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RESOLUTION #2013- 24

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A PRE-EVENT CONTRACT FOR DISASTER RECOVERY SERVICES BETWEEN THE CITY OF KINGSVILLE AND ASHBRIIT, INC. FOR EMERGENCY DEBRIS REMOVAL SERVICES; REPEALING ALL CONFLICTING RESOLUTIONS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Kingsville desires to have an outside firm assist with emergency debris removal and went out for RFP #13-05 for such services;

WHEREAS, the City Commission authorized staff on February 11, 2013 to negotiate a contract for these services with AshBritt, Inc.;

WHEREAS, the City and AshBritt have worked to prepare a Contract for Emergency Debris Removal Services as requested.

BE IT RESOLVED by the City Commission of the City of Kingsville, Texas:

I.

THAT the Mayor is authorized and directed as an act of the City of Kingsville, Texas to enter into a Pre-Event Contract for Disaster Recovery Services between the City of Kingsville, Texas and with AshBritt, Inc. for emergency debris removal services in accordance with Exhibit A hereto attached and made a part hereof.

II.

THAT all resolutions or parts of resolutions in conflict with this resolution are repealed to the extent of such conflict only.

III.

THAT this Resolution shall be and become effective on and after adoption.

PASSED AND APPROVED by a majority vote of the City Commission on the _____ 25th day of March, 2013.


Sam R. Fugate, Mayor

ATTEST:

Mary Valenzuela
Mary Valenzuela, City Secretary

APPROVED AS TO FORM:

Courtney Alvarez
Courtney Alvarez, City Attorney

Pre-Event Contract for Disaster Recovery Services

THIS PRE-EVENT CONTRACT FOR DISASTER RECOVERY SERVICES ("Contract") is entered into and effective as of this 25th day of March, 2013 ("Effective Date"), by and between AshBritt, Inc., a Florida corporation, whose address is 565 E. Hillsboro Boulevard, Deerfield Beach, Florida 33441 (hereinafter referred to as "Contractor") and the City of Kingsville, a political subdivision and municipal corporation of the State of Texas, whose address is 200 E. Kleberg Ave., Kingsville, Texas 78363 (hereinafter referred to as "City").

RECITALS

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

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

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

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

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

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

WHEREAS, the City and the Contractor have agreed to the scope of services, pricing schedule, terms, conditions and technical specifications as fully set out in this Contract; and

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

1.0 SERVICES

1.1 Scope of Contracted Services:

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

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

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

1.2 Emergency Push / Road Clearance:

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

1.3 Right-of-Way (ROW) Removal:

The Contractor shall mechanically remove, load and/or haul all Debris from the local ROW when directed to do so by the City. The Debris shall be delivered to a City designated Temporary Debris Storage and Reduction Site (TDSRS) for processing. The Contractor shall use reasonable care to prevent damage to City or private property not already damaged by the disaster event in the process of ROW Debris removal. The Contractor shall only be liable for any damage caused by its negligence or intentional wrongdoing.

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

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

1.5 Demolition of Structures *(if implemented)* :

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

1.6 Private Property Waivers:

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

1.7 Management of TDSRS:

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

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

1.7 Disaster Recovery Technical Assistance:

The Contractor will provide, upon request of the City, Disaster Recovery Technical Assistance to elected and appointed officials within the City. This service shall include reasonable support guidance on all aspects of the recovery process. Emphasis will be on Debris management and disaster grants. The Contractor will provide compliance and documentation support through the use of experienced specialists. These specialists will be supervised by a senior Contractor team member with the

goal of assisting the City to receive the maximum reimbursement available from external sources.

1.8 Other Disaster Services:

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

1.8.1 Additional Support Services:

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

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

2.0 PERFORMANCE OF SERVICES

2.1 Description of Service:

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

2.2 Cost of Services:

The Contractor shall bear the costs of performing all contracted services hereunder, as directed by the City, including but not limited to that which is set out in Section 1.0. Such costs include applicable permits and license fees as well as all maintenance

costs required to maintain its vehicles and other operating equipment in a condition adequate to accomplish the contracted services as set out in this Contract.

2.3 Matters Related to Performance:

2.3.1 Subcontractor(s):

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

2.3.2 Indemnification:

The Contractor agrees to indemnify, hold harmless and defend the City from and against any and all liabilities, suits, actions, legal proceedings, claims, demands, damages, costs and expenses (including reasonable attorney's fees) arising out of any negligent or intentional act or omission of the Contractor, its agents, subcontractors or employees in the performance of this Contract and the contracted services required hereunder. Contractor shall not be liable to indemnify the City from any claim arising out of the City's breach of this Contract or negligent or intentional act or omission. If any claim or demand is made against the City for any matter indemnified herein, City shall give notice thereof to the Contractor within seven (7) days, and Contractor shall assume the defense of such claim through counsel reasonably acceptable to the City. As separate consideration for this indemnification, defense and hold harmless obligation provided by Contractor hereunder, the parties acknowledge and agree that the first one hundred dollars (\$100.00) of the Contract sum to be paid to Contractor is paid as separate consideration for these indemnification obligations of Contractor.

2.3.3 Insurance(s):

The Contractor agrees to keep the insurance specified below in full force and effect during the term of this Contract. Except for workers' compensation, the Contractor must also name the City as an additional insured while working within the boundaries of the City.

2.3.4 Worker's Compensation:

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

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

2.3.5 Automobile Liability:

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

2.3.6 Comprehensive General Liability:

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

2.3.7 Insurance Cancellation / Renewal:

The Contractor will notify the City at least thirty (30) days in advance of cancellation, non-renewal or adverse change to the required insurance. New certificates of insurance are to be provided to the City at least ten (10) days following coverage renewals or changes.

3.0 STANDARDS OF PERFORMANCE

3.1 Contractor Representative:

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

3.2 Mobilization:

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

3.3 Time to Complete:

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

3.4 Completion of Work:

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

3.5 Extensions :

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

3.6 Term of Contract:

The term of the Contract shall be for five (5) consecutive years beginning on the Effective Date, with the City having the option to extend the term of this Contract for two (2) additional one-year periods upon written notice delivered at least sixty (60) days prior to the expiration of the term or any extended term.

3.7 Contract Renewal:

This Contract may be renewed for additional one year terms after a written acceptance of both parties on any negotiated changes to the terms and specifications contained in this Contract. Section 7.0 and Exhibit-B (*AshBritt Hourly/Service Rate Schedule*) of this Contract may be reviewed on an annual basis, at which time amended unit costs and rates may be submitted by the Contractor to the City to reflect the current disaster recovery market value of all contracted services in this Contract. Such amendments shall become part of this Contract after both parties sign any such written amendment(s).

3.8 Contract Termination:

This Contract shall terminate upon 180 days written notice from either party and delivered to the other party as set out in Section 8.1 of this Contract.

4.0 GENERAL RESPONSIBILITIES

4.1 Other Agreements:

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

4.2 City Obligations:

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

4.3 Conduct of Work:

The Contractor shall be responsible for planning and conducting all operations in a satisfactory workmanship manner. The Contractor shall exhibit respect for the citizens and their individual private properties. All operations shall be conducted under the review of the City Representative. The Contractor shall have and require strict compliance with accepted ethical practices.

4.4 Supervision:

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

4.5 Damages:

The Contractor shall be responsible for conducting operations in such a manner as to cause the minimum damage possible to existing public, private and commercial property and/or infrastructure. Contractor shall be responsible for any damages owing to the negligence or intentional wrongdoing of its employees and subcontractors as set out in Sections 1.2 through 1.5 of this Contract.

4.6 Other Contractor(s):

The Contractor shall acknowledge the presence of other contractors involved in disaster response and recovery activities by the federal, state and local government and of any private utility, and shall not interfere with their work. The Contractor agrees and understands that the contract shall no be construed as an exclusive arrangement and further agrees that the City, at any time, may secure similar or identical services at its sole option.

4.7 Ownership of Debris :

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

4.8 Disposal of Debris:

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

5.0 GENERAL TERMS and CONDITIONS

5.1 Geographic Assignment:

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

5.2 Multiple, Scheduled Passes:

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

5.3 Operation of Equipment:

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

5.4 Certification of Load Carrying Capacity:

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

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

5.5 Vehicle Information:

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

5.6 Security of Debris During Hauling:

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

5.7 Traffic Control:

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

5.8 Monitoring of Debris Operations

The Government may require that the City conduct a Debris monitoring program. The Contractor will assist the monitoring team, if this activity is by force account or contracted. The Contractor will cooperate and coordinate with the Debris monitoring team in all aspects of the team activity. If the City elects to conduct the Debris monitoring by force account, the Contractor will conduct detailed Debris monitoring training at the request of the City. Debris eligibility determinations, by the monitoring team, shall be made at the point of vehicle loading. Determinations of the vehicle percentage full, by the monitoring team, shall be made at the entrance to the TDSRS. Logistical support and reports to the City on Debris monitoring activities are the responsibility of the team manager or monitoring contractor.

5.9 Work Days/Hours:

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

5.9 Hazardous and Industrial Wastes:

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

5.10 Stumps:

All hazardous/eligible stumps identified by the City will be extracted, loaded, transported, stored, reduced and disposed in accordance with the standards of this Contract. Stump voids will be filled with clean fill material native to the geographical area. All stumps that are removed and the stump voids that are filled will be documented, and invoiced by the contractor for payment in accordance with the rates contained on Exhibit B (Ashbritt Hourly/Service Rate Schedule).

5.11 Utilizing Local Resources:

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

5.12 Work Safety:

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

5.13 Inspection and Testing:

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

5.14 Other Agencies:

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

6.0 REPORTS CERTIFICATIONS and DOCUMENTATION

6.1 Accountable Debris Load Forms:

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

6.2 Reports:

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

6.2.1 Daily Reports:

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

6.2.2 Weekly Summaries:

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

6.2.3 Report(s) Delivery:

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

6.2.4 Final Project Closeout Report:

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

management operations for the City and/or Government, to include electronic spread sheets.

6.3 Additional Supporting Documentation:

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

6.4 Report Maintenance:

Contractor may be subject to audit by federal, state and local agencies pursuant to this Contract. The Contractor will maintain all reports, records, and Debris reporting tickets and contract correspondence for a period of not less than three (3) years after final project closeout. These maintained reports may include electronic scanned copies of the daily load tickets and tower determination of percent full.

6.5 Contract File Maintenance:

The Contractor will maintain this Contract and the invoices that are generated for the contracted services for a period of not less than five (5) years.

7.0 UNIT PRICES and PAYMENTS

7.1 Unit Price for Emergency Push / Road Clearance:

The Contractor will invoice the City and be paid for this contracted service in accordance with the rates as set out in Exhibit-B (Ashbritt Hourly/Service Rate Schedule).

7.2 Unit Price for Debris:

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

7.3 Unit Prices for Stumps:

The City will determine the necessity and eligibility for ALL stump removal. The unit price of compensation for stump pulling, loading, transportation, storage, reduction and/or disposal shall be based on the stump size and corresponding rate as set out in Exhibit A (Compensation Based on Multiple Tasking) or Exhibit B (Ashbritt Hourly/Service Rate Schedule).

7.4 Billing Cycle:

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

7.5 Payment Responsibility:

The City agrees to accept the Contractor's invoice(s) and supporting documentation as set out in Section 6.3 of this Contract and process said invoices for payment within 30 days of receipt of the Contractor's invoice. The City will advise the Contractor within five (5) working days of receiving any invoice that requires additional information for approval to process for payment. The City will make payment of any undisputed amounts within thirty (30) days of receipt of Contractor's invoice, and the balance within thirty (30) days of the requested additional information.

7.6 Ineligible Work:

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

7.6.1 Eligibility Inspections:

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

7.6.2 Eligibility Determinations:

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

7.7 Unit Price/Service Negotiations:

Unknown and/or unforeseen events or conditions may require an adjustment to the pricing provided in Sections 7.1, 7.2 and 7.3 or Exhibit A or Exhibit B hereto. Any amendments, extensions or changes to the scope of contracted services or unit prices are subject to full negotiations between the City and the Contractor, and shall be set forth in writing.

7.8 Specialized Services:

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

7.9 Amended Pricing

The pricing of services in this contract reflects the anticipated severity and magnitude of a major disaster event. The City may choose to activate the Contractor in response to a disaster event of less magnitude. Upon Contractor activation by

Notice-to-Proceed for a lesser event, the Contractor reserves the right to submit to the City an amended and reduced pricing schedule. Any such amended pricing schedule will be submitted within three (3) business days of activation or upon the completion of the Contractor's damage assessment survey, whichever occurs first.

The City will indicate acceptance within 24 hours of the delivery of the proposed amended pricing schedule and the logic for such action. Any amendment to the contract pricing for a current activation does not amend the pricing for any future disaster event.

8.0 MISCELLANEOUS

8.1 Notice:

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

To Contractor at:

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

To City at:

Vincent J. Capell, City Manager
City of Kingsville, Texas
P.O. Box 1458
Kingsville, TX 78364
Telephone: (361) 595-8002
Facsimile: (361) 595-8024

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

8.2 Litigation:

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

County, Texas, federal or state, and (ii) the defense of any inconvenient forum to the maintenance of any Related Proceeding in such court.

8.3 Entire Contract:

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

8.4 Waiver:

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

8.5 Severability:

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

8.6 Binding Effect

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

8.7 Headings

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

8.8 Counterparts

This Contract may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same Contract.

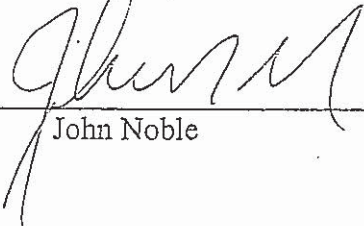
8.9 Fiscal Year Appropriations

All parties recognize that the continuation of any contract after the close of any fiscal year of the City (the City's fiscal year ends on September 30th) is subject to appropriations and budget approval providing for covering such contract item as an expenditure in said budget. The City does not represent that said budget item will be actually adopted as that determination is within the discretion of the City Commission at the time of adoption of each budget.

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

AshBritt, Inc.

By:



John Noble

Title:

Chief Operating Officer

City of Kingsville, TX

By:



Vincent J. Capell

Title:

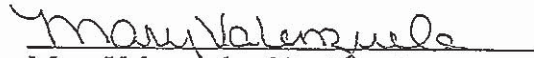
City Manager

ATTEST:



Name - Title

ATTEST:



Mary Valenzuela, City Secretary

Attachments: Exhibit-A (*Compensation Based on Multiple Tasking*)
Exhibit-B (*AshBritt Hourly/Service Rate Schedule*)

- COPYRIGHT WARNING -

FEDERAL LAW PROVIDES FOR SEVERE CIVIL AND CRIMINAL PENALTIES FOR THE UNAUTHORIZED REPRODUCTION AND DISTRIBUTION OF COPYRIGHTED DOCUMENTS AND PRODUCTS.

THIS DOCUMENT IS LICENSED TO ASHBRIIT, INC. FOR PROPOSAL AND CONTRACTING PURPOSES ONLY. ANY COPYING, DISTRIBUTION OR USE BY OTHERS IS STRICTLY PROHIBITED. ALL OTHER RIGHTS RESERVED.