



## City of Morgan's Point Resort

### Agenda

### City Council

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Friday, June 21, 2024

5:00 PM

MPR LIBRARY – 8 Morgan's  
Point Blvd

To View the meeting go to: [www.MorgansPointResortTX.com/YouTube](http://www.MorgansPointResortTX.com/YouTube)

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1. **Call to Order**

2. **Announcement and Citizen Comments**

*This is an opportunity for members of the public to suggest the addition of topics for the discussion, or to address topics of interest, with the presentation limited to three (3) minutes. All speakers will conduct themselves in an orderly and lawful manner. All speakers will be recognized prior to speaking and will announce their name and address to be included in the minutes. State law prohibits the Mayor and Members of the City Council from commenting on any statement or engaging in dialogue without an appropriate agenda item being posted in accordance with the Texas Open Meetings Law.*

3. **Agenda**

- a. Consider a Resolution authorizing an exigent circumstances debris management services contract with Ceres Environmental Services in an amount not to exceed \$480,000.

4. **Adjourn**

I certify that a copy of the \_6-21-2024\_\_\_ agenda of items to be considered by the Morgan's Point Resort was posted and could be seen on the City Hall bulletin board on the \_\_\_6-18-2024\_\_\_ at 5:00PM and remained posted continuously for at least 72 hours proceeding the scheduled time of the meeting. I further certify that the following news media were properly notified of the above stated meeting: Belton Journal. The meeting facility is wheelchair accessible and accessible parking spaces are available. Request for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Secretary's office at 254-742-3206 for further information.

Camille Bowser, City Secretary



# Exigent Circumstances Debris Management Services Contract

## *By and Between*

**City Of Morgan's Point Resort, Texas**

*and*

**Ceres Environmental Services, Inc.**

This Contract is made and entered into on the dates hereinafter indicated, by and between City Of Morgan's Point Resort, Texas, hereinafter referred to as "Morgan's Point Resort", and Ceres Environmental Services, Inc., hereinafter referred to as "Ceres", a Florida corporation authorized to do and doing business in the State of Texas, represented herein by its Corporate Secretary, Tia Laurie, duly authorized.

### WITNESSETH:

WHEREAS, Morgan's Point Resort requires an emergency contract vehicle for debris removal services following the 2024 Wind Debris Event to eliminate threats to lives, public health, safety, significant damage to public and private property, and to help ensure the economic recovery of Morgan's Point Resort; and,

WHEREAS, Morgan's Point Resort intends to utilize this contracting vehicle based on Bell County's Contract-Diaster and/or Storm Recovery Services RFP 04-23 Contract Dated October 1, 2022 for a short period of time while Morgan's Point Resort conducts Emergency Work as defined by the FEMA Public Assistance Program and prepares a proper procurement that meets Morgan's Point Resort, State and Federal procurement guidelines.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein, Morgan's Point Resort and Ceres hereby agree as follows, to-wit:

### **1. TERM & APPLICABILITY**

To comply with FEMA Fact Sheet on Procurement Under Grants: Under Exigent or Emergency Circumstances (incorporated as Exhibit A), the term of this Contract shall commence upon issuance of Notice to Proceed from Morgan's Point Resort to Ceres and shall expire in thirty (30) days from the Notice to Proceed date. This Contract shall apply to all work performed at the request of Morgan's Point Resort or for the benefit of Morgan's Point Resort during the term hereof (the "Work") unless both parties agree in writing that the terms and conditions hereof shall not apply.

Ceres will provide the Work to Morgan's Point Resort in accordance with the terms and conditions stated herein, and those contained in the Scope of Work and Fee Schedule (Exhibits B and C, respectively). For purposes of this Contract, the order of precedence for interpretation will be as follows:

1. This Contract
2. FEMA Fact Sheet on Procurement Under Grants: Under Exigent or Emergency Circumstances ("Exhibit A")

3. Scope of Work ("Exhibit B")
4. Price Schedule ("Exhibit C")

## **2. SCOPE OF WORK**

Ceres shall perform such Work as Morgan's Point Resort directs during the term hereof following the issuance of a Notice to Proceed. Such work may include, but is not limited to, the removal of debris from public property; removal of debris from public streets and rights-of-way; processing and disposal of debris; preparing and maintaining documentation of all services performed including, but not limited to, time sheets, load tickets, materials used, invoices for rented equipment, etc. The full list of services is provided in Exhibit B.

## **3. NOT TO EXCEED AMOUNT**

The Contract is based on unit prices as set forth in the Price Schedule, Exhibit C. The not-to-exceed amount under this Contract is four hundred eighty thousand dollars and no cents (\$480,000.00) unless amended and approved by City Of Morgan's Point Resort's City Council.

## **4. INVOICING & PAYMENT**

Morgan's Point Resort shall contract with Debris Tech as their debris monitoring firm (Monitor):

Morgan's Point Resort shall pay Ceres for services rendered under this Contract upon submission of invoices in an amount equal to actual hours worked or volume removed, process and disposed of multiplied by the billing rates set forth in Exhibit B Pricing Schedule. All invoices must first be reviewed by the Monitor prior to submittal to Morgan's Point Resort. The Monitor is working under a different contract for Morgan's Point Resort. Ceres shall submit invoices to the Monitor each week for review and verification of actual hours worked or volume removed, process, and disposed of multiplied by the billing rates set forth in Exhibit B Pricing Schedule. The Monitor shall review and verify amounts within ten (10) days of receipt from Ceres. The Monitor shall submit a payment recommendation report prepared and signed by the Monitor for each complete invoice package submitted by the Contractor for services rendered to Morgan's Point Resort. Only reconciled ticket data for the invoiced period noted within the Contractor invoice package will be approved within the payment recommendation. The signed payment recommendation report serves as an acknowledgment that the Monitor has performed a full reconciliation over the invoice submitted by Ceres. Morgan's Point Resort's payment for services shall be governed by Chapter 2251 of the Texas Government Code. Invoices shall be paid by Morgan's Point Resort within thirty (30) days from the date of the City Of Morgan's Point Resort Finance Department's receipt of Monitor's payment recommendation. Interest charges for any late payments shall be paid by Morgan's Point Resort in accordance with Texas Government Code Section 2251.025. More specifically, the rate of interest that shall accrue on a late payment is the rate in effect on September 1 of Morgan's Point Resort's fiscal year in which the payment becomes due. The said rate in effect on September 1 shall be equal to the sum of one percent (1%); and (2) the prime rate published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. In the event that a discrepancy arises in relation to an invoice, such as an incorrect amount on an invoice or a lack of documentation that is required to be attached to an invoice to evidence the amount claimed to be due, Morgan's Point Resort shall notify Ceres of the discrepancy. Following Morgan's Point Resort's notification of any discrepancy as to an invoice, Ceres must resolve the discrepancy and resubmit a corrected or revised invoice, which includes all required support documentation, to the City Of Morgan's

Point Resort Finance Department . Morgan's Point Resort shall pay the invoice within thirty (30) days from the date of the City Of Morgan's Point Resort Resort Finance Department receipt of the corrected or revised invoice. Morgan's Point Resort's payment of an invoice that contains a discrepancy shall not be considered late, nor shall any interest begin to accrue until the thirty-first (31<sup>st</sup>) day following the City Of Morgan's Point Resort Resort Finance Department 's receipt of the corrected or revised invoice.

## **5. AUDIT OF RECORDS**

Ceres agrees that Morgan's Point Resort or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of Ceres which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. Ceres agrees that Morgan's Point Resort shall have access during normal working hours to all necessary Ceres facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. Morgan's Point Resort shall give Ceres reasonable advance notice of intended audits.

## **6. INSURANCE REQUIREMENTS**

### Insurance:

Prior to commencing work, Ceres shall procure and maintain, at Ceres' own cost and expense for the duration of the Contract, the following insurance against claims for injuries to person or damages to property which may arise from, or in connection with, the performance of the work or services hereunder by Ceres, agents, representatives, employees, or subcontractors.

Ceres shall maintain limits no less than: Commercial General/Umbrella Liability Insurance - \$5,000,000.00 aggregate/one million dollars \$1,000,000.00 per occurrence. Coverage is provided on a claims-made or preferably on an occurrence basis. The insurance shall include coverage for the following:

- Premise/Operations
- Explosion, Collapse and underground Property Damage Hazard (only when applicable to the project)
- Products/Completed Operations
- Contractual
- Independent Contractors
- Broad Form Property Damage
- Personal Injury

Business Automobile/Umbrella Liability Insurance - \$1,000,000 limit per accident for property damage and personal injury.

- Owned/Leased Autos
- Non-owned Autos
- Hired Autos

This policy shall include Employers'/Umbrella Liability coverage for \$1,000,000 per accident. Workers' Compensation coverage is required as a condition of performing work or services for Morgan's Point Resort, whether or not Ceres is otherwise required by law to provide such coverage.

Environmental Liability Insurance - \$1,000,000 per occurrence. Pollution Liability Insurance Covering claims for injuries to members of the public or damage to property of others arising out of covered act or omission of the Contractor or any of its employees, agents, subcontractors, or sub-consultants, including Premises and/or Operations, Independent Contractors; Broad Form Property Damage and a Contractual Liability Endorsement with One Million Dollars (\$1,000,000) per occurrence and annual aggregate.

#### Other Insurance Provisions

##### Commercial General Liability and Automobile Liability Coverage's

Morgan's Point Resort, Members of their city council, boards, committees, officers, agents, employees and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of Ceres; products and completed operations of the Ceres or premises on which Ceres is performing on behalf of Morgan's Point Resort. The coverage shall contain no special limitations on the scope of protection afforded to Morgan's Point Resort, members of their city council, boards, and committees, officers, agents, employees and volunteers.

Ceres' insurance coverage shall be primary insurance as respects Morgan's Point Resort, members of their city council, boards, council members and committees, officers, agents, employees and volunteers. Any insurance or self-insurance maintained by Morgan's Point Resort, members their council, boards, council and committees, officers, agents employees and volunteers shall be in excess of Ceres' insurance and shall not contribute with it.

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Morgan's Point Resort, members of their council, boards, council and committees, officers, agents, employees and volunteers. Coverage shall state Ceres' insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

##### Worker's' Compensation and Employer's Liability and Property Coverage's

The insurer shall agree to waive all rights of subrogation against Morgan's Point Resort, members of their council, boards, council members and committees, officers, agents, employees and volunteers for losses arising from activities and operations of Ceres in the performance of services under this agreement. Workman's Compensation Insurance as required by laws and regulations applicable to and covering employees of Contract engaged in the performance of the work under this contract with a limit of not less than \$1,000,000.00.

Umbrella Liability Coverage – Ceres' shall purchase and maintain a policy of Umbrella Liability Coverage in excess of the primary insurance afforded above and including all operations of the proposer, with a minimum limit of \$10,000,000.00.

All Coverage's Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduces in coverage or in limits except after (30) days prior written notice has been given to Morgan's Point Resort.

If Ceres, for any reason, fails to maintain insurance coverage which is required pursuant to this Contract, this shall be deemed a material breach of contract. Morgan's Point Resort, at its sole option, may terminate their respective Contract and obtain damages from Ceres resulting from said breach.

Alternatively, Morgan's Point Resort may purchase such required insurance coverage, but has no special obligation to do so. Without further notice to Ceres, Morgan's Point Resort may deduct from sums due to Ceres any premium costs advanced by Morgan's Point Resort for such insurance.

Morgan's Point Resort names as "additional insured" as its interest may appear.

#### Deductibles and Self-Insured Retention's

Any deductibles or self-insured retentions must be declared to and approved by Morgan's Point Resort. At the option of Morgan's Point Resort, the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Morgan's Point Resort, members of its Morgan's Point Resort boards, council and committees, officers, agents, employees and volunteers; or Ceres shall procure a bond guaranteeing payment of losses, related investigation, claim administration and defense expensed.

#### Acceptability of Insurers

Insurance is to be with Texas admitted insurers rated A or better by A.M. Best's rating service.

#### Verification of Coverage

Ceres shall furnish Morgan's Point Resort with certificates of insurance, with original endorsements affecting coverage required by this clause. The certificates and endorsements for each policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be received and approved by Morgan's Point Resort before work commences.

#### Subcontractors

Ceres shall include each of its subcontractors as insureds under the policies of insurance required herein.

#### Subrogation

All insurance shall include a waiver of subrogation in favor of Morgan's Point Resort and principals for whom Morgan's Point Resort is working, including any and all co-lessors of such principal, and shall be subject to the approval of Morgan's Point Resort. Insurance provided for comprehensive general liability, comprehensive automobile and water vehicle liability, and umbrella liability shall name Morgan's Point Resort as an additional insured party and shall be primary. Certificates shall indicate the waiver of subrogation in favor of Morgan's Point Resort and any principal for whom Morgan's Point Resort is working, including any and all co-lessors of such principal, and the contractual liability assumed under the Indemnity Provision of this Section, and shall specify that in the event of cancellation or material change in coverage, at least sixty (60) days prior written notice will be given to Morgan's Point Resort.

### **7. TERMINATION**

This Contract may be terminated by Morgan's Point Resort or Ceres, should Ceres or Morgan's Point Resort fail to provide in any substantial manner the services and/or commodities required under this Contract, or otherwise fails to comply with the terms of this Contract or the Contract Documents, or violates any ordinance, regulation or other law which applies to its performance under this Contract.

#### Termination for Convenience

Morgan's Point Resort may terminate this Contract, at any time, for any reason by giving at least fifteen (15) days notice in writing to the Ceres. Morgan's Point Resort, at its option, may give Ceres a reasonable period of time to cure the noncompliance. If the Contract is terminated by Morgan's Point Resort as

provided herein, Ceres will be entitled to receive payment for those services actually performed to the date of termination.

#### Termination for Cause

If Ceres fails to comply with any of the terms and conditions of this Contract, Morgan's Point Resort may give notice, in writing, all deficiencies claimed. The notice will be sufficient for all purposes if it describes the default in general terms. If all defaults are not cured and corrected within a reasonable period as specified in the notice, Morgan's Point Resort may, with no further notice, declare this Contract terminated. Ceres will thereafter be entitled to receive payment for those services reasonable performed to the date of termination, less the amount of reasonable damages suffered by Morgan's Point Resort, by reason of Ceres' failure to comply with this Contract.

#### Delays And Excused Performance/Force Majeure

Ceres shall not be considered in default by reason of failure, which arises out of causes reasonably beyond Ceres' control, and without its fault or negligence. Such causes may include, however, not limited to: Acts of God, Morgan's Point Resort's omissive and commissive failures, natural or public health emergencies, labor disputes, freight embargos.

### **8. INDEPENDENT CONTRACTOR**

While in the performance of providing the services outlined herein or carrying out other obligations under this Contract, Ceres shall be acting in the capacity of independent contractor and not as an employee of Morgan's Point Resort. Morgan's Point Resort shall not be obligated to any person, firm, corporation, or other entity of any obligation of Ceres arising from the performance of services under this Contract. Nothing contained in this Contract is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties.

Ceres shall at all times remain an independent contractor with respect to the services to be performed under this Contract. Ceres understands and agrees that Morgan's Point Resort shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and benefits, including Worker's Compensation insurance for any member, manager, employee, agent, servant, or volunteer of Ceres, as Ceres is an independent contractor.

### **9. CONTRACT EXECUTION AND AMENDMENT**

This Contract, together with Exhibit A, B, and C represent the entire agreement between Morgan's Point Resort and Ceres. This Contract supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may be amended only by written instrument signed by both parties.

### **10. APPLICABLE LAW AND VENUE**

This Contract shall be consummated in Bell County, Texas and shall be governed and construed in accordance with the laws of the State of Texas. Venue shall be in Bell County, Texas and by entering into this Contract, Ceres expressly waives any objections it has or may have to jurisdiction and venue, regardless of Ceres' residence or domicile.

### **11. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS**

Ceres shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. Ceres shall include this provision in all subcontracts issued as a result of this Agreement.



## **12. INDEMNIFICATION**

To the fullest extent permitted by law, Ceres shall protect, defend, indemnify, save and hold harmless Morgan's Point Resort, all Morgan's Point Resort departments, agencies, boards and council its officers, agents, servants and employees including volunteers from and against any and all claims, demands, expense and liability arising out of liability or death to any person or the damage, loss or destruction of any property which may occur or in any way grow out of any act or omission of Ceres, its agents, servants, and employees while performing any of the services contemplated under this Contract and any and all costs, expense or attorney's fees incurred by Ceres as a result of any such claims, demands and/or causes of action, except for those claims, demands, or causes of action arising out of the negligence of Morgan's Point Resort, its agents and/or employees. Ceres agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demands, or causes of action at its sole expense, and agrees to bear all other costs and expenses related thereto, even if proven to be groundless, false or fraudulent.

## **13. No Waiver of Sovereign Immunity or Powers**

Nothing in this Contract will be deemed to constitute a waiver of sovereign immunity or powers of Morgan's Point Resort, the City Of Morgan's Point Resort City Council, or City Of Morgan's Point Resort Judge.

## **14. Confidentiality**

Ceres expressly agrees that he or she will not use any incidental confidential information that may be obtained while working in a governmental setting for his or her own benefit, and agrees that he or she may not enter any unauthorized areas or access confidential information and he or she will not disclose any information to unauthorized third parties, and will take care to guard the security of the information at all times.

## **15. Public Information:**

Ceres understands that Morgan's Point Resort will comply with the Texas Public Information Act as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other materials in connection with this Contract may be subject to public disclosure pursuant to the Texas Public Information Act.

## **16. Damage to Morgan's Point Resort Property:**

Ceres shall be liable for all damages to Morgan's Point Resort owned, leased, or occupied property and equipment caused by Ceres and its employees, agents, subcontractors, and suppliers, including any delivery or transportation company, in connection with any performance pursuant to this Contract. Ceres shall notify Morgan's Point Resort in writing of any damage within one (1) calendar day.

## **17. NOTICES**

Any communications by either party to the other shall be deemed to be duly given if set forth in writing, and personally delivered or sent by mail, registered or certified, postage prepaid with return receipt requested as follows:

Notices should be sent to Morgan's Point Resort at the following address:

Dennis Baldwin  
8 Morgan's Point Resort Boulevard

Morgan's Point Resort, TX 76513-6438  
 Attn: Dennis Baldwin  
 254-669-4559 (Cell)  
 254-346-4101 (Office)  
[citymanager@mprtx.us](mailto:citymanager@mprtx.us)

Notices should be sent to Ceres at the following address:

Ceres Environmental Services, Inc.  
 ATTN: Tia Laurie  
 6371 Business Boulevard, Suite 100  
 Sarasota, Florida 34240  
 1-800-218-4424  
[Tia.laurie@ceresenv.com](mailto:Tia.laurie@ceresenv.com)

Written notices delivered personally shall be deemed communicated as of actual receipt. Mailed notices shall be deemed communicated five (5) days after deposit in the mail, postage prepaid, certified, in accordance with this Section.

#### **18. SEVERABILITY**

The parties to this Contract understand and agree that the provisions herein, shall, between them, have the effect of law, but in reference to matters not provided herein, the Contract shall be governed by the regulations of the United States and the laws of the State of Texas. If any provision of this Contract is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Contract, such provision is fully severable, and this Contract must be construed and enforced as if such illegal, invalid, or unenforceable provisions never comprised a part of this Contract and the remaining provisions of this Contract remain in full force and effect and may not be affected by the illegal, invalid, or unenforceable provision or its severance from this Contract.

#### **19. ASSIGNMENT**

This Contract may not be assigned or transferred at any time to any person, firm, corporation or other legal entity except with the express prior written approval of Morgan's Point Resort.

#### **20. DISCRIMINATION CLAUSE**

Ceres agrees to abide by the requirements of the following as applicable: Title VI and VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Federal Executive Order 11246, the Federal Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Act of 1975, and Ceres agrees to abide by the requirements of the Americans with Disabilities Act of 1990. Ceres agrees to provide a work environment free of potential harassment and not to discriminate in its employment practices and will render services under this Contract without regard to race, color, religion, sex, sexual orientation, national origin, veteran status, political affiliation, or disabilities. Any act of discrimination committed by Ceres, or failure to comply with these statutory obligations when applicable shall be grounds for termination of this Contract.

#### **21. OWNERSHIP OF RECORDS**

When applicable, all records, reports, documents, or other material related to this Contract and/or obtained or prepared by Ceres in connection with the performance of the services contracted herein, shall become the property of Morgan's Point Resort, and shall, upon request, be returned by Ceres to Morgan's Point Resort, at Ceres' expense, at the termination or the expiration of this Contract.

## **22. FEDERAL CLAUSES**

Ceres agrees to the following miscellaneous terms and provisions for all federally funded and reimbursable contracts:

### **A. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.**

- 1) In accordance with 2 C.F.R. § 200.321, Ceres shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- 2) Affirmative steps for the prime contractor to take regarding subcontractors must include:
  - a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists.
  - b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
  - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
  - d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
  - e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- 3) Contractor shall sign the Statement of Compliance - Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.

### **B. Debarment and Suspension:**

Morgan's Point Resort and Ceres are subject to the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 3000 (Non- procurement Debarment and Suspension).

- 1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such Ceres is required to verify that none of the contractor, its 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).
- 2) Ceres 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.
- 3) This certification is a material representation of fact relied upon by Ceres. If it is later determined that Ceres 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 Morgan's Point Resort, the Federal Government may pursue available remedies, including but not limited to suspension and/ or debarment.

- 4) Ceres agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, sub-part C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**C. Byrd Anti-Lobbying Amendment 31 U.S.C. § 1352 (as amended)**

Contractors who 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. Contractor shall sign the Byrd Anti Lobbying Certification for Contracts, Grants, Loans, and Cooperative Agreements form.

**D. DHS Seal, Logo, and Flags**

Ceres shall not use the Department Homeland Security seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

**E. Compliance with Federal Law, Regulations, and Executive Orders**

Contract financial assistance will be used to fund the contract only. The contractor will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

**F. 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.

**G. Program Fraud and False or Fraudulent Statements or Related Acts**

Ceres 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. Ceres SHALL ABIDE BY THE FOLLOWING PROVISIONS IF THE BOXES ARE CHECKED.

**H. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES.**

- 1) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—
- 2) *Prohibitions.*
  - a. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

- b. Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
  - i. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
  - ii. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
  - iii. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
  - iv. Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

### 3) *Exceptions.*

- a. This clause does not prohibit contractors from providing—
  - i. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
  - ii. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- b. By necessary implication and regulation, the prohibitions also do not apply to:
  - i. Covered telecommunications equipment or services that:
    - 1. Are *not used* as a substantial or essential component of any system; and
    - 2. Are *not used* as critical technology of any system.
- c. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

### 4) *Reporting requirement.*

- a. In the event the Ceres identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or Ceres is notified of such by a subcontractor at any tier or by any other source, Ceres shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
- b. Ceres shall report the following information pursuant to paragraph (d)(1) of this clause:
  - i. Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

- ii. Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, Ceres shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.
- 5) *Subcontracts*. Ceres shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

## **I. DOMESTIC PREFERENCES FOR PROCUREMENTS**

As appropriate, and to the extent consistent with law, Ceres should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

- *Produced in the United States* means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- *Manufactured products* mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

## **J . COPYRIGHT AND DATA RIGHTS**

Ceres grants to Morgan's Point Resort, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, Ceres will identify such data and grant to Morgan's Point Resort or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, Ceres will deliver to Morgan's Point Resort data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by Morgan's Point Resort.

### **[ X ] Federally Assisted Construction Contract**

As required by 41 C.F.R. Part 60-1.4(b), during the performance of this contract, Ceres agrees as follows:

- 1) Ceres will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Ceres will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, 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.

- Ceres agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- 2) Ceres will, in all solicitations or advertisements for employees placed by or on behalf of the Ceres, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
  - 3) Ceres will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Ceres' legal duty to furnish information.
  - 4) Ceres will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Ceres' commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
  - 5) Ceres will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
  - 6) Ceres will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders. In the event of Ceres' noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Ceres may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
  - 7) Ceres will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Ceres will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided*, however, that in the event Ceres becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, Ceres may request the United States to enter into such litigation to protect the interests of the United States.
  - 8) Morgan's Point Resort further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if Morgan's Point Resort so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality

or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Ceres and subcontractor with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

- 9) Morgan's Point Resort further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Ceres debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Ceres and subcontractor by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, Morgan's Point Resort agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings."

#### **[ X ] PROCUREMENT OF RECOVERED MATERIALS**

Morgan's Point Resort and Ceres must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- 1) In the performance of this contract, Ceres shall make maximum use of products containing recovered materials that are EPA designated items unless the product cannot be acquired:
  - a. Competitively within a timeframe providing for compliance with the contract performance schedule;
  - b. Meeting contract performance requirements; or
  - c. At a reasonable price.
- 2) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designate items is available at <http://www.epa.gov/cpg/products.htm>."



**[ X ] FEMA REQUIREMENTS****(1) CHANGE OR MODIFICATION.**

To be eligible for FEMA assistance under a FEMA grant or cooperative agreement, the cost of a change, modification, change order, or constructive change must be allowable, allocable, within the scope of the grant or cooperative agreement, and reasonable for the completion of the project scope. Accordingly, Ceres shall comply with the following:

**CHANGE IN THE WORK OR TERMS OF THE PROJECT DOCUMENTS**

- 1) Without invalidating the contract, Morgan's Point Resort reserves and shall have the right, from time to time to make such increases, decreases or other changes in the character or quantity of the work as may be considered necessary or desirable to complete fully and acceptably the project in a satisfactory manner in accordance with the scope of the FEMA grant or cooperative agreement. Any extra or additional Services within the scope of the Request must be accomplished by means of appropriate Field Orders, Change Orders, or Amendments.
- 2) The Contract Administrator shall have the right to approve and issue Field Orders, Change Order, or Amendments setting forth written interpretations of the intent of the project documents and ordering minor changes in work execution, providing the Field Order, Change Order, or Amendment involves no change in the Contract Price or the Contract Time.
- 3) Changes in the quantity or character of the Services within the scope of the Request which are not properly the subject of Field Orders, including all changes resulting in changes in the Contract Price, or the Contract Time, shall be authorized only by Change Orders or Amendments approved in advance and issued in accordance with the provisions of Morgan's Point Resort's Procurement Code, as amended from time to time.

**(2) ACCESS TO RECORDS.**

- 1) In addition to the requirements of Executive Order 11246 of September 24, 1965, Ceres and their successors, transferees, assignees, and subcontractors acknowledge and agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities, and staff. See DRS Standard Terms and Conditions, v 3.0, if XXVI (2013).
- 2) Ceres agrees to provide Morgan's Point Resort, 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 Ceres which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- 3) Ceres agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- 4) Ceres agrees to provide the FEMA Administrator or his authorized representative access to construction or other work sites pertaining to the work being completed under the contract.

**[ X ] CONTRACTS IN EXCESS OF \$100,000.00 THAT INVOLVE THE EMPLOYMENT OF MECHANICS OR LABORERS****Contract Work Hours and Safety Standards Act**

- 1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on 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 workweek.

- 2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in this section, in the sum of \$10 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 required by the clause set forth in this section.
- 3) Withholding for unpaid wages and liquidated damages. Morgan's Point Resort 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 Ceres 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 in the clause set forth in this section.
- 4) Subcontracts. Ceres or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (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 paragraphs (1) through (4) of this section.

**[ X ] CLEAN AIR ACT & FEDERAL WATER POLLUTION CONTROL ACT – CONTRACTS IN EXCESS OF \$150,000.00**

- 1) Ceres agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- 2) Ceres agrees to report each violation to Morgan's Point Resort and understands and agrees that Morgan's Point Resort will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.
- 3) Ceres agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA. FEDERAL WATER POLLUTION CONTROL ACT (1) Ceres agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- 4) Ceres agrees to report each violation to Morgan's Point Resort and understands and agrees that Morgan's Point Resort, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

**"Compliance with the Copeland "Anti-Kickback" Act.**

Ceres shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this contract. Ceres or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Ceres shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a Ceres and subcontractor as provided in 29 C.F.R. § 5.12.

**IN WITNESS WHEREOF**, the parties have executed this Contract before the undersigned competent witnesses on the dates hereinafter indicated.

**City Of Morgan's Point Resort, Texas**

By: \_\_\_\_\_  
Dennis M. Baldwin, City Manager

Date: \_\_\_\_\_

**Ceres Environmental Services, Inc.**

By: \_\_\_\_\_  
Tia Laurie, Corporate Secretary

Date: \_\_\_\_\_

## BYRD ANTI LOBBYING CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

### To be submitted with each bid or offer exceeding \$100,000.00

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

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

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

\_\_\_\_\_  
Signature of Contractor's Authorized Official

Tia Laurie, Corporate Secretary

Name and Title of Contractor's Authorized Official

Date: \_\_\_\_\_

**STATEMENT OF COMPLIANCE - SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS**

The undersigned CONTRACTOR hereby swears under penalty of perjury that CONTRACTOR took the following affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms were used when possible:

- a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- b) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- e) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Dated: \_\_\_\_\_, 20\_\_

Ceres Environmental Services, Inc.  
(Contractor)

By: \_\_\_\_\_  
(Signature)

By: Tia Laurie, Corporate Secretary  
(Name and Title)

## FACT SHEET

# Procurement Under Grants: Under Exigent or Emergency Circumstances

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The Federal Emergency Management Agency (FEMA) provides financial assistance to states, territories, tribes, local governments, nonprofits, institutions of higher education, and other non-Federal entities. All FEMA grant programs are subject to the Federal procurement standards found at 2 C.F.R. §§ 200.317 – 200.326. Recognizing that FEMA’s recipients and subrecipients may face exigencies or emergencies when carrying out a FEMA award, this Fact Sheet provides key information to consider when utilizing contracted resources under exigent or emergency circumstances.

## What Rules Apply to State Entities?

States are required to follow their own procurement procedures as well as the Federal requirements for procurement of recovered materials and inclusion of required contract provisions per 2 C.F.R. §§ 200.317, 200.322, and 200.326.

For purposes of the Federal procurement requirements, states are defined as the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of Northern Mariana Islands, and any agency or instrumentality thereof except for local governments. Tribal governments are not considered to be states when applying Federal procurement standards required by 2 C.F.R. Part 200.

## What Rules Apply to Non-State Entities?

For all other types of entities, referred to as “non-state entities” in this Fact Sheet, Federal regulations (2 C.F.R. Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) establish requirements for the exigency or emergency exception that permits the use of noncompetitive procurements, frequently referred to as “sole-source contracting.” This exception and associated procurement requirements are discussed further below. In general, it will be fact-specific and entity-specific as to when exigent or emergency circumstances necessitate the use of noncompetitive procurements. The answers to the frequently asked questions below provide additional guidance on the acceptable use of noncompetitive proposals under exigent or emergency circumstances, which is described in regulation at 2 C.F.R. § 200.320(f)(2).



# FEMA

It is essential that all non-state entities understand that both FEMA and the U.S. Department of Homeland Security's Office of Inspector General (OIG) closely review procurement actions and contract selections, with a particular emphasis on noncompetitive procurement actions, to evaluate compliance with Federal requirements. ***Failure to follow Federal contracting and procurement requirements puts non-state entities at risk of not receiving reimbursement or not being able to use FEMA grant funds for otherwise eligible costs.***

## What is the exigency or emergency exception?

Non-state entities must follow the procurement requirements found at 2 C.F.R. §§ 200.317 – 200.326. However, Federal regulations allow for noncompetitive procurements under certain circumstances, including when a non-state entity determines that immediate actions required to address the public exigency or emergency cannot be delayed by a competitive solicitation. This represents an exception to requirements for full and open competition. FEMA approval is not required for use of noncompetitive procurements under the emergency or exigency exception; however, the non-state entity must document its justification for using noncompetitive procurements and must still comply with other procurement requirements and ensure that costs are reasonable.

When referring to procurement activity, FEMA defines both exigency and emergency as situations that demand immediate aid or action. The difference between the two is that:

- In the case of an **exigency**, there is a need to avoid, prevent, or alleviate serious harm or injury, financial or otherwise, to the non-state entity, and use of competitive procurement proposals would prevent the urgent action required to address the situation. Thus, a noncompetitive procurement may be appropriate.
- In the case of an **emergency**, a threat to life, public health or safety, or improved property requires immediate action to alleviate the threat.

While emergency conditions generally are short-lived, exigent circumstances can exist for a period of weeks or months.

- **Exigency Example:** A tornado impacts a city in June and causes widespread and catastrophic damage, including damage to a city school. The city wants to repair the school and have it ready for use by the beginning of the school year in September. The city estimates, based on past experience, that awarding a contract using a sealed bidding process would require at least 90 days, and the city's engineer estimates that the repair work would last another 60 days. This would extend the project beyond the beginning of the school year. Rather than conducting a sealed bidding process, the city—in compliance with state and local law—wants to sole source with a contractor it has contracted with previously. The city can demonstrate that this constitutes an “exigent circumstance” because use of a sealed bidding process would cause an unacceptable delay and thus procurement by noncompetitive methods was necessary based on the particular situation.
- **Emergency Example #1 (Disaster Grants):** Severe weather impacts a city and causes widespread and catastrophic damage, including loss of life, widespread flooding, loss of power, damage to public and private structures, and millions of cubic yards of debris across the city, leaving almost the entire jurisdiction inaccessible. The city needs to begin debris removal activities immediately to restore access to the community, support search and rescue operations, power restoration, and address health and safety concerns. Under these circumstances, the city may find it necessary to award noncompetitive contracts to address threats to life, property, and public health.

- **Emergency Example #2 (Non-Disaster Grants):** The weather in a city has been below freezing for the past 2 weeks, causing a pipe in the city's emergency operations center to burst and flood the first floor. This flood destroyed half of the city's radios that its emergency workers use to communicate with police and fire personnel. The city documented and demonstrated that it needed to replace these radios right away to avert an immediate threat to life, safety, or property as the city needed a full supply of radios in order to respond to emergencies. Under these circumstances, the city may find it necessary to award noncompetitive contracts to address threats to life, property, and public health.

## When does the exigency or emergency exception apply and for how long?

Use of the public exigency or emergency exception *is only permissible during the actual exigent or emergency circumstances*. Exigency or emergency circumstances will vary for each incident, making it difficult to determine in advance or assign a particular time frame when noncompetitive procurements may be warranted. Exigent or emergency circumstances may exist for two days, two weeks, two months, or even longer in some cases. Non-state entities must ensure that work performed under the noncompetitively procured contracts is specifically related to the exigent or emergency circumstance in effect at the time of procurement. Importantly, because the exception to competitive procurement is available only while the exigent or emergency circumstances exist, non-state entities should, upon awarding a noncompetitive contract, immediately begin the process of competitively procuring similar goods and services in order to transition to the competitively procured contracts as soon as the exigent or emergency circumstances cease to exist.

FEMA may review a non-state entity's justification that exigent or emergency circumstances warrant an exception to competitive procurement. If the agency determines that exigent or emergency circumstances did not exist or did not preclude a non-state entity from adhering to competitive procurement requirements, FEMA may disallow all or part of the non-state entity's cost related to the contract or take other actions permitted by statute and regulation. (See 2 C.F.R. § 200.338).

## What documentation is required to support the use of the exigency or emergency exception?

While FEMA approval is not required for a non-state entity to use noncompetitive procurement proposals under the emergency or exigency exception, non-state entities must document and provide justification for the use of the exigent or emergency exception. A list of elements that non-state entities may wish to include as part of their written justifications can be found at the end of this Fact Sheet. The justification must be included in the non-state entity's records for each FEMA award, subaward, or project.

## Do any Federal procurement requirements apply if a non-state entity is sole-sourcing a contract under exigent or emergency circumstances?

Yes, non-state entities must comply with the following requirements even when exigent or emergency circumstances exist:

- Contracts must include the required contract clauses (2 C.F.R. § 200.326 & Appendix II) (also applicable to states).
- Contracts exceeding the Federal simplified acquisition threshold must include the Federal bonding requirements if the contract is for construction or facility improvement (2 C.F.R. § 200.325).



- Contracts must be awarded to a responsible contractor (2 C.F.R. § 200.318(h)).
- The non-state entity must complete a cost or price analysis to determine that the cost or price of the contract is fair and reasonable if the contract exceeds or is expected to exceed the Federal simplified acquisition threshold (2 C.F.R. § 200.323(a) and (b)).
- The use of cost-plus-percentage-of-cost contracting is prohibited (2 C.F.R. § 200.323(c)).
- Use of time and materials contracts must comply with 2 C.F.R. § 200.318(j).
- The non-state entity must follow documentation, oversight, and conflict of interest requirements among other general procurement requirements in 2 C.F.R. § 200.318. If a conflict of interest is unavoidable due to the exigent/emergency circumstances, the non-state entity must explain that in the procurement documentation.

### What if the non-state entity wants to use a pre-awarded or pre-existing contract in an exigency or emergency and that contract does not comply with the Federal procurement requirements?

If a pre-awarded or pre-existing contract is not in compliance with the Federal procurement requirements (e.g., the contract was not fully and openly competed (see 2 C.F.R. §§ 200.319, 200.320), the six affirmative socioeconomic contracting steps were not completed (2 C.F.R. § 200.321), there is a conflict of interest involved (2 C.F.R. § 200.318)), it may still be possible to use the contract for the duration of the exigency or emergency. FEMA recommends that non-state entities review the list of procurement requirements above and take actions to modify pre-awarded or pre-existing contracts where applicable. In addition, non-state entities must prepare the appropriate documentation to justify the use of a noncompetitively procured contract.

### Can non-state entities use time and materials (T&M) contracts in an exigency or emergency?

Yes, but only under certain circumstances. FEMA advises against the use of T&M contracts and generally limits the use of these contracts to a short time period where the scope or duration of the work is unclear. T&M contracts do not incentivize contractors to control costs or maximize labor efficiency. FEMA may reimburse costs incurred under a T&M contract only if all of the following apply:

- No other contract was suitable;
- The contract has a ceiling price that the contractor exceeds at its own risk; and
- The non-state entity can demonstrate it provided a high degree of oversight to obtain reasonable assurance that the contractor used efficient methods and effective cost controls.

### Can a non-state entity award cost-plus-a-percentage-of-cost contracts or contracts with a percentage-of construction-cost method in an exigency or emergency?

No. This prohibition applies to all work, regardless of the circumstances (2 C.F.R. § 200.323(d)).

## Can non-state entities use *piggyback* contracts in an exigency or emergency?

Piggyback contracting occurs when one entity with an existing contract assigns some or all of its contractual rights to another entity that was not previously party to the contract. Generally, FEMA discourages piggyback contracts because the original contract pertains to the needs of the original entity with a specific scope of work for that entity. While there may be circumstances when piggybacking is permissible, in almost all instances, the scope of work would need to be changed to include the needs of a non-state entity, and changes to the scope of work are generally not permitted as there is not likely to be full and open competition for the expanded scope of work. However, during emergency and exigency circumstances, non-state entities may be able to piggyback another entity's contract and expand the scope of a contract for the period of the emergency or exigency circumstance.

Note that a non-state entity may choose to enter into a separate contract with the same contractor as another entity, using the same terms and conditions as in that other entity's contract, with only a change in the scope of work and the associated costs. However, this is sole-source contracting rather than piggyback contracting, and it must meet the requirements for noncompetitive procurement under exigency or emergency circumstances as described elsewhere in this Fact Sheet.

If a non-state entity is contemplating the use of piggyback contracting, it should contact its state or territory liaison, or the applicable FEMA Program Office to request FEMA assistance with contract review. For assistance with FEMA contact information, the entity should contact the Centralized Scheduling and Information Desk (CSID) help line at (800) 368-6498 or [askcsid@fema.dhs.gov](mailto:askcsid@fema.dhs.gov). CSID hours of operation are from 9 a.m. to 5 p.m. ET, Monday through Friday.

## Can states use time and materials (T&M) or cost-plus-percentage-of-cost (CPPC) contracts in an exigency or emergency?

While the Federal procurement rules do not prohibit the use of T&M contracts and CPPC contracts by states, FEMA discourages states from using these contracts because they generally lack provisions that control costs and maximize efficiency in performing work. FEMA and the OIG closely scrutinize these types of contracts for cost reasonableness.

Although T&M contracts are discouraged, there may be instances where T&M contracts are appropriate in the short term for activities such as debris removal, emergency power restoration, or other immediate actions required to address emergency health and safety threats under a Public Assistance award. States entering into T&M contracts are encouraged to include language in the contract that specifies a ceiling price and limits the duration of the contract to a short time period, thus providing the state time to develop a scope of work and transition to the more competitive procurement procedures.

As a reminder, 2 C.F.R. § 200.317 requires states to follow: (1) the same policies and procedures they use for procurements using non-Federal funds; (2) 2 C.F.R. § 200.322 (procurement of recovered materials); and (3) 2 C.F.R. § 200.326 (required contract provisions). These requirements apply regardless of whether exigency or emergency circumstances exist. States must ensure that they are also in compliance with the cost principles in 2 C.F.R. §§ 200.400 – 200.474, including ensuring that costs are reasonable, as defined in 2 C.F.R. § 200.404.

## Additional Information and Resources

Non-state entities should consult as soon as possible with all appropriate parties, including their own legal counsel, to review their procurement policies, actions, and contracts and compare them to the Federal procurement requirements. Non-state entities also should contact their state or territory liaisons, or applicable FEMA Program Office to request assistance with any procurement activity concerns. For assistance with FEMA contact information, the entity should contact the Centralized Scheduling and Information Desk (CSID) help line at (800) 368-6498 or [askcsid@fema.dhs.gov](mailto:askcsid@fema.dhs.gov). CSID hours of operation are from 9 a.m. to 5 p.m. ET, Monday through Friday.

Detailed procurement and contracting information is available on the FEMA website at [www.fema.gov/procurement-disaster-assistance-team](http://www.fema.gov/procurement-disaster-assistance-team). While the guidance available at that website is specifically applicable to FEMA's Public Assistance Program, it is a useful resource for FEMA's other grant programs as the procurement requirements in 2 C.F.R. Part 200 apply to all of FEMA's grant programs. The current Code of Federal Regulations referenced in this guidance can be accessed at [www.eCFR.gov](http://www.eCFR.gov). The annual Code of Federal Regulations is available at <https://www.govinfo.gov/app/collection/cfr>, and the applicable regulations will be the ones in place at the time FEMA issued the declaration or made the award.

## Suggested Elements for Noncompetitive Procurement Justification

1. Identify which of the four circumstances listed in 2 C.F.R. § 200.320(f) justify a noncompetitive procurement:
  - The item is available only from a single source;
  - The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
  - The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
  - After solicitation of a number of sources, competition is determined inadequate.
2. Provide a brief description of the product or service being procured, including the expected amount of the procurement.
3. Explain why a noncompetitive procurement is necessary. If utilizing the exigency/emergency exception, the justification should explain the nature of the public exigency or emergency, including specific conditions and circumstances that clearly illustrate why procurement other than through noncompetitive proposals would cause unacceptable delay in addressing the public exigency or emergency. (Failure to plan for transition to competitive procurement cannot be the basis for continued use of noncompetitive procurement based on public exigency or emergency).
4. State how long the noncompetitively procured contract will be used for the defined scope of work and the impact on that scope of work should the noncompetitively procured contract not be available for that amount of time (e.g., how long do you anticipate the exigency or emergency circumstances will continue; how long will it take to identify your requirements and award a contract that complies with all procurement requirements; or how long would it take another contractor to reach the same level of competence).

5. Describe the specific steps taken to determine that full and open competition could not have been used, or was not used, for the scope of work (e.g., research conducted to determine that there were limited qualified resources available that could meet the contract provisions).
6. Describe any known conflicts of interest and any efforts that were made to identify possible conflicts of interest before the noncompetitive procurement occurred. If no efforts were made, explain why. If a conflict of interest is unavoidable, such as due to exigent/emergency circumstances, explain how it was unavoidable and any steps taken to address the impact of that conflict of interest.
7. Include any other information justifying the use of noncompetitive procurement in the specific instance.

**NOTE: A separate justification is required for each instance of noncompetitive procurement.**

## **Exigent Circumstances Debris Management Services Contract**

### **Exhibit B – Scope of Work**

Ceres shall perform Work as City of Morgan's Point Resort directs during the term hereof following the issuance of a Notice to Proceed. Such may include, but is not limited to, the provision of the following:

- Traffic control
- Debris separation crew
- Debris consolidation crew
- Removal and hauling vegetative debris
- Grinding vegetative debris
- Air curtain burning of vegetative debris
- Open or enhanced burning of vegetative debris
- Debris management site operations
- Loading and hauling of ground vegetative material
- Loading and hauling of ash residual from burning
- Removal of hazardous hanging limbs
- Removal of hazardous trees
- Removal of hazardous stumps
- Removal of waterway debris

All work shall conform to FEMA eligible requirements from the FEMA's Public Assistance Program and as provided for in the Public Assistance Program and Policy Guide and any Disaster Specific Guidance issued during the course of the Contract.

## C Proposal Pricing

UNIT RATE PRICE FORM		
<b>1. ROW Vegetative Debris Removal (Collect &amp; Haul)</b>		
Work consists of all labor, equipment, fuel, traffic control and associated costs necessary for the collection and transportation of eligible vegetative debris on the ROW and Authorized User-owned property to an approved DMS.		<b>\$ Per Cubic Yard</b>
<b>A</b>	0 to 5 miles	\$ 7.65
<b>B</b>	5.1 to 10 miles	\$ 7.95
<b>C</b>	10.1 to 15 miles	\$ 8.25
<b>D</b>	15.1 to 20 miles	\$ 8.55
<b>E</b>	20.1 to 25 miles	\$ 8.85
<b>F</b>	25.1 to 27 miles	\$ 8.95
<b>G</b>	27.1 miles and over (\$ Per Cubic Yard Per Mile)	\$ 0.19
<b>2. ROW C&amp;D Debris Removal (Collect &amp; Haul)</b>		
Work consists of all labor, equipment, fuel, traffic control and associated costs necessary for the collection and transportation of eligible C&D debris on the ROW and Authorized User-owned property to an approved DMS or an approved disposal facility.		<b>\$ Per Cubic Yard</b>
<b>A</b>	0 to 5 miles	\$ 7.88
<b>B</b>	5.1 to 10 miles	\$ 8.19
<b>C</b>	10.1 to 15 miles	\$ 8.50
<b>D</b>	15.1 to 20 miles	\$ 8.81
<b>E</b>	20.1 to 25 miles	\$ 9.12
<b>F</b>	25.1 to 27 miles	\$ 9.22
<b>G</b>	27.1 miles and over (\$ Per Cubic Yard Per Mile)	\$ 0.19
<b>3. DMS Management and Operations</b>		
Work consists of all labor, equipment, fuel, and associated costs necessary for the construction, management, operation and remediation of DMS for acceptance, management, segregation, and staging of disaster related debris.		<b>\$ Per Cubic Yard</b>
		\$ 1.44
<b>4. Reduction of Vegetative Debris Through Grinding</b>		
Work consists of all labor, equipment, fuel, and miscellaneous costs necessary to reduce disaster generated vegetative debris through grinding.		<b>\$ Per Cubic Yard</b>
		\$ 2.56
<b>5. Reduction of Vegetative Debris Through Air Curtain Incineration</b>		
Work consists of all labor, equipment, fuel, and miscellaneous costs necessary to reduce disaster generated vegetative debris through air curtain incineration.		<b>\$ Per Cubic Yard</b>
		\$ 1.64
<b>6. Reduction of Vegetative Debris Through Open Burn</b>		
Work consists of all labor, equipment, fuel, and miscellaneous costs necessary to reduce disaster generated vegetative debris through open burn.		<b>\$ Per Cubic Yard</b>
		\$ 0.54
<b>7. Reduction of C&amp;D Debris Through Compaction</b>		
Work consists of all labor, equipment, fuel, and miscellaneous costs necessary to reduce disaster generated C&D debris through compaction.		<b>\$ Per Cubic Yard</b>
		\$ 1.20
<b>8. Haul-out of Reduced Debris (Mulch) to Final Disposal Site</b>		
Work consists of all labor, equipment, fuel, and associated costs necessary for loading and transporting reduced debris (mulch) at an approved DMS to a final disposal facility.		<b>\$ Per Cubic Yard</b>
<b>A</b>	0 to 5 miles	\$ 2.89
<b>B</b>	5.1 to 10 miles	\$ 3.09
<b>C</b>	10.1 to 15 miles	\$ 3.29
<b>D</b>	15.1 to 20 miles	\$ 3.49
<b>E</b>	20.1 to 25 miles	\$ 3.69
<b>F</b>	25.1 to 27 miles	\$ 3.89
<b>G</b>	27.1 miles and over (\$ Per Cubic Yard Per Mile)	\$ 0.19

<b>9. Haul-out of Reduced Debris (Ash) to Final Disposal Site</b>		<b>\$ Per Cubic Yard</b>
Work consists of all labor, equipment, fuel, and associated costs necessary for loading and transporting reduced debris (ash) at an approved DMS to a final disposal facility.		
<b>A</b>	0 to 5 miles	\$ 3.98
<b>B</b>	5.1 to 10 miles	\$ 4.33
<b>C</b>	10.1 to 15 miles	\$ 4.68
<b>D</b>	15.1 to 20 miles	\$ 5.03
<b>E</b>	20.1 to 25 miles	\$ 5.38
<b>F</b>	25.1 to 27 miles	\$ 5.73
<b>G</b>	27.1 miles and over (\$ Per Cubic Yard Per Mile)	\$ 0.23
<b>10. Haul-out of Reduced Debris (C&amp;D) to Final Disposal Site</b>		<b>\$ Per Cubic Yard</b>
Work consists of all labor, equipment, fuel, and associated costs necessary for loading and transporting reduced debris (ash) at an approved DMS to a final disposal facility.		
<b>A</b>	0 to 5 miles	\$ 3.85
<b>B</b>	5.1 to 10 miles	\$ 4.30
<b>C</b>	10.1 to 15 miles	\$ 4.75
<b>D</b>	15.1 to 20 miles	\$ 5.20
<b>E</b>	20.1 to 25 miles	\$ 5.65
<b>F</b>	25.1 to 27 miles	\$ 6.10
<b>G</b>	27.1 miles and over (\$ Per Cubic Yard Per Mile)	\$ 0.19
<b>11. Removal of Eligible Hazardous Leaning Trees and Hanging Limbs</b>		<b>\$ Per Tree</b>
Work consists of all labor, equipment, fuel, traffic control and associated costs necessary for the removal of eligible hazardous leaning or hanging limbs and placement of them on the ROW for haul-off.		
<b>A</b>	6 inch to 12 inch diameter measured 4.5 feet above the ground	\$ 49.00
<b>B</b>	13 inch to 24 inch diameter measured 4.5 feet above the ground	\$ 99.00
<b>C</b>	25 inch to 36 inch diameter measured 4.5 feet above the ground	\$ 149.00
<b>D</b>	37 inch to 48 inch diameter measured 4.5 feet above the ground	\$ 199.00
<b>E</b>	49 inch and larger diameter measured 4.5 feet above the ground	\$ 249.00
<b>F</b>	Hanger Removal (2" or greater at the break and price per Tree)	\$ 82.00
<b>12. Removal of Eligible Hazardous Stumps</b>		<b>\$ Per Stump</b>
Work consists of all labor, equipment, fuel, traffic control and associated costs necessary for the removal of eligible hazardous stumps and transportation to an approved DMS or other designated disposal facility.		
<b>A</b>	24 inch to 36 inch diameter measured 24 inches above the ground	\$ 155.00
<b>B</b>	37 inch to 48 inch diameter measured 24 inches above the ground	\$ 195.00
<b>C</b>	49 inch and larger diameter measured 24 inches above the ground	\$ 245.00
<b>D</b>	Backfill (Per Cubic Yard based on the FEMA Stump Conversion Chart)	\$ 26.75
<b>E</b>	Removal of stumps placed at ROW by residents (Per Cubic Yard based on the FEMA Stump Conversion Chart)	\$ 19.88
<b>13. Removal of Eligible White Goods</b>		<b>\$ Per Each</b>
Work consists of all labor, equipment, fuel, traffic control and associated costs necessary for the collection of eligible white goods, removal of refrigerants, transportation to an approved DMS, decontamination, and transportation to an approved final disposal facility.		
<b>A</b>	Without Freon recovery	\$ 29.00
<b>B</b>	With Freon recovery	\$ 64.00
<b>14. Removal of Eligible Used Electronics</b>		<b>\$ Per Each</b>
Work consists of all labor, equipment, fuel, traffic control and associated costs necessary for the collection of eligible used electronics and transportation to an approved final disposal facility.		
		\$ 19.00

<b>15. Removal of Hazardous Household Waste</b>		<b>\$ Per Pound</b>
Work consists of all labor, equipment, fuel, traffic control and associated costs necessary for the removal of eligible HHW and transportation to an approved final disposal facility.		
		\$ 5.90
<b>16. Removal of Eligible Gasoline Powered Tools</b>		<b>\$ Per Each</b>
Work consists of all labor, equipment, fuel, traffic control and associated costs necessary for the removal of eligible gasoline powered tools and transportation to an approved final disposal facility.		
		\$ 59.00
<b>17. Abandoned Vehicle Removal</b>		<b>\$ Per Each</b>
Work consists of all labor, equipment, fuel, traffic control and associated costs necessary for the removal of abandoned vehicles and transport to a vehicle staging site.		
<b>A</b>	Passenger vehicle	\$ 145.00
<b>B</b>	1-Ton truck or smaller	\$ 195.00
<b>C</b>	Recreational vehicle	\$ 125.00
<b>D</b>	Bus, Tractor Trailer or vehicle of similar size	\$ 450.00
<b>18. Abandoned Vessel Removal</b>		<b>\$ Per Linear Foot</b>
Work consists of all labor, equipment, fuel, traffic control and associated costs necessary for the removal of land-based and marine based vessels with various types of hulls and transport to a vessel staging site.		
<b>A</b>	Land-based vessel removal (V-hull, round bottom or flat bottom)	\$ 35.00
<b>B</b>	Land-based vessel removal (Keeled hull)	\$ 52.00
<b>C</b>	Marine-based vessel removal (V-hull, round bottom or flat bottom)	\$ 68.00
<b>D</b>	Marine-based vessel removal (Keeled hull)	\$ 82.00
<b>19. Management of Vehicle/Vessel Storage Site</b>		<b>\$ Per Day</b>
Work consists of all labor, equipment, fuel, traffic control and associated costs necessary for the removal of eligible gasoline powered tools and transportation to an approved final disposal facility.		
		\$ 1,100.00
<b>20. Animal Carcass Removal</b>		<b>\$ Per Pound</b>
Work consists of all labor, equipment, fuel, traffic control and associated costs necessary for the removal of animal carcasses for lawful disposal.		
		\$ 0.92
<b>21. Emergency Debris Push Crew</b>		<b>\$ Per Hour</b>
Work consists of all labor, equipment, fuel, traffic control and associated costs necessary for the emergency debris clearance operations as directed by Bell County or Authorized User. A emergency debris clearance crew consists of skid steer or similar with operator, two (2) laborers with chainsaw, and truck/trailer.		
		\$275.00
<b>22. Emergency Delivery of Water</b>		<b>\$ Per Gallon</b>
Work consists of all labor, equipment, fuel, traffic control and associated costs necessary for the removal of land-based and marine based vessels with various types of hulls and transport to a vessel staging site.		
		\$1.75
<b>23. Emergency Delivery of Ice</b>		<b>\$ Per Pound</b>
Work consists of all labor, equipment, fuel, traffic control and associated costs necessary for the removal of land-based and marine based vessels with various types of hulls and transport to a vessel staging site.		
		\$0.89
<b>24. Temporary Kitchen Facilities</b>		<b>\$ Per Week</b>
Work consists of all labor, equipment, fuel, and associated costs necessary to provide temporary kitchen facilities (one 40-foot kitchen trailer) to Bell County or Authorized User. This price excludes the cost of mobilization/demobilization and food. Mobilization and demobilization is invoiced at cost plus 10%. The cost of food is invoiced at cost plus 10%.		
		\$7,415.00
<b>25. Temporary Sanitation Facilities</b>		<b>\$ Per Week</b>
Work consists of all labor, equipment, fuel, and associated costs necessary to provide temporary sanitation facilities (one 6-stall comfort station) to Bell County or Authorized User. This price excludes the cost of mobilization/demobilization. Mobilization and demobilization is invoiced at cost plus 10%.		
		\$2,650.00
<b>26. Temporary Shower Facilities</b>		<b>\$ Per Week</b>
Work consists of all labor, equipment, fuel, and associated costs necessary to provide temporary shower facilities (one 6-stall shower station) to Bell County or Authorized User. This price excludes the cost of mobilization/demobilization. Mobilization and demobilization is invoiced at cost plus 10%.		
		\$3,615.00



<b>27. Temporary Satellite Communications</b>		<b>\$ Per Phone Per Day</b>
Work consists of all equipment necessary to provide temporary satellite communications (one satellite phone) to Bell County or Authorized User. This price excludes the cost of per minute use. The cost of per minute use is invoiced at cost plus 10%.		
		\$24.50
<b>28. Power Generation</b>		<b>\$ Per Day</b>
Work consists of all equipment necessary to provide power generator to various Bell County or Authorized User owned facilities. This price excludes the cost of mobilization/demobilization, hookup by license electrician, and fuel. The cost of mobilization/demobilization, hookup by license electrician, and fuel is invoiced at cost plus 10%.		
<b>A</b>	5kw Portable/Mobile Generator	\$ 132.00
<b>B</b>	10kw Portable/Mobile Generator	\$ 198.00
<b>C</b>	20kw Portable/Mobile Generator	\$ 228.00
<b>D</b>	40kw Portable/Mobile Generator	\$ 294.00
<b>E</b>	60kw Portable/Mobile Generator	\$ 342.00
<b>F</b>	80kw Portable/Mobile Generator	\$ 390.00
<b>G</b>	100kw Portable/Mobile Generator	\$ 474.00
<b>H</b>	120kw Portable/Mobile Generator	\$ 552.00
<b>I</b>	150 kw Portable/Mobile Generator	\$ 564.00
<b>J</b>	175 kw Portable/Mobile Generator	\$ 582.00
<b>K</b>	200 kw Generator	\$ 606.00
<b>L</b>	240 kw Generator	\$ 756.00
<b>M</b>	320 kw Generator	\$ 816.00
<b>N</b>	500 kw Generator	\$ 1,416.00
<b>O</b>	640 kw Generator	\$ 1,848.00
<b>P</b>	750 kw Generator	\$ 2,184.00
<b>Q</b>	1000 kw Generator	\$ 2,856.00
<b>R</b>	1500 kw Generator	\$ 3,588.00
<b>29. Trailers</b>		<b>\$ Per Trailer Per Day</b>
Work consists of all equipment necessary to provide power generator to various Bell County or Authorized User owned facilities. This price excludes the cost of mobilization/demobilization. The cost of mobilization/demobilization is invoiced at cost plus 10%.		
<b>A</b>	Office trailer	\$ 85.00
<b>B</b>	Storage container	\$ 72.00
<b>C</b>	Reefer trailer	\$ 118.00
<b>30. Light Towers</b>		<b>\$ Per Tower Per Hour</b>
Work consists of all equipment necessary to light towers to Bell County or Authorized User.		
		\$ 35.50
<b>31. Emergency delivery of food</b>		<b>\$ Per Meal</b>
Heater Meals EX Plus		\$ 9.50
<b>32. Portable HVACs</b>		<b>\$ Per Week</b>
10 Ton Unit		\$ 7,545.00

**Notes:**

- Line Items No. 1, 2, 3, 4, 5, 6, and 7 are based on incoming debris to DMS or final disposal.
- Line Item No. 8, 9, and 10 is based on outgoing debris from DMS.
- Tipping fees are a pass through to Bell County or Authorized User with no-mark up.
- Each year on the anniversary date of the contract's execution, the price schedule shall adjust to reflect an increase or decrease based on the Consumer Price Index.

**Schedule 2: Equipment and Labor Rates**

Description	Unit	Price
Air Curtain Burner/Incinerator Above Ground – 1-4 Tons per hour	Hour	\$ 48.00
Air Curtain Burner/Incinerator Above Ground - 2-5 Tons per hour	Hour	\$ 48.00
Air Curtain Burner/Incinerator Above Ground – 3-6 Tons per hour	Hour	\$ 48.00
Air Curtain Burner/Incinerator Above Ground – 6-10 Tons per hour	Hour	\$ 48.00
40-60' Bucket Truck - Provide Size and Specifications	Hour	\$ 223.00
Compact Track Loader with Grapple – Provide Size and Specifications	Hour	\$ 107.00
Dozer, D3 or Equivalent (Tracked)	Hour	\$ 116.00
Dozer, D6 or Equivalent – (Tracked)	Hour	\$ 152.00
Dozer, D8 or Equivalent – (Tracked)	Hour	\$ 173.00
Dozer, D10 or Equivalent – (Tracked)	Hour	\$ 194.00
Big Tex 25DU, or similar (truck not included)	Hour	\$ 40.00
Dump Truck, 10-15 CY	Hour	\$ 71.00
Dump Truck, 16–20 CY	Hour	\$ 76.00
Dump Truck, 21-29 CY Provide Size and Specifications	Hour	\$ 84.00
Dump Truck, 30-50 CY- Provide Size and Specifications	Hour	\$ 97.00
Dump Truck, > 50CY - Provide Size and Specifications	Hour	\$ 103.00
Electronic Board, Arrow Boards – Vehicle Mounted/Skid Mounted	Hour	\$ 25.00
Electronic Board, Arrow Boards – Vehicle Mounted/Over cab or rood mounted	Hour	\$ 25.00
Electronic Board, Arrow Boards – Trailer Mounted Diesel Engine	Hour	\$ 32.00
Electronic Board, Arrow Boards – Trailer Mounted Batteries/Solar Power	Hour	\$ 28.00
Electronic Board, Variable Message Signs – Vehicle Mounted - Multi-Line Display	Hour	\$ 37.00
Electronic Board, Variable Message Signs – Self Contained Multi-Line Display	Hour	\$ 33.00
Flatbed Truck	Hour	\$ 82.00
Fuel / Service Truck	Hour	\$ 97.00
Grader w/12' Blade 165-200 HP	Hour	\$ 152.00
Grader w/12" Blade over 220 HP	Hour	\$ 173.00
Hydraulic Excavator 322C - 320C L or Equivalent	Hour	\$ 173.00
Hydraulic Excavator 330C - 325C L or Equivalent	Hour	\$ 179.00
Hydraulic Excavator with "Thumb" –Provie size and specifications:	Hour	\$ 176.00
Knuckleboom Loader	Hour	\$ 231.00
Lowboy Trailer w/Tractor	Hour	\$ 103.00
Pick-up Truck	Hour	\$ 25.00
Pump up to 95 HP with minimum 25' Intake and 200' Discharge	Hour	\$ 39.00
Pump > 95 HP with minimum 25' Intake and 200' Discharge	Hour	\$ 76.00
Road Sweeper	Hour	\$ 173.00
Self-loading Dump Truck with Knuckleboom and debris grapple	Hour	\$ 236.00
Skid Steer Loader with Debris Grapple	Hour	\$ 116.00
Skid Steer Loader with Bucketed Debris Grapple	Hour	\$ 116.00
Track Loader 90 HP or equivalent	Hour	\$ 79.00
Track Loader 127 HP or equivalent	Hour	\$ 82.00
Tub Grinder 100-300 CY per hour	Hour	\$ 226.00
Tub Grinder 300-400 CY per hour	Hour	\$ 278.00
Tub Grinder > 400 CY per hour	Hour	\$ 362.00
Wheel Loader Backhoe – 420D or equivalent – (1.5 CY Minimum)	Hour	\$ 89.00
Wheel Loaders – 3 – 5 CY	Hour	\$ 124.00
Wheel Loaders – 5 – 7 CY	Hour	\$ 155.00
Operations Manager w/Cell Phone and half ton pick-up	Hour	\$ 79.00
Site Foreman w/Cell Phone and 1 ton	Hour	\$ 68.00
Tree Climber w/Chainsaw and gear	Hour	\$ 55.00
Laborer w/Chainsaw and gear	Hour	\$ 50.00
Laborer w/Small Tools, Traffic Control, or Flag person	Hour	\$ 45.00
Bonded and Certified Security Personnel	Hour	\$ 53.00

## RESOLUTION #2024.15

A RESOLUTION OF THE CITY COUNCIL OF MORGANS POINT RESORT, BELL COUNTY, TEXAS, AUTHORIZING AND APPROVING THE EXECUTION OF A CONTRACT WITH CERES ENVIRONMENTAL SERVICES FOR DEBRIS MANAGEMENT SERVICES

**WHEREAS**, the City desires to employ CERES ENVIRONMENTAL SERVICES to perform debris management under exigent or emergency circumstances; and

**WHEREAS**, the employment contract attached hereto as Exhibit “A” is acceptable to the City.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MORGANS POINT RESORT, BELL COUNTY, TEXAS, THAT:**

**Section 1. Action Authorized:** The City Manager, on behalf of the City, is hereby authorized to enter into the contract with Ceres Environmental Services, which is attached here to as Exhibit “A”, for a price not to exceed \$480,000.

**Section 2. Budget Amendment:** The City Council amends the municipal budget for the current fiscal year to provide for payment not exceed \$480,000 contract modification.

**Section 3. Open Meetings:** This resolution was approved by the City Council at a special called meeting duly posted in accordance with the Texas Open Meeting Act and at which four council members were present and voting.

**Section 4. Severability:** In the event that one or more of the provisions contained in this Resolution shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability of this Resolution shall be construed as if such invalid, illegal or unenforceable provision has never been contained herein, but shall not affect the remaining provisions of this Resolution , which shall remain in full force and effect.

**Section 5. Effective Date:** This Resolution shall be and become effective immediately upon its adoption.

**PASSED AND APPROVED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2024 by \_\_\_\_ (ayes) to \_\_\_\_ (nays) to \_\_\_\_ (abstentions) vote of the City Council of the City of Morgan’s Point Resort, Texas.

**THE CITY OF MORGANS POINT, TEXAS**

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DENNIS GREEN, Mayor

ATTEST;

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CAMILLE BOWSER, City Secretary