time may be subject to penalties under section 119.10, Florida Statutes. Contractor further agrees not to release any records that are statutorily confidential or otherwise exempt from disclosure without first receiving prior written authorization from the City. Contractor shall indemnify, defend, and hold the City harmless from and against any and all claims, damage awards, and causes of action arising from Contractor’s failure to comply with the public records disclosure requirements of section 119.07(1), Florida Statutes, or from Contractor’s failure to maintain public records that are exempt or confidential from disclosure, including, but not limited to, any third party claims or awards for attorneys’ fees and costs arising therefrom. Contractor authorizes City to seek declaratory, injunctive, or other appropriate relief against Contractor from a Circuit Court in Volusia County on an expedited basis to enforce the requirements of this section.

16.2 No Code Violation or Past Due Debt. Contractor warrants and represents that neither the business, nor any officer or significant stakeholder of the business is in violation of the City of DeBary Code of Ordinances, and does not owe the City any past due debt. Any breach of the foregoing warranty and representation is a material breach of this Agreement, and the City shall have the right to terminate this Agreement therefore.

16.3 Changes Due to Public Welfare. The City and Contractor agree to enter into good faith negotiations regarding modifications to this Agreement that may be required in order to implement changes in the interest of the public welfare or due to change in law or ordinance.

16.4 Compliance with Applicable Laws. Contractor shall perform its obligations hereunder in accordance with all applicable federal, state, local laws, ordinances, rules, regulations (including, but not limited to, the Americans with Disabilities Act (ADA), including Titles I, II and III of the ADA as applicable; the Federal Immigration Reform and Control Act of 1986 (as amended); and Title VII of the Civil Rights Act of 1964 (as amended), and all orders and decrees of bodies or tribunals having jurisdiction or authority which in any manner affect the performance of this Agreement. Contractor shall indemnify, defend, and hold harmless the City and all its officers, agents, servants and employees against any claim or liability arising from or based on the violation of any such law, ordinance, rule, regulation, order, or decree where such liability is attributable to an act or omission committed by the Contractor, including its representatives, subcontractors, professional associates, agents, servants, or employees. Additionally, Contractor shall obtain and maintain at its own expense all applicable licenses and permits to conduct business
pursuant to this Agreement from the federal government, State of Florida, County of Volusia, or any municipalities when legally required and maintain same in full force and effect during the term of this Agreement.

16.5 **Nondiscrimination and Americans with Disabilities Act.** Contractor shall not unlawfully discriminate against any person in the operations and activities in the use or expenditure of the funds or any portion of the funds provided by this Agreement or in the provision of goods or Services pursuant to this Agreement. Contractor agrees it shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing all goods and Services funded or paid for by City, including Titles I, II and III of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. For internet/web Services: For the purposes of this paragraph, any Services or products offered to public via the internet or online must comply with WCAG 2.0 AA in order to be deemed ADA compliant. The City will provide Contractor with prompt written notice with respect to any ADA deficiencies of which the City is aware and Contractor will promptly correct such deficiencies. If the City, the Department of Justice or other governmental entity tasked with the enforcement of the ADA (“Enforcement Agency”) notes any deficiency in the facilities, practices, services, or operations of Contractor furnished or provided in connection with this Agreement, Contractor shall, at no additional charge or cost to the City, immediately cure any such deficiencies without delay to the satisfaction of such Enforcement Agency. Contractor further agrees that it shall, to the extent permitted by law, indemnify, defend, and hold harmless the City from and against any and all claims, sanctions, or penalties assessed against the City, which claims, sanctions, or penalties arise or otherwise result from Contractor’s failure to comply with the ADA or WCAG 2.0 AA with regard to any online or internet Services or products. In performing under this Agreement, Contractor agrees that it shall not commit an unfair employment practice in violation of any state or federal law and that it will not discriminate against any member of the public, employee, or applicant for employment for work under this Agreement because of race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability.

16.6 **Drug Free Workplace.** The City of DeBary is a drug-free and smoke-free workplace. Contractor agrees that it shall provide a drug-free environment to its personnel during the term of this Agreement and will comply, subject to the prior receipt thereof, with the City’s policies on drug-free and smoke-free workplace, as amended from time to time, during the term of this Agreement.

16.7 **Employment of Illegal Aliens / E-Verify.** Contractor certifies that it does not knowingly or willingly and will not during the performance of the Agreement employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986, as amended. Contractor shall comply with § 448.095, Florida Statutes, effective January 1, 2021, and register with and utilize the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of all new employees hired by Contractor. Furthermore, any subcontract Contractor enters into with a subcontractor to perform work or Services under this Agreement must contain the
following language: “The subcontractor must comply with § 448.095, Florida Statutes, and register with and utilize the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of all new employees hired by Contractor on or after the effective date of this contract and thereafter during the remaining term of such contract.” If Contractor fails to comply with the foregoing or § 448.095 or § 448.09(1), Florida Statutes, the City will take action as required by § 448.095(2)(c), Florida Statutes, which may include termination of this Agreement. If the City terminates this Agreement due to Contractor’s or a subcontractor’s failure to comply with § 448.095 or § 448.09(1), Florida Statutes, Contractor will be liable to the City for any additional costs or expenses incurred by the City as a result of the termination of this Agreement. Furthermore, Contractor agrees to indemnify, defend, and hold harmless the City from and against any fines, sanctions, or penalties levied against the City by a governmental agency arising from the Contractor’s failure or alleged failure to comply with this paragraph, including, but not limited to, the City’s loss or repayment of grant funds. Pursuant to § 448.095(2)(d), Florida Statutes, any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination.

16.8 **Equal Opportunity; Disadvantaged Business Enterprises.** Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, gender, sexual orientation, age, national origin, political affiliation, disability, or family status. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

16.9 **Scrutinized Companies-FL Statute sections 287.135 and 215.473.** Contractor certifies that neither the undersigned entity, nor any of its wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for the purpose of making profit have been placed on the Scrutinized Companies that Boycott Israel List created pursuant to s. 215.4725 of the Florida Statutes, or are engaged in a boycott of Israel.

In addition, if the value of the compensation to be paid under this Agreement equals or exceeds one million dollars, Contractor certifies that neither the undersigned entity, nor any of its wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for the purpose of making profit are on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s.215.473 of the Florida Statutes, or are engaged in business operations in Cuba or Syria as defined in said statute.

Contractor understands and agrees that the City may immediately terminate this Agreement upon written notice if the undersigned entity (or any of those related entities of respondent as defined above by Florida law) are found to have certified falsely or if any of the following occur with respect to the company or a related entity: (i) it has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of
Israel, or (ii) for any contract for goods or services of one million dollars or more, it has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or it is found to have been engaged in business operations in Cuba or Syria.

17 COMPLIANCE WITH FEMA 2 CFR 200.318-326 AND APPENDIX II CONTRACT PROVISIONS

17.1 Compliance with the Contract Work Hours and Safety Standards Act.

17.1.1 Overtime requirements. No contractor or subcontractor contracting for any part of the work under this Agreement, which may require or involve the employment of laborers or mechanics, may require or permit any such laborer or mechanic in any workweek in which he or she is employed to perform such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such work week.

17.1.2 Violation; liability for unpaid wages; liquidated damages. If any violation of subsection 17.1.1 Overtime requirements occurs, the Contractor and any subcontractor responsible therefore will be liable for the unpaid wages. In addition, such Contractor and subcontractor will be liable to the United States, for liquidated damages. Such liquidated damages will be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of subsection 17.1.1 Overtime requirements in the sum of $27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages as required by subsection 17.1.1 Overtime requirements.

17.1.3 Withholding for unpaid wages and liquidated damages. The City or State of Florida shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided for in subsection 17.1.2 Violation; liability for unpaid wages; liquidated damages.

17.1.4 Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in subsections 17.1.1 through 17.1.4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subsections 17.1.1 through 17.1.4 of this section.
17.2 **Clean Air Act and the Federal Water Pollution Control Act:** Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

17.2.1 The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

17.2.2 The Contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

17.3 **Suspension and Debarment.**

17.3.1 This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

17.3.2 The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

17.3.3 This certification is a material representation of fact relied upon by City. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

17.4 **Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended):** Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency (See Exhibit D).

17.5 **Access to Records:**

17.5.1 The Contractor agrees to provide the State of Florida, City of DeBary, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records
of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

17.5.2 The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

17.5.3 The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

17.5.4 In compliance with the Disaster Recovery Act of 2018, the City of DeBary and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

17.6 **DHS SEAL, LOGO, AND FLAGS:** The Contractor may not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

17.7 **Compliance with Federal Law, Regulations, and Executive Orders:** This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

17.8 **No Obligation by Federal Government:** The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

17.9 **Program Fraud and False or Fraudulent Statements or Related Acts:** The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor’s actions pertaining to this contract.

18 **MISCELLANEOUS PROVISIONS**

18.1 **Independent Contractor.** Contractor shall provide the services required herein strictly in an independent contractor relationship with the City and, except as otherwise expressly set forth herein, is not, nor may be, construed to be an agent or employee of the City. Nothing herein creates any association, partnership, joint venture or agency relationship between Contractor and the City. The City will not provide vehicles or equipment to Contractor to perform the duties required under this Agreement nor will the City pay for any business, travel, office, or training expense or any other Agreement performance expense not specifically set forth in the Scope of Services of this Agreement. Contractor is not exclusively bound to the City and may provide Services to other private and public entities, but agrees and covenants that any such service provided by Contractor or for such entities will not conflict or otherwise interfere with Contractor’s provision of Services to the City under this Agreement.

18.2 **Other Agencies.** Contractor may, upon mutual agreement, permit any municipality or other governmental agency to participate in the Contract under the same prices, terms,
and conditions. At no time will any city or municipality or other agency be obligated to place any order for any other city, municipality, or agency, nor will any city, municipality, or agency be obligated for any liabilities, costs, invoices, or bills incurred by any other city, municipality, or agency. Furthermore, each agency will independently manage its contractual relationship with the Contractor and issue its own purchase orders or task assignments to Contractor.

18.3 **Third Party Beneficiaries.** Neither Contractor nor City intends to directly, incidentally, or substantially benefit a third party via this Agreement. The Parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement. Therefore, the Parties agree that there are no third party beneficiaries to this Agreement and that no third party is entitled to assert a claim against either of the parties based upon this Agreement.

18.4 **Waiver of Claims.** Once the Agreement expires, or final payment has been made, Contractor has no more than thirty (30) calendar days to present or file any claims against the City concerning the Agreement. After that period, the Contractor will be deemed to have waived any right to claims against the City concerning the Agreement.

18.5 **Safety.** Contractor shall take the necessary precautions and bear the sole responsibility for the safety of the methods employed in performing the work. Contractor shall at all times comply with the regulations set forth by federal, state, and local laws, rules, and regulations concerning "OSHA" and all other applicable state labor laws, regulations, and standards. Contractor shall indemnify, defend, and hold harmless the City from and against all liabilities, suits, damages, costs, and expenses (including attorney's fees and court costs) which may be imposed against or upon the City due to the Contractor's, Subcontractor's, or supplier's failure to comply with the regulations.

18.6 **Notice.** All notice required under this Agreement shall be in writing and shall be sent by certified United States Mail or national parcel service, postage prepaid, return receipt requested, or by hand-delivery with a written receipt of delivery, addressed to the party for whom it is intended at the place last specified. When sent in accordance with the foregoing, notice shall be deemed delivered the sooner of (i) when received by the addressee or (ii) five (5) days after being deposited in the mail or with the parcel service. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this article. For the present, the parties designate the following:
<table>
<thead>
<tr>
<th><strong>In the case of City:</strong></th>
<th>with a copies of legal notices to:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>City of DeBary</strong></td>
<td><strong>City of DeBary</strong></td>
</tr>
<tr>
<td>Attn: City Manager</td>
<td>Attn: City Attorney</td>
</tr>
<tr>
<td>Address: 16 Colomba Road</td>
<td>Address: 16 Colomba Road</td>
</tr>
<tr>
<td>DeBary, Florida 32713</td>
<td>DeLand, Florida 32713</td>
</tr>
<tr>
<td>Phone: 386-668-2040</td>
<td>Phone: 386-668-2040</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th><strong>In the case of Contractor:</strong></th>
<th>with a copy of legal notices to:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Ceres Environmental Services, Inc.</strong></td>
<td><strong>Ceres Environmental Services, Inc.</strong></td>
</tr>
<tr>
<td>Attn: Chantz Block</td>
<td>Attn: Tia Laurie</td>
</tr>
<tr>
<td>Address: 6968 Professional Parkway East</td>
<td>Address: 6968 Professional Parkway East</td>
</tr>
<tr>
<td>Sarasota, FL 34240</td>
<td>Sarasota, FL 34240</td>
</tr>
<tr>
<td>Phone: 800 218-4424</td>
<td>Phone: 800 218-4424</td>
</tr>
</tbody>
</table>

18.7 **Assignment.** Contractor may not assign or otherwise convey Contractor’s rights and/or obligations under this Agreement without obtaining the City’s prior written consent, which consent the City may withhold, limit, and/or condition in the City’s sole discretion, including, but not limited to, requiring Contractor or his/her proposed successor in interest to post a new or revised performance bond, whichever is appropriate to ensure performance pursuant to this Agreement. Any consent by the City to assignment under this article must be by written Amendment to the Agreement in a form and substance specified by the City in its sole discretion. If Contractor desires to assign or otherwise convey its rights and/or obligations under this Agreement, Contractor shall provide the City with a written request for City’s consent no less than thirty (30) days prior to the assignment’s proposed effective date. Failure to provide such notice may result in the City assessing a processing fee of Five Hundred Dollars (US $500.00); however, payment of such fee shall not entitle Contractor to the City’s acceptance or approval of its request for assignment. Nothing herein shall preclude the right of the City to waive its rights under this Section but no waiver shall be granted by the City without a written and duly executed amendment to the Agreement.

18.8 **Conflicts.** Neither Contractor nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Contractor’s loyal and conscientious exercise of judgment related to its performance under this Agreement. Contractor further agrees
that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against City in any legal or administrative proceeding in which he, she, or Contractor is not a party, unless compelled by court process. Further, Contractor agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of City in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Contractor or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding. In the event Contractor is permitted pursuant to this Agreement to utilize Subcontractors to perform any Services required by this Agreement, Contractor agrees to require such Subcontractors, by written Agreement, to comply with the provisions of this section to the same extent as Contractor.

18.9 **Audit Right and Retention of Records.** The City shall have the right to audit the books, records, and accounts of Contractor and its subcontractors that are related to this Agreement. Contractor and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Agreement. Contractor shall preserve and make available, at reasonable times for examination and audit by the City, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for a retention period of five (5) years after completion or termination of this Agreement, and any renewals, or as required by Item 65, General Records Schedule GS1-SL for State and Local Government Agencies, effective February 19, 2015 and the Florida Public Records Act (Chapter 119, Florida Statutes), whichever provides for the longer retention period. Contractor shall, by written Agreement, require its subcontractors to agree: (i) to the requirements and obligations of this Article 18.9—Audit Right and Retention of Records, (ii) to be subject to applicable privacy and confidentiality laws and regulations, and (iii) to be subject to Contractor’s privacy and confidentiality policies and procedures. All audits must be performed at Contractor’s home office in Sarasota, Florida. Nothing in this Article 18.9—Audit Right and Retention of Records may require Contractor to violate any laws applicable to Contractor as a provider of Disaster Management Services.

18.10 **Location of City Data.** Contractor may not out-source any development and/or support for this Agreement or transfer any City Data outside the territorial limits of the United States of America, without the written approval of the City’s Contract Administrator.

18.11 *Intentionally left blank.*

18.12 **References to City or Contractor.** Contractor agrees that during the term of this Agreement, except as provided herein, Contractor may not reference City in Contractor’s website, and/or press releases, and, may not place City’s name or logo on Contractor’s website or in collateral marketing materials relating to Contractor’s products and Services without prior review and written approval by City. Further, Contractor agrees that it may not use City’s name, logo or any trademarks (including in any press releases, customer "case studies," and the like) without City’s prior written consent. Termination or expiration of this Agreement shall not affect Contractor’s obligation in this regard and such obligation shall survive the termination or cancellation of this Agreement.
18.13 **Force Majeure.** Neither party will be liable for any failure or delay in the performance of its obligations under the Agreement to the extent such failure or delay necessarily results from the occurrence of a Force Majeure Event beyond the control or reasonable anticipation of either party, including, but not limited to, compliance with any unanticipated government law or regulation not otherwise in effect at the time of execution of this Agreement, acts of God, acts of domestic or international terrorism, unforeseeable governmental acts or omissions, fires, strikes, natural disasters, wars, riots, transportation problems, and/or any other unforeseeable cause whatsoever beyond the reasonable control of the parties (and such cause being referred to as a “Force Majeure Event”). *Due to the nature of this Agreement (i.e., debris removal, reduction, and disposal in the wake of a hurricane or other major storm event), the recent occurrence of a hurricane or major storm event does not qualify as a Force Majeure event excusing performance or delay under this Agreement.* Accordingly, the parties further agree that:

18.13.1 Upon the occurrence of Force Majeure Event, the non-performing party shall be excused from any further performance of those obligations under this Agreement that are affected by the Force Majeure Event for as long as (a) the Force Majeure Event continues; and (b) the non-performing party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

18.13.2 Upon the occurrence of a Force Majeure Event, the non-performing party shall notify the other party of the occurrence of such event and describe in reasonable detail the effect(s) of such event upon the party’s performance of its obligations and duties pursuant to this Agreement. Such notice must be delivered or otherwise communicated to the other party within three (3) business days following the failure or delay caused by the Force Majeure Event, or as soon as possible after such failure or delay if the Force Majeure Event precludes the non-performing party from providing notice within such time period.

18.13.3 In the event of a Force Majeure Event, the time for performance by the parties under the applicable statement of work shall be extended for a period of time equal to the time lost by reason of such cause through execution of a Change Order pursuant to the terms of the Agreement.

18.14 *Intentionally left blank.*

18.15 **Waiver of Breach and Materiality.** Failure to enforce any provision of this Agreement may not be deemed a waiver of such provision or a modification of this Agreement, nor may a waiver of any breach of a provision of this Agreement be deemed a waiver of any subsequent breach and will not be construed to be a modification of the terms of this Agreement.

18.16 **Severance.** In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions will continue to be effective to the extent practicable unless City or Contractor elects to terminate this Agreement.

18.17 **Entire Agreement.** This Agreement contains the entire agreement between Contractor
and City. Any modifications to this Agreement shall not be binding unless in writing and signed by both parties.

18.18 **Applicable Law, Venue and Waiver of Jury Trial.** This Agreement will be interpreted and construed in accordance with and governed by the laws of the State of Florida. Jurisdiction over and venue for any controversies or legal issues arising out of this Agreement will, if in state court, be exclusively in the 7th Judicial Circuit in and for the County of Volusia, Florida, or, if in federal court, be exclusively in the Middle District of Florida, Orlando Division. By entering into this Agreement, Contractor and the City hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to this Agreement, and, unless otherwise expressly provided herein, each agrees to bear its own costs and attorney's fees relating to any dispute arising under this Agreement.

18.19 **Prior Agreements.** This document represents the final and complete understanding of the Parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The Parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

18.20 **Survival.** Any provisions of this contract, including those pertaining to indemnity, warranties, dispute resolution, post-termination claims, maintenance of public records, and other matters in which the parties contemplate continuing obligations beyond the term of this Agreement survive the termination, cancellation, or expiration of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY BLANK – SIGNATURE PAGE TO FOLLOW]
19 SIGNATURES

IN WITNESS WHEREOF, the parties have made and executed this Agreement for Debris Removal, Reduction and Disposal on the date last written below.

Attest:

__________________________
Carmen Rosamonda
City Manager

Date: ______________________

__________________________
Karen Chasez
Mayor

Date: ______________________

Attest:

__________________________
Signature

__________________________
Chantz Blake, Contract Admin
Name and Title

Date: 1-28-2022

__________________________
Signature

__________________________
Tia Laurie, Corporate Secretary

Date: 11/28/2022

CC Date: ______________________
AGREEMENT FOR DEBRIS REMOVAL, REDUCTION, AND DISPOSAL

This Agreement for Debris Removal, Reduction, and Disposal ("Agreement") is hereby made and entered into by and between T.F.R., Inc. of Texas, d/b/a T.F.R. Enterprises, Inc., a Foreign Profit Corporation, whose principal address is 601 Leander Drive, Leander, TX 78641 ("Contractor") and the City of DeBary, a Florida municipal corporation, whose primary address is 16 Colomba Road, DeBary, FL 32713 ("City").

RECITALS:

WHEREAS, the City desires to retain the services of a competent and qualified Contractor to provide debris removal, reduction, and disposal services within the City in the wake of a natural disaster such as a hurricane; and

WHEREAS, the City has issued Bid # 07-21 for such emergency debris removal, reduction, and disposal services and has received responses from various potential vendors; and

WHEREAS, the City has determined that the Contractor is fully qualified to render the required services; and

WHEREAS, it has been determined that the execution of this Agreement is beneficial to the people of the City of DeBary, Florida.

NOW THEREFORE, in consideration of the foregoing recitals, which are deemed true and correct and are incorporated herein by reference, and other consideration as called for in this Agreement, the receipt and sufficiency of which is acknowledged by the City and the Contractor, the parties agree and stipulate as follows:

1 DEFINITIONS.

For this Agreement and any incorporated exhibits, addenda, or attachments, the following terms, phrases, words, and their respective derivations will have the meaning set forth below. Any additional terms not contained herein are as defined in Part 1 RFP Terms and Acronyms of RFP No. 07-21, which is attached hereto and incorporated herein as Exhibit A.

1.1. Agreement. This Agreement for Debris Removal, Reduction, and Disposal, including any exhibits, addenda, or attachments appended thereto.

1.2. Amendment. An amendment to this Agreement in writing, approved by the City Manager, and executed by the City and Contractor authorizing a modification or revision to one or more terms or conditions of this Agreement.

1.3. Change Order. A written change or modification to this Agreement approved by the City and the Contractor authorizing an addition, deletion, or revision in the Scope of Services, or an adjustment in the pricing or timing of this Agreement, without changing or altering any other terms or conditions of this Agreement.
1.4. **Compensation.** The amount paid by the City to Contractor for Services, regardless of whether stated as compensation or stated as hourly rates, overhead rates, or other figures or formulas from which compensation due to the Contractor can be calculated, which includes the total monetary amount payable to the Contractor under the terms of this Agreement for all Services, labor, materials, supplies, travel, training, profit, overhead, costs, expenses, and any other costs necessary to complete the Services as set forth in the Scope of Services.

1.5. **City.** The City of DeBary, Florida.

1.6. **Contract Administrator / Project Manager.** The City Manager or his/her designee who is responsible for addressing any concerns arising from this Agreement on behalf of the City.

1.7. **Contractor.** T.F.R., Inc. of Texas, d/b/a T.F.R. Enterprises, Inc.

1.8. **Day.** The word “day” means each calendar day or, when used in the plural, accumulation of calendar days.

1.9. **Deliverable.** The products or Services provided through the Scope of Services for this Agreement, including, but not limited to: other services, reports, written documentation, training, systems, or processes.

1.10. **Effective Date.** The date that this Agreement is fully executed by the Contractor and the City.

1.11. **FEMA.** Federal Emergency Management Agency.

1.12. **Geodatabase.** Special database storing data referenced by spatial or geographic coordinates.

1.13. **GIS.** Geographic Information System, which is a system that works with data referenced by spatial or geographic coordinates.

1.14. **GPS.** Global Positioning System, which is a satellite based navigation system that provides time and location data anywhere on the Earth to those with a compatible server.

1.15. **Incident.** Each disaster for which the City issues a Notice to Proceed ("NTP").

1.16. **Notice to Proceed.** A written notice issued to the Contractor by the City’s Property Manager, fixing the date upon which the Contract times will commence to run and on which the Contractor must start to perform the Services and provide the Deliverables as set forth in this Agreement Agreement.

1.17. **Project.** The task or tasks assigned under a particular Notice to Proceed ("NTP").
1.18. **Proposal.** The document(s) submitted by the Contractor in response to the City’s Bid #07-21.

1.19. **Run-out Period.** Upon expiration of this Agreement, the Run-out Period will begin upon such expiration date and expire upon completion and provision of the Services or Deliverables due in connection with the declared disaster event/project commencing on or before the date of expiration.

1.20. **Services.** Those services defined in the Scope of Services to be performed by the Contractor pursuant to this Agreement and its attached exhibits, addenda, and attachments, including: the work, duties, and obligations to be carried out by the Contractor under the Agreement and the Exhibits attached hereto and incorporated herein.

1.21. **Subcontractor.** A person or entity other than a materialman or laborer who enters into an Agreement with the Contractor for the performance of any part of this Agreement.

2 **EXHIBITS.**

2.1. The Exhibit(s) listed below are incorporated into and made a part of this Agreement.

2.1.1 Exhibit A- RFP No. 07-21, including the Parts 1, 2, 3, 4, and 9 setting forth definitions, description of services, Scope of Work, technical specifications, and indemnification and insurance obligations.

2.1.2 Exhibit B – Pricing Schedule.

3 **ORDER OF PRECEDENCE.**

3.1 If the Contractor finds any potential or possible inconsistency, conflict, error, or discrepancy in the Agreement, Contractor shall immediately communicate in writing the nature of any such issue to the City’s Contract Administrator or Project Manager, requesting the City’s interpretation and direction prior to proceeding with the provision of Services or Deliverables affected thereby. If any conflicts or inconsistencies arise between any exhibit to this Agreement or between any such exhibit and the body of this Agreement itself, such conflict or inconsistency will be resolved by giving precedence to the following contract documents in the following order:

3.1.1 If any conflicts or inconsistencies arise between Exhibit A and any other exhibit of the Agreement with regard to the Scope of Work, Project specifications, performance criteria, or management metrics, the Description of Services, Scope of Work, and Technical Specifications set forth in Exhibit A will govern and control to the extent any such conflict may exist.

3.1.2 If any conflicts or inconsistencies arise between Exhibit B, the Pricing Schedule, and any other exhibit regarding the pricing of Services or Deliverables to be
provided pursuant hereto, such Exhibit B shall govern and control to the extent any such conflict may exist.

3.1.3 If any conflicts or inconsistencies arise between the body of this Agreement and any exhibits attached hereto, the terms contained in the body of this Agreement shall govern and control to the extent any such conflict may exist.

4. SCOPE OF SERVICES. Contractor shall provide debris removal, reduction, and disposal Services and Deliverables pursuant to this Agreement as generally set forth herein and more specifically set forth in Exhibit A to this Agreement.

4.1. Contractor shall provide debris removal, reduction, and disposal Services and Deliverables consistent with Parts 2, 3, and 4, pertaining to the Description of Services, Scope of Work, and Technical Specifications, of RFP 07-21, which is attached hereto and incorporated herein as Exhibit A.

4.2. Performance Criteria:

4.2.1. All services must be performed in accordance with the Agreement and carried out under the direction of the City’s Contract Administrator / Project Manager.

4.2.2. All labor necessary to complete the Services and provide the Deliverables required under this Agreement must be performed in a good and competent workmanlike manner, in accordance with industry standards, and to the satisfaction of the City.

4.2.3. Time is of the Essence. Time is of the essence for all Services performed under this Agreement and all Projects performed in accordance herewith.

4.2.4. Authority to Act on Behalf of the City. The City Manager shall have the authority to approve, award, and execute all documents or other instruments required to effectuate changes, modifications, or additional Services, so long as the then-cumulative financial obligation of the City for such additional items does not exceed the City Manager’s authority under the City’s purchasing ordinances, policies, or procedures. Any change, modification, or additional service that causes the cumulative financial obligation of the City to exceed the City Manager’s authority under the City’s ordinances, policies, or procedures is not effective unless approved by the DeBary City Council.

5 RESPONSIBILITY OF CONTRACTOR

5.1 Where questions exist as to the Scope of Services, Contractor shall promptly confer with the Project Manager to ascertain the functional criteria of the Scope of Services.

5.2 Supervision. Contractor shall direct and supervise competent and qualified personnel and shall devote time and attention to the direction of the operation to ensure performance of obligations and duties as set forth herein. Contractor shall hire, compensate, supervise, and terminate members of its work force, and Contractor shall direct and control the manner in which Services are performed, including conditions under which individuals shall be assigned duties, how individuals will report, and the
hours individuals shall perform. Contractor will be responsible for all income tax, social security, and Medicare taxes, federal unemployment taxes, and any other withholdings from the company's employees' and/or subcontractors' wages or salaries. Benefits, if any, for Contractor's employees and/or subcontractors will be the sole responsibility of Contractor, including, but not limited to, health and life insurance, retirement, liability/risk coverage, and worker's and unemployment compensation. Contractor will be solely responsible for the means, methods, techniques, sequences, and procedures in delivering Services and Deliverables pursuant to this Agreement. Further, Contractor will be responsible for assuring the City that Services and Deliverables accurately comply with the requirements of this Agreement and the Scope of Services contained therein.

5.3 **Assurance.** Contractor gives City its assurance that all Services performed under this Agreement will be timely performed in a competent and workmanlike manner and in accordance with the specifications and requirements of the Agreement and any approvals required under the Agreement. All Services not conforming to the specifications and requirements of the Scope of Services will be considered materially defective and constitute a breach of this Agreement.

5.4 **Accuracy of Reports / Summaries.** Contractor will be responsible for the professional and technical accuracy and the coordination of all data, reports, summaries, and any other Services furnished by Contractor under this Agreement. Contractor shall, without additional cost to the City, correct or revise any errors or deficiencies in its Services or Deliverables for which it is responsible.

5.5 **Services to Comply with Specifications and Law.** All Services performed by the Contractor pursuant to this Agreement, including all general provisions, special provisions, job specifications, addenda, amendments, written interpretations, and any written change orders issued pursuant thereto, shall comply with the Scope of Services and all applicable laws, codes, ordinances, regulations, and statutes.

5.6 **Subcontractors.**

5.6.1 **Employment or Substitution of Subcontractors.** Contractor may not employ any subcontractor, other person, or organization of against whom the City may have reasonable objection, nor may Contractor be required to employ any subcontractor against whom the Contractor has reasonable objection. Contractor may not make any substitution for any subcontractor who has been accepted by the City without obtaining the City's approval thereof.

5.6.2 **Disapproval of Subcontractors.** City's disapproval or requirement of removal or replacement of Contractor's subcontractor will be deemed for lawful reasons if in City's reasonable judgment, such Contractor's subcontractor has been previously debarred by the City or another governmental agency or otherwise poses a threat or causes harm to the health, welfare, or safety, or morale of the City or its agencies, personnel, or property.

5.6.3 **Contractor Responsible for Subcontractors.** Contractor remains fully responsible for all negligent acts and omissions of its subcontractors and of any individuals or entities directly or indirectly employed by them and of persons for whose
negligent acts any of them may be liable to the same extent that it is responsible for the negligent acts and omissions of persons directly employed by it. Nothing in this Agreement may create or be interpreted to create any contractual relationship between any subcontractor and the City or any obligation on the part of the City to pay or to ensure the payment of any monies due to any subcontractor or other entity employed or otherwise retained by the Contractor to perform work under this Agreement, except as may otherwise be required by law. The City may furnish to any subcontractor to the extent practicable, evidence of amounts paid to Contractor for the performance of any or all tasks under this Agreement.

5.6.4 **Subcontractors to Act Pursuant to this Agreement.** Contractor agrees to bind specifically every subcontractor to the applicable terms and conditions of this Agreement for the benefit of the City, and shall require all subcontractors or other entities employed or otherwise engaged by the Contractor in connection with this Agreement to comply fully with the terms and conditions of this Agreement as such may apply to the Services being performed for Contractor.

6 **TERM OF AGREEMENT**

6.1 The term of this Agreement commences on the Effective Date of this Agreement or when this Agreement is fully executed by all parties and terminates three (3) years from the Effective Date. Two (2) subsequent two (2) year renewals are permissible upon mutual written agreement between the parties and the approval of the DeBary City Council.

6.2 The Contractor will commence the provision of Services as specified in this Agreement or as may be requested by the City and complete any such Services within the time specified therein or in any applicable Task Assignment as may be issued by the City.

6.3 Effect of Expiration of Agreement. Upon expiration of the Agreement, (1) no new Services may be commenced; (2) For Services commenced prior to the expiration of the Agreement that cannot be completed until after the expiration of the Agreement, this Agreement will expire on the completion date of said Services, and after all work or Services associated with such event/project have been approved and accepted by the City’s Project Manager. As such, the obligations entered therein by both parties under this Agreement for such Services will remain in full force and effect until completion of all Services performed and Deliverables provided under this Agreement during the Run-out Period.

7 **AGREEMENT PRICE AND COMPENSATION**

7.1 **Payment Pursuant to Fee Schedule.** Contractor will be paid Compensation for all Services. Total Compensation for this Agreement will be comprised of the total cost of all projects, materials, equipment, labor, expenses (including reimbursable expenses), and all mark-ups for overhead and profit, as more particularly described in Exhibit “B” – Price Schedule attached hereto and incorporated herein. The City agrees to pay Contractor in current funds, as compensation for its Services.

7.2 **Errors and Omissions in Pricing.** Compensation may not be adjusted due to errors or
omissions not attributable to the City in computing the costs of the Services that result in an increase in the cost of this Agreement or because the time for completion varies from the original estimate, including completion or substantial completion of this Agreement or any tasks issued pursuant thereto prior to the scheduled completion date or on account of City’s election to furnish any of the Services. In addition, Contractor certifies that the original Agreement price or Compensation for the Scope of Services and any additions thereto will be adjusted to exclude any sums by which the City determines the price or Compensation was increased due to inaccurate, incomplete, or noncurrent wage rates, and other factual unit costs.

7.3 **Reimbursable Expenses.** City’s payment to Contractor pursuant to the Price Schedule, attached hereto and incorporated herein as Exhibit B, shall be full compensation for Services rendered and any expenses incurred in connection therewith, and Contractor shall not be eligible for reimbursement for any expenses incurred in connection with the performance of this Agreement.

7.4 **Payments.** Charges and payments must be made in accordance with Exhibit B – Price Schedule. The rates expressed in Exhibit B shall govern Compensation and provide for payments against specified Services and Deliverables.

7.4.1 **Approval of Payment.** If, on the basis of the City Project Manager’s observation and review of Contractor’s Services, the City Project Manager is satisfied that the Services have been completed and that the Contractor has fulfilled all of its obligations under the Agreement, the City Project Manager, after receipt of a proper invoice, will either approve or deny such invoice in accordance with the applicable provisions of Part VII of Chapter 218, Florida Statutes. If City Project Manager rejects the invoice in whole or in part, he/she shall return the invoice to Contractor, indicating in writing the reasons for refusing to approve final payment, in which case Contractor will make the necessary corrections and resubmit the invoice. Regardless of the foregoing, approval of payment pursuant to this section will not operate as a waiver or otherwise prevent the City from recovering amounts paid when the City subsequently discovers material defects or deficiencies in the Services or Deliverables provided by Contractor, which defects or deficiencies would have otherwise caused the City to withhold payment.

7.4.2 **Invoice Detail.** Contractor shall submit an invoice for professional Services rendered to the City upon the completion of such Services. Each invoice must show detailed descriptions of the Services provided in accordance with the Agreement pricing.

7.4.3 **Retainage.** A ten percent (10%) retainage may be withheld from each reconciled invoice until the end of the project or task assigned. In order to recover the retainage, the Contractor must successfully complete and receive a letter of completion from the City, for all work performed. Retainage may be held until final reconciliation is complete. Portions of the retainage may be held by the City as compensation for the repair of damage caused to public or private property by the Contractor.
7.5 **Invoices.** Invoices or payment requests must be received from the Contractor and submitted to the City's Project Manager. All invoicing and payments, including the practices and procedures pertaining thereto, are governed by the applicable provisions of Part VII of Chapter 218, Florida Statutes.

7.5.1 **Documentation.** Contractor's Invoice(s) must be accompanied by supporting data as may be required by the City Project Manager. City Project Manager shall review Contractor's Invoice and supporting data and notify Contractor in writing within ten (10) days from receipt of the statement if any amounts requested are disputed or otherwise lack adequate support or documentation.

7.5.2 **Invoicing Pursuant to Agreement.** Pursuant to Exhibit B, Contractor shall invoice City for all payments due Contractor under this Agreement. City shall pay invoices in accordance with this Agreement. Invoices must be sent to the address specified by the City in order to be paid.

7.5.3 **Withholding.** The City may withhold payment of any specific invoiced charges that it disputes in good faith while paying all undisputed charges on the invoice.

7.5.4 **Payment Due.** Within forty-five (45) days of acceptance by the City Project Manager of all the Services for which Contractor has submitted an invoice of professional Services, Contractor shall be paid the unpaid balance of any money due for any undisputed Services covered by said invoice.

7.5.5 **Taxes.** City is a tax-exempt entity and may not be charged or invoiced for the payment of taxes for Services performed or any Deliverables provided under this Agreement.

7.6 **Contractor's Continuing Obligations.** Contractor's obligation to perform the Services and provide any Deliverables in accordance with the terms of the Agreement is absolute. Nothing, including without limitation, the following, will constitute an acceptance of Services or Deliverables not completed or provided in accordance with the Agreement: (1) approval of any progress; (2) final payment to Contractor; (3) documentation confirming acceptance of the Work by the City; (4) any payment by the City to Contractor under the Agreement; (5) any act of acceptance by the City; (6) any failure to do so; or (6) any correction of defective Services or Deliverables by the City.

7.7 **Unusual Costs:** The Contractor may petition the City at any time for an additional rate adjustment on the basis of extraordinary and unusual changes in the costs of operation that could not reasonably be foreseen by a prudent operator and which, by all reasonable expectations, will continue for at least one (1) year. The Contractor's request must contain substantial proof and justification to support the any such need for the rate adjustment. The City may request from the Contractor and the Contractor must provide any additional information as may be reasonably necessary to assist the City in making its determination as to whether the adjustment may be granted. The City shall approve or deny any such request, in whole or in part, within sixty (60) days of receipt of the request and all other additional information as may be required by the City. Any price redetermination must be based upon the documentation provided, and the City reserves the right to rescind any price relief granted if circumstances change and a decrease in
price is warranted.

7.8 **Non-appropriation.** Notwithstanding any other term or provision of this Agreement, the continuation of this Agreement beyond a single fiscal year of City is subject to the appropriation and availability of funds in accordance with Chapter 129, Florida Statutes. Termination by the City due to non-appropriation will be without penalty or additional charge to the City. The City will not be obligated to pay Contractor under this Agreement beyond the date of termination except as set forth in this Agreement. City’s obligation to pay Contractor is limited to the budgeted amount for a fiscal year approved by the DeBary City Council for the then-current fiscal year of this Agreement and is otherwise limited to legally available non-ad valorem tax revenues.

8 **PAYMENT OF SUBCONTRACTORS**

8.1 **Payment.** Contractor shall pay its subcontractors and suppliers within thirty (30) days following receipt of payment from the City for such subcontracted Services or supplies. Contractor agrees that if it withholds an amount as retainage from such Subcontractors or suppliers, that it shall release such retainage and pay same within thirty (30) days following receipt of payment of retained amounts from City.

8.2 **Indemnification as to Payment of Subcontractors.** Contractor shall indemnify, defend, and hold the City harmless from and against any and all claims and actions from Contractor’s subcontractors for payment for Services and Deliverables provided by its subcontractors in connection with this Agreement. Regardless of the foregoing, nothing in this Agreement creates or may be deemed to create any contractual relationship between any subcontractor and the City or any obligation on the part of the City to pay or ensure the payment of any moneys due to any subcontractor, except as may otherwise be required by law.

9 **LIMITATION OF LIABILITY AND INDEMNIFICATION OF CITY**

9.1 **Indemnification.** Contractor shall indemnify, defend, and hold harmless the City, including its districts, authorities, separate units of government established by law, ordinance, or resolution, including its partners, elected and non-elected officials, employees, agents, volunteers, and any party with whom the City has agreed by contract to provide additional insured status, from and against all claims, damages, losses, and expenses, including, but not limited to, attorney’s fees arising out of, resulting from, or incident to Contractor’s performance of its obligations in whole or part of this Agreement, unless such injury or damage is occasioned solely by the fault, negligence, or willful misconduct of the City.

9.2 In all claims against the City, Contractor’s indemnification obligations are not limited in any way by any limitation on the amount or type of damages, compensation, or any benefits or insurance payable by or on behalf of the Contractor, including its employees, agents, contractors, or subcontractors.

9.3 **Sovereign Immunity.** The City expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Regardless of anything set forth in any section of this Agreement to the contrary, nothing in this
Agreement may be deemed a waiver of the City’s immunity or limits of liability beyond any statutory limited waiver of immunity or limits of liability that may have been or may be adopted by the Florida Legislature, and the cap on the amount and liability of the City for damages, regardless of the number or nature of claims in tort, equity, or contract, may not exceed the dollar amount set by the legislature for tort. Nothing in this Agreement may inure to the benefit of any third party for the purpose of allowing any claim against the City, which claim would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

10 INSURANCE

Contractor shall provide insurance in accordance with the provisions and requirements of Part 9, Indemnification and Insurance Requirements of RFP# 07-21, which is attached hereto and incorporated herein as Exhibit A.

11 PERFORMANCE AND PAYMENT BONDS

11.1 As security for the faithful performance and payment of all of Contractor’s obligations under the Contract, Contractor shall furnish Construction Performance and Payment Bonds in conformance with § 255.05, Florida Statutes, within seven days after a Notice to Proceed is issued. Such bonds must remain in effect at least until one year after the date when final payment becomes due, except as otherwise may be required by law or excused in writing by the City. Any such bonds must be issued by an agency authorized to do business in the State of Florida with a rating of “A” or higher, as listed in the A.M. Best & Company latest published rating. An attorney in fact who signs Performance and Payment Bonds must file with the bond a certified copy of his/her power of attorney to assign said bond.

11.2 Concurrently with an assessment of the damage immediately following a disaster event, the City, in consultation with the Contractor, will determine the Contractor’s Scope of Services to be performed and an estimated dollar value of the work for the event, based upon the best data available at the time. The initial Task Order issued by the City for each specific event will require the Contractor to provide appropriate Performance and Payment Bonds, each equal in sum to the estimated dollar value of the work. If the value of the contracted work increases, the Contractor will be required to provide an updated Performance and Payment Bond in an amount equal to the new value.

11.3 Performance and Payment Bonds for each event must comply with all other requirements unless otherwise stated. If the catastrophic event diminishes after the notice to proceed is issued, a stop work order will be issued to cancel the Performance and Payment Bonds tied to such event. Performance and Payment Bonds for each event must comply with all other requirements unless otherwise stated. If the catastrophic event diminishes after the Event notice to proceed is issued, a stop work order will be issued to cancel the Performance and Payment Bonds tied to such event.

12 DAMAGES/LIQUIDATED DAMAGES

12.1 Damages: Due to the nature of the services to be provided and the potential impact to the City for loss, the Contractor cannot disclaim consequential or special damages related
to the performance of this Contract. The Contractor will be responsible and accountable for any and all damages, directly or indirectly, caused by the actions or inaction of its employees, staff, or Subcontractors. There are no limitations to this liability.

12.2 **Liquidated Damages:** If the Contractor fails 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, as liquidated damages, the following:

12.2.1 The Contractor shall pay the City, as liquidated damages, $5,000.00 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 start date issued by the City’s Project Manager.

12.2.2 The Contractor shall pay the City, as liquidated damages, $1,000.00 per load of disaster debris collected in the City that is not disposed of at a City approved DMS or City Designated Final Disposal Site. Application of liquidated damaged does not release the Contractor of all liability associated with hauling and depositing material to an unauthorized location.

12.2.3 The Contractor shall pay the City, as liquidated damages, $100.00 per incident where the Contractor fails to sufficiently clean collection site(s) so that no loose leaves and small debris in excess of one bushel basket remain, no debris is left on the road surface and no single piece of debris larger than six (6) inches remains on site. Application of liquidated damages does not release the Contractor from the responsibility of sufficiently cleaning collection site(s).

12.2.4 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 damages.

13 **TERMINATION**

13.1 The Contract may be terminated by either party upon the material breach by the other party if such breach is not cured within thirty (30) days written notice from the non-breaching party.

13.2 City may terminate this Agreement upon at least thirty (30) days prior written notice to Contractor for convenience or non-appropriation.

13.3 Contractor may terminate this Agreement upon at least one hundred eighty (180) days prior written notice to City.

13.4 Upon receipt of notice of termination by the City from Contractor or upon delivery of
notice of termination from the City to Contractor, Contractor shall:

13.4.1 Stop work under the Agreement on the date and to the extent specified in City’s Notice of Termination.

13.4.2 Inform the City, in writing, of the extent to which performance is completed.

13.4.3 Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the Services under the Agreement that is in progress but not yet completed.

13.4.4 Assign to the City, in the manner, at the times, and to the extent directed by the City, all of the right, title and interest of Contractor under the orders and subcontracts so terminated.

13.5 For all undisputed outstanding invoices submitted to the City prior to the effective date of the termination and subject to Article 6 - Term of Agreement, Article 7 – Agreement Price and Compensation, and this Article 13 - Termination, the City shall cause payments to be made to Contractor within forty five (45) days of receipt of invoice. Contractor shall invoice the City for any sums Contractor claims to be owed by City under this Agreement for work performed from the last invoice to the effective date of termination. City will review such invoice for payment and pay any undisputed amount within forty five (45) days.

13.6 With the approval of the City and to the extent required by the City, the Contractor will settle all outstanding liabilities and all claims arising out of any termination of this Agreement. City’s approval of such settlement will be final for all the purposes of a termination under this Article 13 - Termination. In addition, Contractor shall transfer title and deliver to the City, in the manner, at the times, and to the extent, if any, directed by the City of Deliverables, work-in-progress, reports, and other materials produced as a part of, or acquired in connection with the performance of the Services terminated.

13.7 If the Contractor fails to cure a breach within ten (10) calendar days after receipt of notice from the City of said breach, the City may take over the Services and complete the Services on its own or through another contractor, and Contractor will be liable to the City for any increased costs of the Project reasonably incurred by the City in completing the Contractor’s unfinished Services. As such, City may apply unpaid Compensation due and owing to Contractor prior to the default as a set off against the costs incurred by the City for taking over such Services.

13.8 The right of termination provided to the City and Contractor herein will be cumulative of all other remedies available at law.

13.9 All provisions of this Agreement that impose or contemplate continuing obligations on a party will survive the expiration or termination of this Agreement.

14 DISPUTE RESOLUTION

14.1 Good Faith Efforts to Resolve. The parties to this Agreement shall exercise their best
efforts to negotiate and settle promptly any dispute that may arise with respect to this Agreement in accordance with the provisions set forth in this Section 14, Dispute Resolution. Contractor and City Project Manager shall use reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, to address and work toward resolution of issues that arise in performance of this Agreement and any applicable statement of Services. Issues will be escalated to successive management levels as needed.

14.2 Informal Dispute Resolution. If a dispute develops between the parties concerning any provision of this Agreement, or the interpretation thereof, or any conduct by the other party under these agreements, and the parties are unable to resolve such dispute within five (5) business days or longer, that party, known as the Invoking Party, through its applicable Project Manager, shall promptly bring the disputed matter to the attention of the non-Invoking Party’s Project Manager or designated representative, as the case may be, of the other party in writing (“Dispute Notice”) in order to resolve such dispute.

14.3 Discovery and Negotiation / Recommended Procedures. Upon issuance of a Dispute Notice, the Project Managers or designated representative shall furnish to each other all non-privileged information with respect to the dispute believed by them to be appropriate and germane. The Project Managers shall negotiate in an effort to resolve the dispute without the necessity of any formal proceeding.

14.4 Formal Dispute Resolution. At any point after issuance of a Dispute Notice under this section, either party may request and initiate formal non-binding mediation before a single mediator, which mediation shall be completed within thirty (30) days of initiation or such longer time as may be agreed upon by both parties as being necessary for the mutual selection of a mediator and scheduling of such mediation. Any such mediation shall be convened and conducted in accordance with the rules of practice and procedure adopted by the Supreme Court of Florida for court-ordered mediation, Rule 1.700 et seq. of the Florida Rules of Civil Procedure, and Chapter 44, Florida Statutes. If the dispute remains unresolved after conducting such mediation, then either party may proceed to finalize any pending termination remedies and commence litigation in a court of competent jurisdiction. Each party shall bear its own costs and attorney’s fees for mediation or arbitration of an issue arising under this Agreement.

14.5 Right to Terminate Reserved. Regardless of the dispute resolution procedures provided for in this Section 14, Dispute Resolution, nothing herein will affect, delay, or otherwise preclude a party from terminating this Agreement in accordance with the provisions of Section 13, Termination, it being understood that these dispute resolution procedures are intended as a means of resolving disputes both during the term of this Agreement and after termination or expiration thereof.

15 CITY DATA

15.1 Contractor agrees and understands that all files and other information and data created in connection with the administration of this Agreement constitute a public record, except to the extent any such record is exempt from disclosure or identified as confidential under Florida or federal law (e.g., Chapter 119, Florida Statutes). Contractor
agrees to maintain access to such records and keep and maintain such records after termination of this Contract to the extent required by applicable law.

15.2 THE ABOVE DUTIES AND OBLIGATIONS SURVIVE THE CANCELLATION, EXPIRATION, OR TERMINATION OF THIS CONTRACT.

16 LOCAL GOVERNMENT REQUIREMENTS

16.1 Public Records Law. Pursuant to section 119.0701(2)(a), Florida Statutes, the City is required to provide Contractor with this statement and establish the following requirements as contractual obligations pursuant to the Agreement:

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 386-668-2040, AHatch@Debary.org, by mail, City Clerk, City of DeBary, 16 Colomba Road, Debary, FL 32713.

By entering into this Contract, Contractor acknowledges and agrees that any records maintained, generated, received, or kept in connection with, or related to the performance of services provided under, this Contract are public records subject to the public records disclosure requirements of section 119.07(1), Florida Statutes, and Article I, section 24 of the Florida Constitution. Pursuant to section 119.0701, Florida Statutes, any Contractor entering into a contract for services with the City is required to:

A. Keep and maintain public records required by the City to perform the services and work provided pursuant to this Contract.

B. Upon request from the City’s custodian of public records, provide the City 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, Florida Statutes, or as otherwise provided by law.

C. 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 Contract term and following completion or termination of the Contract if Contractor does not transfer the records to the City.

D. Upon completion or termination of the Contract, transfer, at no cost, to the City all public records in the possession of Contractor or keep and maintain public records required by the City to perform the service. If Contractor transfers all public records to the City upon completion or termination of the Contract, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion or termination of the Contract, Contractor shall meet all applicable requirements for retaining
Requests to inspect or copy public records relating to the City’s Contract for services must be made directly to the City. If Contractor receives any such request, Contractor shall instruct the requestor to contact the City. If the City does not possess the records requested, the City shall immediately notify Contractor of such request, and Contractor must provide the records to the City or otherwise allow the records to be inspected or copied within a reasonable time.

Contractor acknowledges that failure to provide the public records to the City within a reasonable time may be subject to penalties under section 119.10, Florida Statutes. Contractor further agrees not to release any records that are statutorily confidential or otherwise exempt from disclosure without first receiving prior written authorization from the City. Contractor shall indemnify, defend, and hold the City harmless from and against any and all claims, damage awards, and causes of action arising from Contractor’s failure to comply with the public records disclosure requirements of section 119.07(1), Florida Statutes, or from Contractor’s failure to maintain public records that are exempt or confidential from disclosure, including, but not limited to, any third party claims or awards for attorneys’ fees and costs arising therefrom. Contractor authorizes City to seek declaratory, injunctive, or other appropriate relief against Contractor from a Circuit Court in Volusia County on an expedited basis to enforce the requirements of this section.

16.2 **No Code Violation or Past Due Debt.** Contractor warrants and represents that neither the business, nor any officer or significant stakeholder of the business is in violation of the City of DeBary Code of Ordinances, and does not owe the City any past due debt. Any breach of the foregoing warranty and representation is a material breach of this Agreement, and the City shall have the right to terminate this Agreement therefore.

16.3 **Changes Due to Public Welfare.** The City and Contractor agree to enter into good faith negotiations regarding modifications to this Agreement that may be required in order to implement changes in the interest of the public welfare or due to change in law or ordinance.

16.4 **Compliance with Applicable Laws.** Contractor shall perform its obligations hereunder in accordance with all applicable federal, state, local laws, ordinances, rules, regulations (including, but not limited to, the Americans with Disabilities Act (ADA), including Titles I, II and III of the ADA as applicable; the Federal Immigration Reform and Control Act of 1986 (as amended); and Title VII of the Civil Rights Act of 1964 (as amended), and all orders and decrees of bodies or tribunals having jurisdiction or authority which in any manner affect the performance of this Agreement. Contractor shall indemnify, defend, and hold harmless the City and all its officers, agents, servants and employees against any claim or liability arising from or based on the violation of any such law, ordinance, rule, regulation, order, or decree where such liability is attributable to an act or omission committed by the Contractor, including its representatives, subcontractors, professional associates, agents, servants, or employees. Additionally, Contractor shall obtain and maintain at its own expense all applicable licenses and permits to conduct business
pursuant to this Agreement from the federal government, State of Florida, County of Volusia, or any municipalities when legally required and maintain same in full force and effect during the term of this Agreement.

16.5 Nondiscrimination and Americans with Disabilities Act. Contractor shall not unlawfully discriminate against any person in the operations and activities in the use or expenditure of the funds or any portion of the funds provided by this Agreement or in the provision of goods or Services pursuant to this Agreement. Contractor agrees it shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing all goods and Services funded or paid for by City, including Titles I, II and III of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. For internet/web Services: For the purposes of this paragraph, any Services or products offered to public via the internet or online must comply with WCAG 2.0 AA in order to be deemed ADA compliant. The City will provide Contractor with prompt written notice with respect to any ADA deficiencies of which the City is aware and Contractor will promptly correct such deficiencies. If the City, the Department of Justice or other governmental entity tasked with the enforcement of the ADA (“Enforcement Agency”) notes any deficiency in the facilities, practices, services, or operations of Contractor furnished or provided in connection with this Agreement, Contractor shall, at no additional charge or cost to the City, immediately cure any such deficiencies without delay to the satisfaction of such Enforcement Agency. Contractor further agrees that it shall, to the extent permitted by law, indemnify, defend, and hold harmless the City from and against any and all claims, sanctions, or penalties assessed against the City, which claims, sanctions, or penalties arise or otherwise result from Contractor’s failure to comply with the ADA or WCAG 2.0 AA with regard to any online or internet Services or products. In performing under this Agreement, Contractor agrees that it shall not commit an unfair employment practice in violation of any state or federal law and that it will not discriminate against any member of the public, employee, or applicant for employment for work under this Agreement because of race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability.

16.6 Drug Free Workplace. The City of DeBary is a drug-free and smoke-free workplace. Contractor agrees that it shall provide a drug-free environment to its personnel during the term of this Agreement and will comply, subject to the prior receipt thereof, with the City’s policies on drug-free and smoke-free work place, as amended from time to time, during the term of this Agreement.

16.7 Employment of Illegal Aliens / E-Verify. Contractor certifies that it does not knowingly or willingly and will not during the performance of the Agreement employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986, as amended. Contractor shall comply with § 448.095, Florida Statutes, effective January 1, 2021, and register with and utilize the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of all new employees hired by Contractor. Furthermore, any subcontract Contractor enters into with a subcontractor to perform work or Services under this Agreement must contain the
following language: "The subcontractor must comply with § 448.095, Florida Statutes, and register with and utilize the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of all new employees hired by Contractor on or after the effective date of this contract and thereafter during the remaining term of such contract." If Contractor fails to comply with the foregoing or § 448.095 or § 448.09(1), Florida Statutes, the City will take action as required by § 448.095(2)(c), Florida Statutes, which may include termination of this Agreement. If the City terminates this Agreement due to Contractor’s or a subcontractor’s failure to comply with § 448.095 or § 448.09(1), Florida Statutes, Contractor will be liable to the City for any additional costs or expenses incurred by the City as a result of the termination of this Agreement. Furthermore, Contractor agrees to indemnify, defend, and hold harmless the City from and against any fines, sanctions, or penalties levied against the City by a governmental agency arising from the Contractor’s failure or alleged failure to comply with this paragraph, including, but not limited to, the City’s loss or repayment of grant funds. Pursuant to § 448.095(2)(d), Florida Statutes, any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination.

16.8 Equal Opportunity; Disadvantaged Business Enterprises. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, gender, sexual orientation, age, national origin, political affiliation, disability, or family status. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

16.9 Scrutinized Companies-FL Statute sections 287.135 and 215.473. Contractor certifies that neither the undersigned entity, nor any of its wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for the purpose of making profit have been placed on the Scrutinized Companies that Boycott Israel List created pursuant to s. 215.4725 of the Florida Statutes, or are engaged in a boycott of Israel.

In addition, if the value of the compensation to be paid under this Agreement equals or exceeds one million dollars, Contractor certifies that neither the undersigned entity, nor any of its wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for the purpose of making profit are on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s.215.473 of the Florida Statutes, or are engaged in business operations in Cuba or Syria as defined in said statute.

Contractor understands and agrees that the City may immediately terminate this Agreement upon written notice if the undersigned entity (or any of those related entities of respondent as defined above by Florida law) are found to have certified falsely or if any of the following occur with respect to the company or a related entity: (i) it has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of
Israel, or (ii) for any contract for goods or services of one million dollars or more, it has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or it is found to have been engaged in business operations in Cuba or Syria.

17 COMPLIANCE WITH FEMA 2 CFR 200.318-326 AND APPENDIX II CONTRACT PROVISIONS

17.1 Compliance with the Contract Work Hours and Safety Standards Act.

17.1.1 Overtime requirements. No contractor or subcontractor contracting for any part of the work under this Agreement, which may require or involve the employment of laborers or mechanics, may require or permit any such laborer or mechanic in any workweek in which he or she is employed to perform such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such work week.

17.1.2 Violation; liability for unpaid wages; liquidated damages. If any violation of subsection 17.1.1 Overtime requirements occurs, the Contractor and any subcontractor responsible therefore will be liable for the unpaid wages. In addition, such Contractor and subcontractor will be liable to the United States, for liquidated damages. Such liquidated damages will be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of subsection 17.1.1 Overtime requirements in the sum of $27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages as required by subsection 17.1.1 Overtime requirements.

17.1.3 Withholding for unpaid wages and liquidated damages. The City or State of Florida shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided for in subsection 17.1.2 Violation; liability for unpaid wages; liquidated damages.

17.1.4 Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in subsections 17.1.1 through 17.1.4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subsections 17.1.1 through 17.1.4 of this section.
17.2 **Clean Air Act and the Federal Water Pollution Control Act:** Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

17.2.1 The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

17.2.2 The Contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

17.3 **Suspension and Debarment.**

17.3.1 This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

17.3.2 The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

17.3.3 This certification is a material representation of fact relied upon by City. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

17.4 **Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended):** Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency (See Exhibit D).

17.5 **Access to Records:**

17.5.1 The Contractor agrees to provide the State of Florida, City of DeBary, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records
of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

17.5.2 The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

17.5.3 The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

17.5.4 In compliance with the Disaster Recovery Act of 2018, the City of DeBary and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

17.6 **DHS SEAL, LOGO, AND FLAGS:** The Contractor may not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

17.7 **Compliance with Federal Law, Regulations, and Executive Orders:** This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

17.8 **No Obligation by Federal Government:** The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

17.9 **Program Fraud and False or Fraudulent Statements or Related Acts:** The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor’s actions pertaining to this contract.

18 **MISCELLANEOUS PROVISIONS**

18.1 **Independent Contractor.** Contractor shall provide the services required herein strictly in an independent contractor relationship with the City and, except as otherwise expressly set forth herein, is not, nor may be, construed to be an agent or employee of the City. Nothing herein creates any association, partnership, joint venture or agency relationship between Contractor and the City. The City will not provide vehicles or equipment to Contractor to perform the duties required under this Agreement nor will the City pay for any business, travel, office, or training expense or any other Agreement performance expense not specifically set forth in the Scope of Services of this Agreement. Contractor is not exclusively bound to the City and may provide Services to other private and public entities, but agrees and covenants that any such service provided by Contractor or for such entities will not conflict or otherwise interfere with Contractor's provision of Services to the City under this Agreement.

18.2 **Other Agencies.** Contractor may, upon mutual agreement, permit any municipality or other governmental agency to participate in the Contract under the same prices, terms,
and conditions. At no time will any city or municipality or other agency be obligated to place any order for any other city, municipality, or agency, nor will any city, municipality, or agency be obligated for any liabilities, costs, invoices, or bills incurred by any other city, municipality, or agency. Furthermore, each agency will independently manage its contractual relationship with the Contractor and issue its own purchase orders or task assignments to Contractor.

18.3 **Third Party Beneficiaries.** Neither Contractor nor City intends to directly, incidentally, or substantially benefit a third party via this Agreement. The Parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement. Therefore, the Parties agree that there are no third party beneficiaries to this Agreement and that no third party is entitled to assert a claim against either of the parties based upon this Agreement.

18.4 **Waiver of Claims.** Once the Agreement expires, or final payment has been made, Contractor has no more than thirty (30) calendar days to present or file any claims against the City concerning the Agreement. After that period, the Contractor will be deemed to have waived any right to claims against the City concerning the Agreement.

18.5 **Safety.** Contractor shall take the necessary precautions and bear the sole responsibility for the safety of the methods employed in performing the work. Contractor shall at all times comply with the regulations set forth by federal, state, and local laws, rules, and regulations concerning "OSHA" and all other applicable state labor laws, regulations, and standards. Contractor shall indemnify, defend, and hold harmless the City from and against all liabilities, suits, damages, costs, and expenses (including attorney's fees and court costs) which may be imposed against or upon the City due to the Contractor's, Subcontractor's, or supplier's failure to comply with the regulations.

18.6 **Notice.** All notice required under this Agreement shall be in writing and shall be sent by certified United States Mail or national parcel service, postage prepaid, return receipt requested, or by hand-delivery with a written receipt of delivery, addressed to the party for whom it is intended at the place last specified. When sent in accordance with the foregoing, notice shall be deemed delivered the sooner of (i) when received by the addressee or (ii) five (5) days after being deposited in the mail or with the parcel service. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this article. For the present, the parties designate the following:
<table>
<thead>
<tr>
<th>In the case of City:</th>
<th>with a copies of legal notices to:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>City of DeBary</strong></td>
<td><strong>City of DeBary</strong></td>
</tr>
<tr>
<td>Attn: City Manager</td>
<td>Attn: City Attorney</td>
</tr>
<tr>
<td>Address: 16 Colomba Road</td>
<td>Address: 16 Colomba Road</td>
</tr>
<tr>
<td>DeBary, Florida 32713</td>
<td>DeLand, Florida 32713</td>
</tr>
<tr>
<td>Phone: 386-668-2040</td>
<td>Phone: 386-668-2040</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>In the case of Contractor:</th>
<th>with a copy of legal notices to:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>T.F.R., Inc. of Texas, d/b/a T.F.R. Enterprises, Inc.</strong></td>
<td><strong>T.F.R., Inc. of Texas, d/b/a T.F.R. Enterprises, Inc.</strong></td>
</tr>
<tr>
<td>Attn: Tipton Rowland</td>
<td>Attn: Corporation Service Co.</td>
</tr>
<tr>
<td>Address: 601 Leander Drive</td>
<td>Address: 1201 Hays Street</td>
</tr>
<tr>
<td>Leander, TX 78641</td>
<td>Tallahassee, FL 32301-2525</td>
</tr>
<tr>
<td>Phone: 512 260-3322</td>
<td>Phone: 850 521-1000</td>
</tr>
</tbody>
</table>

18.7 **Assignment.** Contractor may not assign or otherwise convey Contractor’s rights and/or obligations under this Agreement without obtaining the City’s prior written consent, which consent the City may withhold, limit, and/or condition in the City’s sole discretion, including, but not limited to, requiring Contractor or his/her proposed successor in interest to post a new or revised performance bond, whichever is appropriate to ensure performance pursuant to this Agreement. Any consent by the City to assignment under this article must be by written Amendment to the Agreement in a form and substance specified by the City in its sole discretion. If Contractor desires to assign or otherwise convey its rights and/or obligations under this Agreement, Contractor shall provide the City with a written request for City’s consent no less than thirty (30) days prior to the assignment’s proposed effective date. Failure to provide such notice may result in the City assessing a processing fee of Five Hundred Dollars (US $500.00); however, payment of such fee shall not entitle Contractor to the City’s acceptance or approval of its request for assignment. Nothing herein shall preclude the right of the City to waive its rights under this Section but no waiver shall be granted by the City without a written and duly executed amendment to the Agreement.

18.8 **Conflicts.** Neither Contractor nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Contractor’s loyal and conscientious exercise of
judgment related to its performance under this Agreement. Contractor further agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against City in any legal or administrative proceeding in which he, she, or Contractor is not a party, unless compelled by court process. Further, Contractor agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of City in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Contractor or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding. In the event Contractor is permitted pursuant to this Agreement to utilize Subcontractors to perform any Services required by this Agreement, Contractor agrees to require such Subcontractors, by written Agreement, to comply with the provisions of this section to the same extent as Contractor.

18.9 **Audit Right and Retention of Records.** The City shall have the right to audit the books, records, and accounts of Contractor and its subcontractors that are related to this Agreement. Contractor and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Agreement. Contractor shall preserve and make available, at reasonable times for examination and audit by the City, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for a retention period of five (5) years after completion or termination of this Agreement, and any renewals, or as required by Item 65, General Records Schedule GS1-SL for State and Local Government Agencies, effective February 19, 2015 and the Florida Public Records Act (Chapter 119, Florida Statutes), whichever provides for the longer retention period. Contractor shall, by written Agreement, require its subcontractors to agree: (i) to the requirements and obligations of this Article 18.9– Audit Right and Retention of Records, (ii) to be subject to applicable privacy and confidentiality laws and regulations, and (iii) to be subject to Contractor’s privacy and confidentiality policies and procedures. All audits must be performed at Contractor’s home office in Leander, Texas. Nothing in this Article 18.9 – Audit Right and Retention of Records may require Contractor to violate any laws applicable to Contractor as a provider of Disaster Management Services.

18.10 **Location of City Data.** Contractor may not out-source any development and/or support for this Agreement or transfer any City Data outside the territorial limits of the United States of America, without the written approval of the City’s Contract Administrator.

18.11 *Intentionally left blank.*

18.12 **References to City or Contractor.** Contractor agrees that during the term of this Agreement, except as provided herein, Contractor may not reference City in Contractor’s website, and/or press releases, and, may not place City’s name or logo on Contractor’s website or in collateral marketing materials relating to Contractor’s products and Services without prior review and written approval by City. Further, Contractor agrees that it may not use City’s name, logo or any trademarks (including in any press releases, customer "case studies," and the like) without City’s prior written consent. Termination or expiration of this Agreement shall not affect Contractor’s obligation in this regard and
such obligation shall survive the termination or cancellation of this Agreement.

18.13 **Force Majeure.** Neither party will be liable for any failure or delay in the performance of its obligations under the Agreement to the extent such failure or delay necessarily results from the occurrence of a Force Majeure Event beyond the control or reasonable anticipation of either party, including, but not limited to, compliance with any unanticipated government law or regulation not otherwise in effect at the time of execution of this Agreement, acts of God, acts of domestic or international terrorism, unforeseeable governmental acts or omissions, fires, strikes, natural disasters, wars, riots, transportation problems, and/or any other unforeseeable cause whatsoever beyond the reasonable control of the parties (and such cause being referred to as a “Force Majeure Event”). *Due to the nature of this Agreement (i.e., debris removal, reduction, and disposal in the wake of a hurricane or other major storm event), the recent occurrence of a hurricane or major storm event does not qualify as a Force Majeure event excusing performance or delay under this Agreement.* Accordingly, the parties further agree that:

18.13.1 Upon the occurrence of Force Majeure Event, the non-performing party shall be excused from any further performance of those obligations under this Agreement that are affected by the Force Majeure Event for as long as (a) the Force Majeure Event continues; and (b) the non-performing party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

18.13.2 Upon the occurrence of a Force Majeure Event, the non-performing party shall notify the other party of the occurrence of such event and describe in reasonable detail the effect(s) of such event upon the party’s performance of its obligations and duties pursuant to this Agreement. Such notice must be delivered or otherwise communicated to the other party within three (3) business days following the failure or delay caused by the Force Majeure Event, or as soon as possible after such failure or delay if the Force Majeure Event precludes the non-performing party from providing notice within such time period.

18.13.3 In the event of a Force Majeure Event, the time for performance by the parties under the applicable statement of work shall be extended for a period of time equal to the time lost by reason of such cause through execution of a Change Order pursuant to the terms of the Agreement.

18.14 *Intentionally left blank.*

18.15 **Waiver of Breach and Materiality.** Failure to enforce any provision of this Agreement may not be deemed a waiver of such provision or a modification of this Agreement, nor may a waiver of any breach of a provision of this Agreement be deemed a waiver of any subsequent breach and will not be construed to be a modification of the terms of this Agreement.

18.16 **Severance.** In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions will continue to be effective to the extent practicable unless City or Contractor elects to terminate this Agreement.
18.17 **Entire Agreement.** This Agreement contains the entire agreement between Contractor and City. Any modifications to this Agreement shall not be binding unless in writing and signed by both parties.

18.18 **Applicable Law, Venue and Waiver of Jury Trial.** This Agreement will be interpreted and construed in accordance with and governed by the laws of the State of Florida. Jurisdiction over and venue for any controversies or legal issues arising out of this Agreement will, if in state court, be exclusively in the 7th Judicial Circuit in and for the County of Volusia, Florida, or, if in federal court, be exclusively in the Middle District of Florida, Orlando Division. By entering into this Agreement, Contractor and the City hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to this Agreement, and, unless otherwise expressly provided herein, each agrees to bear its own costs and attorney’s fees relating to any dispute arising under this Agreement.

18.19 **Prior Agreements.** This document represents the final and complete understanding of the Parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The Parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

18.20 **Survival.** Any provisions of this contract, including those pertaining to indemnity, warranties, dispute resolution, post-termination claims, maintenance of public records, and other matters in which the parties contemplate continuing obligations beyond the term of this Agreement survive the termination, cancellation, or expiration of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY BLANK –
SIGNATURE PAGE TO FOLLOW]
19 SIGNATURES

IN WITNESS WHEREOF, the parties have made and executed this Agreement for Debris Removal, Reduction and Disposal on the date last written below.

Attest:                      CITY OF DEBARY

______________________________
Carmen Rosamonda
City Manager

BY: __________________________
Karen Chazez
Mayor

Date: _________________________

Attest:                      T.F.R., INC. OF TEXAS, D/B/A T.F.R. ENTERPRISES, INC.

______________________________
Jeffrey J. Jean
Signature

______________________________
Contract Manager, Tiffany J. Jean
Name and Title

BY: __________________________
Signature

CEO _________________________
[TITLE]

Date: 1/25/2022

Date: 1/25/2022

CC Date: __________________________