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**CITY OF MARATHON, FLORIDA
RESOLUTION 2003-102**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MARATHON, FLORIDA, AUTHORIZING THE CITY
MANAGER TO ENTER INTO A CONTRACT WITH
ASHBRITT, INCORPORATED FOR DEBRIS REMOVAL
AND DISPOSAL**

WHEREAS, at the June 10, 2003 city council meeting, Randy Burns of Ashbritt Inc. presented council with a proposal to provide debris removal and disposal after disasters that affect the City of Marathon; and

WHEREAS, the City of Marathon currently has one contract with Grubbs, Inc. for this service; and

WHEREAS, during the recovery and mitigation phases of emergencies it is beneficial to have the ability to use more than one agency; and

WHEREAS, Council directed staff to negotiate a contract with Ashbritt, Inc. to bring back to council for approval.

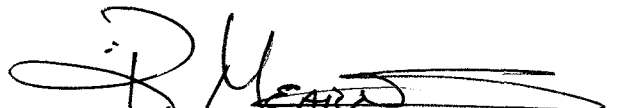
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, that:

Section 1. Council authorizes the City Manager to Enter into a Contract with Ashbritt, Incorporated for Debris Removal and Disposal.

Section 2. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 12th day of August, 2003.

THE CITY OF MARATHON, FLORIDA



Randy Mearns, Mayor

AYES: Bartus, Pinkus, Repetto, Worthington, Mearns
NOES: None

ABSENT: None
ABSTAIN: None

ATTEST:



Cindy L. Ecklund
City Clerk

(City Seal)

AGREEMENT

THIS AGREEMENT is dated as of the 22 day of July in the year 2003 by and between the CITY OF MARATHON a political subdivision of the State of Florida, (hereinafter called CITY), whose mailing address is _____ and Ashbrite, Incorporated a Florida corporation (hereinafter called CONTRACTOR).

RECITALS

WHEREAS, the City of Marathon (the CITY) is charged with protecting the health, safety, and welfare of the citizens of City of Marathon, and

WHEREAS, the expedient removal of storm debris minimizes the threats to the public health and safety and provides for immediate economic recovery, and

WHEREAS, City selected Ashbrite, Inc. (CONTRACTOR) as the successful proposer on the Brevard County bid, and who has committed to extending said proposal prices to the City.

NOW THEREFORE, in consideration of the mutual covenants hereinafter set forth, the CITY and CONTRACTOR agree as follows:

ARTICLE 1 - DEFINITIONS

Wherever used in this Agreement or in the other Contract Documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

- 1.1. **Addenda** - Written or graphic instruments issued prior to the opening of Proposals that clarify, correct or change the Proposal Requirements or the Contract Documents.
- 1.2. **Agreement** - The written contract between CITY and CONTRACTOR covering the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.
- 1.3. **Application for Payment** - The form accepted by CITY which is to be used by CONTRACTOR in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
- 1.4. **Asbestos** - Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
- 1.5. **Bonds** - Performance and Payment bonds and other instruments of security.
- 1.6. **Calendar Day** - Every day shown on the calendar.
- 1.7. **Change Order** - A document signed by CITY, which is signed by CONTRACTOR and authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
- 1.8. **Contract Documents** - The Agreement, Addenda (which pertain to the Contract Documents), Contractor's Proposal (including documentation accompanying the Proposal and any post Proposal documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders and CITY's written interpretations and clarifications issued pursuant to paragraphs 4.5, and 4.6 on or after the Effective Date of the Agreement.

- 1.9. **Contract Price** - The money payable by CITY to CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Agreement and subject to the provisions of paragraph 12.7 in the case of Unit Price Work.
- 1.10. **Contract Times** - The numbers of days or the dates stated in the Agreement: (i) to achieve Substantial Completion, and (ii) to complete the Work so that it is ready for final payment as evidenced by City's written recommendation of final payment in accordance with paragraph 15.14.
- 1.11. **CONTRACTOR** - The person, firm or corporation with whom CITY has entered into the Agreement.
- 1.12. **CITY** - The person, firm, or corporation named as such in the Agreement. Also, the body or authority, corporation, association, firm, or person with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be provided.
- 1.13. **City's Consultant** - A person, firm, or corporation having a contract with the CITY to furnish services as an independent professional associate or consultant with respect to the Project.
- 1.14. **Debris** - Items as determined by the CITY.
- 1.15. **Defective** - An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to City's recommendation of final payment (unless responsibility for the protection thereof has been assumed by CITY at Substantial Completion in accordance with paragraph 14.9 or 14.10).
- 1.16. **Effective Date of the Agreement** - The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
- 1.17. **FEMA** – Federal Emergency Management Agency.
- 1.18. **Field Order** - A written order issued by the CITY which orders minor changes in the Work in accordance with paragraph 10.5 but which does not involve a change in the Contract Price or the Contract Times.
- 1.19. **FLDEM** – Florida Department of Emergency Management.
- 1.20. **Hazardous Waste** - The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
- 1.21. **Inspector** - An authorized representative of the CITY assigned to make all necessary inspections of the Work performed, or being performed.
- 1.22. **Laws and Regulations; Laws or Regulations** - Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.
- 1.23. **Liens** - Liens, charges, security interests, or encumbrances upon real property or personal property.
- 1.24. **Milestone** - A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
- 1.25. **Deleted**

- 1.26. **Notice to Proceed** - A written notice given by the CITY to CONTRACTOR fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform Contractor's obligations under the Contract Documents.
- 1.27. **Partial Utilization** - Use by the CITY of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.
- 1.28. **PCBs** - Polychlorinated biphenyls.
- 1.29. **Petroleum** - Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Wastes and crude oils.
- 1.30. **Project** - The total Work to be provided under the Contract Documents that may be the whole or a part as indicated elsewhere in the Contract Documents.
- 1.31. **Proposal** - The offer or Proposal of the Proposer submitted on the prescribed form setting forth the prices for the Work to be performed.
- 1.32. **Deleted**
- 1.33. **Deleted**
- 1.34. **Radioactive Material** - Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
- 1.35. **Resident Project Representative** - The authorized representative of the CITY who may be assigned to the project or any part thereof.
- 1.36. **Samples** - Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
- 1.37. **Site** - All areas of the City of Marathon as identified by the CITY where Work is performed.
- 1.38. **Subcontractor** - An individual, firm, or corporation having a direct contract with CONTRACTOR or with any other Subcontractor for performance of a part of the Work at the site.
- 1.39. **Substantial Completion** - The Work (or a specified part thereof) has progressed to the point where, in the opinion of the CITY as evidenced by the City's definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended; or if no such certificate is issued, when the Work is complete and ready for final payment as evidenced by City's written approval of final payment in accordance with paragraph 15.14. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereto.
- 1.40. **Supplier** - A manufacturer, fabricator, supplier, distributor, material man, or vendor having direct contract with CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CONTRACTOR or any Subcontractor.
- 1.41. **Underground Facilities** - All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone, or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

- 1.42. **Work** –The entire completed Project or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work includes all tasks required to: (i) collect, sort, process, and dispose of debris and to (ii) build, operate, and maintain temporary debris-processing sites as required by the Contract Documents and is the result of performing or furnishing labor, materials, tools, equipment and other means necessary and incidental to the performance of such tasks as required by the Contract Documents.
- 1.43. **Work Change Directive** - A written directive to CONTRACTOR, issued on or after the Effective Date of the Agreement and approved by the CITY, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed as provided in Section 5.3 or to emergencies under Section 7.30. A Work Change Directive will not change the Contract Price or the Contract Times, but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.
- 1.44. **Written Amendment** - A written amendment of the Contract Documents, signed by the CITY and CONTRACTOR on or after the Effective Date of the Agreement that normally deals with the non-technical aspects of the Contract Documents.

ARTICLE 2 – SCOPE OF WORK

Description of Work:

- 2.1. Provide all labor, materials, machinery, tools, equipment and other means necessary and incidental to execute the Work described in this Agreement. The Work will be conducted in order to provide the least possible interference to adjacent property owners, the general public, or other contractors. Work includes but is not limited to the following:

Mobilization:

- 2.2. The CONTRACTOR will occupy the Project site with all equipment, personnel and supplies and be ready to commence the work within 48 hours of the issuance of a Notice to Proceed by the CITY.
- 2.2.1. CONTRACTOR will establish an operations center in the CITY within 24 hours of the issuance of Notice to Proceed by the CITY for a specific disaster event.
- 2.2.1.1. this Center shall be established by the CONTRACTOR to maintain continuous communications with all of the Contractor's ancillary sites and facilities, work crews, other key response and recovery groups involved in the Project, and CITY personnel.
- 2.2.1.2. CONTRACTOR shall designate in the Work Plan prepared pursuant to Section 3.1 Contractor's representative and backup personnel who will be authorized to act on its behalf and who will be present at all times at the Center.
- 2.2.1.3. CONTRACTOR shall also designate in the Work Plan prepared pursuant to Section 3.1 other key personnel and substitutes that will staff and operate the Center for the duration of each specific storm event. These personnel shall be sufficiently familiar and experienced with the Contractor's personnel, equipment, and methods of operation to make key and timely decisions so that the debris removal operation proceeds in an efficient, well-coordinated manner.
- 2.2.1.4. the Center will operate, at a minimum, each workday from ½ hour prior to beginning of work to ½ hour afterwards.
- 2.2.1.5. the Center's designated supervisor shall work closely with City's Public Information

Officer (PIO) in developing public announcements concerning pick up schedules, project details, safety requirements, and other information necessary for proper conduct of operations.

- 2.2.2. If requested by the CITY, CONTRACTOR shall accompany and assist the CITY in assessing and preparing initial estimates of debris volume and damage assessment reports for submittal to FEMA and/or FLDEM.
- 2.2.3. Prior to the start of the Work, CONTRACTOR shall prepare a Work Plan in accordance with paragraph 3.1.
- 2.2.4. Prior to the start of the Work, CONTRACTOR shall submit a Schedule of Values in accordance with paragraph 3.2.
- 2.2.5. Prior to the start of the Work, all trucks used by the CONTRACTOR must be measured for capacity and appropriately marked by the CITY.
 - 2.2.5.1. trucks may be re-measured at any time during the life of the Project at the discretion of the CITY.

Project Management:

- 2.3. The CONTRACTOR will conduct daily meetings with the CITY to provide updates on the status of operations, discuss issues/problems, and schedule the following days Work.
 - 2.3.1. The CONTRACTOR will provide, at a minimum, weekly progress reports comparing initial projections of work volume, completion rate, and contract value with actual values of work completed to date. These weekly reports shall also include issues requiring the City's attention and other information requested by the CITY.

Debris Removal and Disposal:

- 2.4. The CONTRACTOR will remove and properly dispose of debris from right-of-ways and other selected areas as directed by the CITY.
 - 2.4.1. Debris will include, but not be limited to, household contents, personal property, construction and demolition (C&D) debris, vegetation, white goods (appliances such as ovens and refrigerators), uprooted stumps, leaning trees, dangerous limbs that are on or threatening public right-of-ways, vehicles, sand/sediment, hazardous materials, and other items as directed by the CITY.
 - 2.4.2. Collection of debris shall include hauling materials to either a temporary debris-processing site or to a solid waste disposal facility designated by Cooper City.
 - 2.4.2.1. Only trucks officially marked by the CITY pursuant to paragraph 2.2.5 will be accepted at a temporary debris-processing site or solid waste disposal facility.
 - 2.4.3. If CONTRACTOR is directed to haul the debris to a temporary debris-processing site, then CONTRACTOR shall perform any reduction, separation, or other processing of debris needed for removal to a final disposal site that is designated by the CITY.
 - 2.4.4. The CONTRACTOR is responsible for providing documentation of disposal for all collected and processed debris in accordance with the provisions of this Agreement.
 - 2.4.5. The CITY is responsible for all tipping fees.

- 2.4.6. Prior to the collection of debris, all hazardous and biohazardous wastes shall be identified, separated, and processed by CONTRACTOR in accordance with Sections 2.6 and 2.7, respectively.
 - 2.4.6.1. CONTRACTOR is strictly prohibited from bringing any hazardous or biohazardous wastes to any temporary debris-processing site or solid waste disposal facility.
- 2.4.7. Debris collection will be performed in no more than three (3) separate passes.
- 2.4.8. Approval to commence Work on each pass must be obtained from the CITY before Work is started.
- 2.4.9. The CITY may elect to have the CONTRACTOR perform additional debris removal passes. These passes will be performed for the unit prices contained in the Schedule of Values.
- 2.4.10. For small-scale disaster events, CONTRACTOR may be directed by the CITY to haul debris directly to the City's landfills or other sites designated by the CITY without separation or reduction. Under such circumstances, loads will be monitored and measured using an observation tower to be constructed by the CONTRACTOR at the landfill or other final disposal site. For this contingency, the CITY will notify the CONTRACTOR in writing of this intent. Upon receipt, the CITY will begin negotiations with the CONTRACTOR for revised unit prices for the amended Work. If a mutual agreement cannot be reached within a reasonable time, the CITY may, at its sole discretion, have this work performed by other parties.

Emergency Clearance:

- 2.5. Under emergency conditions, the CONTRACTOR may be asked to assist the CITY with restoring emergency services by collecting, removing, processing, and disposing of debris from key roadways.
 - 2.5.1. Prior to the commencement of any Emergency Clearance Work, the CITY shall identify the sequencing for clearance Work and CONTRACTOR shall provide for acceptance by the CITY a schedule for the execution and completion of all such Work.
 - 2.5.1.1. CONTRACTOR shall adhere to the agreed upon schedule.
 - 2.5.1.2. Contractor's schedule may not be amended without prior written approval by the CITY.
 - 2.5.2. For Emergency Clearance Work, CONTRACTOR shall "cut and toss" debris to the road shoulders.
 - 2.5.2.1. "Cut and toss" is defined as "the minimum actions necessary, within the roadway boundary, to clear the road for use by emergency crews".
 - 2.5.2.2. CONTRACTOR shall minimize damage to the road shoulder, curb and gutter, and sidewalks.
 - 2.5.2.3. CONTRACTOR shall avoid and minimize placing materials in adjacent ditches or drainage structures.
 - 2.5.3. Upon completion of all Emergency Clearance Work and acceptance of such Work by the CITY, CONTRACTOR shall remove and transport the "cut and tossed" debris in accordance with Contractor's accepted Work Plan and the provisions of this Agreement.

Hazardous Wastes

- 2.6. The CONTRACTOR shall identify potentially hazardous waste, perform necessary field testing to categorize the waste as hazardous waste, secure the sites by placing stakes and flagging tape

around the area where hazardous waste has been identified, and obtain authorization from the CITY to remove such waste.

2.6.1. The CONTRACTOR shall transport hazardous waste to a Household Hazardous Waste Collection Center designated by the City. The CONTRACTOR shall consolidate, lab pack, bulk or overpack the waste according to all applicable regulations; and transport the waste by a licensed hazardous waste transporter to a permitted hazardous waste disposal facility approved by the CITY within thirty (30) days of delivery to the center.

2.6.2. Payments to the CONTRACTOR for removal of hazardous wastes will be contingent upon the CITY receiving a waste disposal manifest from the approved disposal facility documenting the delivery, acceptance, and disposal of the hazardous waste.

Biohazardous Waste

2.7. The CONTRACTOR shall identify sites with potentially bio-hazardous waste, secure the sites by placing stakes and flagging tape around the area where bio-hazardous waste has been identified, and obtain authorization from the CITY to remove such waste.

2.7.1. The CONTRACTOR shall package for transport all bio-hazardous waste according to Federal, state, and local regulations. The CONTRACTOR shall transport the biohazardous waste to a Household Hazardous Waste Collection Center designated by the City. The CONTRACTOR shall consolidate, bulk or overpack the waste according to all applicable regulations; and transport the waste by a licensed bio-hazardous waste transporter to a permitted bio-hazardous waste disposal facility approved by the CITY within thirty (30) days of delivery to the center.

2.7.2. Payments to the CONTRACTOR for removal of these materials will be contingent upon the CITY receiving a waste disposal manifest and certificate of destruction from the approved disposal facility documenting the delivery and incineration of the biohazardous waste.

Dead Animals

2.8. The CONTRACTOR shall collect and transport dead animals as directed by the CITY.

2.8.1. CONTRACTOR will not be responsible for disposal fees associated with these dead animals.

Private Property

2.9. Should the CITY deem a disaster event to be of such magnitude that pick-up on the public right-of-way is not practical or sufficient to eliminate immediate threats to public health and safety, the CONTRACTOR may be directed by the CITY to collect debris from private property.

2.9.1. CONTRACTOR will not proceed onto private property until directed to do so by the CITY.

2.9.2. CONTRACTOR will assist the CITY in obtaining rights-of-entry, hold harmless consents, and insurance information from property owners prior to entry onto private property.

2.9.3. CONTRACTOR shall collect, remove and transport debris in accordance with the provisions of this Agreement.

2.9.4. When directed by the CITY, CONTRACTOR will load and haul destroyed vehicles to a holding area designated by the CITY. Once delivered, final resolution will be negotiated between the CITY and respective insurance companies.

- 2.9.5. In the event that the CITY deems work on private property necessary, the CITY will attempt to negotiate additional fees with CONTRACTOR for each specific disaster event. However, the CITY may also, at its sole discretion, have this work performed by other parties.

Sand/Sediments:

- 2.10. The CONTRACTOR is responsible for collecting debris-laden white beach sand from rights-of-way and roadways as directed by the CITY and transporting the debris-laden sand to a temporary debris-processing site.
- 2.10.1. CONTRACTOR shall screen sand using equipment designed with a heavy-duty grid and screens to filter and remove all debris larger than ¼ inch in diameter.
- 2.10.2. CONTRACTOR shall stockpile and segregate all screened white beach sand at the processing sites and stabilize and maintain such sand stockpiles until the clean sand material is removed by the CITY.
- 2.10.3. Once cleaned, CONTRACTOR is responsible for protecting the cleaned white beach sand from being contaminated in any way. The CONTRACTOR is also responsible for ensuring that sand is not removed from the stockpiles by wind erosion, water erosion, or other means.
- 2.10.4. At the direction of the CITY, the CONTRACTOR shall remove other sediments (e.g. gravel, clay, and other materials not suitable for return to the beaches) from rights-of-way, roadways, and public property. The CONTRACTOR will haul these materials to spoil areas designated by the CITY.

Staging/Reduction/Processing:

- 2.11. Processing of debris, unless otherwise directed by the CITY, shall include the establishment and operation of one or more temporary debris-processing sites by the CONTRACTOR throughout City of Marathon where collected debris may be sorted, screened for sand, recycled, ground, mulched, burned, or otherwise segregated for transport and disposal to a facility designated by the CITY.
- 2.11.1. Disposal will be at either the _____ for mulched vegetative debris, the Central Disposal Facility for Class I Solid Waste, Class III Solid Waste, and mulched vegetative debris, the _____ for mulched vegetative debris, or other facilities to be designated by the CITY located within City of Marathon.
- 2.11.2. CONTRACTOR shall conduct all processing activities in compliance with all Federal, state, and local rules and regulations.
- 2.11.3. Debris will not be deemed processed until, in the opinion of the CITY, all disaster related debris has been reduced and delivered to a designated disposal facility.
- 2.11.4. CONTRACTOR shall maintain all temporary debris-processing sites in accordance with all local, state, and Federal rules and regulations including requirements for erosion control, storm water management, fire control, and fugitive emissions control.
- 2.11.5. CONTRACTOR is strictly prohibited from bringing any hazardous or biohazardous wastes to any temporary debris-processing site or solid waste disposal facility.
- 2.11.6. If hazardous or biohazardous wastes are found at a temporary debris-processing site, the CONTRACTOR shall immediately notify the CITY and remove such wastes in accordance with the provisions of Sections 2.6 and 2.7.

- 2.11.7. CONTRACTOR shall provide stabilized ingress and egress to each debris-processing site and shall maintain such access throughout the life of the site.
- 2.11.8. CONTRACTOR shall provide Maintenance of Traffic (MOT) Plan for each of the temporary debris-processing sites. The MOT Plan will be prepared by the CONTRACTOR and submitted to the CITY for review and acceptance prior to the usage of each site. This plan will include provisions for keeping the public roadway and private property free of any fugitive materials as a result of the site utilization.
- 2.11.9. CONTRACTOR shall erect a roofed inspection tower at each temporary debris-processing site of sufficient design to support a minimum of three (3) inspectors and of adequate height to measure all incoming trucks.
- 2.11.10. Upon completion of all processing operations, CONTRACTOR shall reclaim the site to the satisfaction of the CITY, affected property owners, and in accordance with applicable federal, state, and local regulations.
- 2.11.10.1. reclamation includes the completion of the processing activities, removal of all equipment and debris (including contaminated soils), grading of the site to pre-use condition, and seeding and mulching of the exposed areas.
- 2.11.10.2. CONTRACTOR may use screened soils that are free of contaminants for site restoration.
- 2.11.10.3. baseline data collected by the CONTRACTOR and available from other sources will be used to establish the need for removal of contaminated soils. When required, the CONTRACTOR shall replace on the site fill dirt in quantities sufficient to bring the site back to the pre-disaster elevation.

White Goods:

- 2.11.11. "White goods" will be separated and placed in a staging area at the temporary debris-processing site for further processing.

Burning:

- 2.11.12. CONTRACTOR shall obtain approval from the CITY prior burning vegetative debris.
- 2.11.12.1. Clean vegetation suitable for use as mulch or fuel and hazardous or contaminated debris (asbestos tiles, roofing, etc.) may not be burned.
- 2.11.12.2. CONTRACTOR shall use air curtain pit or portable incineration. CONTRACTOR is responsible for monitoring all burning operations to ensure efficient operation and compliance with clean air and other applicable regulations and standards.
- 2.11.12.3. CONTRACTOR will transport resulting ash to the Central Disposal Facility.
- 2.11.12.3.1. while stockpiled at the temporary debris-processing site, ash will be placed by the CONTRACTOR on impermeable liners adequate to prevent runoff or possible contamination. Liners will be provided, installed, and maintained by the CONTRACTOR.
- 2.11.12.4. Contractor is responsible for obtaining the necessary permits from the County.

Mulching/Grinding:

- 2.11.13. CONTRACTOR will only use this process with clean vegetation that contains less than 10%

contaminants and no plastics.

2.11.13.1. The grinding must produce a mulch product with ninety-five (95%) of its final particle size less than three (3) inches in its longest diameter.

2.11.13.2. CONTRACTOR will place mulch in piles no greater than 15 feet high. These piles shall be watered and turned by the CONTRACTOR on a routine basis until transported to a designated facility within City of Marathon, at which time the material becomes the responsibility of the CITY for further resolution.

Recycling:

2.11.14. The CONTRACTOR is encouraged to recycle materials in accordance with local, state, and federal regulations.

2.11.14.1. Any efforts to segregate recyclable materials and the potential economic return are at the discretion of the CONTRACTOR.

Maintenance and Protection of Traffic:

2.12. All streets and travel ways shall remain open to the passage of vehicular and pedestrian traffic during the prosecution of the Work, unless prior written consent is obtained from the CITY and the governing body having jurisdiction over the street or travel way.

2.12.1. In order to maintain effective traffic control and warn of hazards, CONTRACTOR shall provide all necessary signs, signals, barricades, flares, lights, other devices, and personnel and be responsible for the maintenance of all such devices. The CONTRACTOR shall ensure that all equipment is in place and in good condition.

2.12.2. Maintenance and protection of traffic shall be provided in accordance with the Manual of Uniform Traffic Control Devices (MUTCD) and any provisions contained in the plans or the contract documents in areas affected by the Contractor's operations.

2.12.2.1. the correct sequence and spacing of signs, either permanent or temporary must be maintained at all times in accordance with MUTCD. All signs, including guide signs, shall indicate actual conditions at all times. The traffic maintenance schemes shown in the MUTCD describe the minimum methods and control devices necessary. The CITY may order additional devices, the immediate covering, movement, removal, or change of any device, and/or may order additional methods to meet field conditions.

2.12.2.2. CONTRACTOR shall provide traffic control and direction signs, mounted on barricades or standard posts at each change of direction of a roadway, at each crossroad, at detours, at hazardous areas, at temporary debris-processing facilities, and at parking areas.

2.12.2.3. CONTRACTOR shall provide and maintain safe and adequate ingress and egress to and from intersecting highways, homes and commercial establishments to the satisfaction of the CITY.

2.12.2.4. when crossings, obstructions, or the temporary closures of streets or travel ways are required, the CONTRACTOR shall provide and maintain suitable bridges, detours or other temporary measures, all of which must be to the satisfaction of the City, for the accommodation of traffic.

2.12.3. Unless otherwise agreed to or specified, the CONTRACTOR will provide the CITY and any affected party a minimum of 48 hours advance notice of any operations that will impact police, fire, and other emergency response operations.

- 2.12.4. Unless otherwise agreed to or specified, the CONTRACTOR will provide the CITY and any affected party a minimum of 24 hours advance notice of any operations that will impact owners and tenants of private properties for a period of two or more hours.
- 2.12.5. The CONTRACTOR shall remove temporary equipment and facilities when no longer required, and restore area to original or specified conditions upon removal.
- 2.12.6. The duration of the operation shall be for the minimum time practical. Traffic shall be restored as soon as the street or travel way is safely passable.

Products:

- 2.12.7. All signing, operations, safety, and directive devices shall conform to the Manual of Uniform Traffic Control Devices and the Authority having jurisdiction.
- 2.12.8. Delineators shall be of the reflectorized plastic drum type.
- 2.12.9. Advance-warning signs shall be diamond shaped and have black lettering on an orange background.

Work Zones:

- 2.12.10. A work zone is defined as that area in which traffic is restricted because of the prosecution of the Work, or that area which involves a drop-off within 10 feet of the edge of pavement.
 - 2.12.10.1. Except for Emergency Clearance Work, Work zones on opposite sides of the road shall not overlap.
- 2.12.11. Excavations that produce drop-offs on both sides of the traveled way at the same time shall not be permitted.
- 2.12.12. CONTRACTOR shall delineate areas where there is a drop-off near the edge of the traveled way and areas on which it is unsafe to travel. The provisions for delineation shall be as approved by the CITY, and the governing body having jurisdiction over the street, travel way, or site.
- 2.12.13. Reflectorized plastic drum delineators shall be used along embankments and at other hazardous locations determined by the CITY. Delineators shall remain in place until satisfactory protection is provided.
 - 2.12.13.1. Delineators shall be spaced at a distance not to exceed 50 feet, or as directed by the CITY.
- 2.12.14. CONTRACTOR shall provide 1-inch steel plates to provide for traffic movement over narrow, open excavations.
- 2.12.15. The roadside clear area is a strip along the length of the road extending 20 feet from the edge of the travel lane.
 - 2.12.15.1. No material is to be stored on the shoulder or within the 20-foot roadside clear area except that which is to be placed that day for removal.
 - 2.12.15.2. Construction equipment shall be removed from the roadside clear area of all highway pavements during the hours that the CONTRACTOR is not working. This requirement shall not be limited to the contract limits.

Flag Personnel:

2.12.16. The CONTRACTOR shall provide suitably qualified and equipped flag personnel when construction operations encroach on traffic lanes.

2.12.17. The regulation of traffic by flag personnel shall be in accordance with the requirements of the MUTCD or the Authority having jurisdiction.

Flares and Lights:

2.12.18. During periods of low visibility, CONTRACTOR shall provide flares and lights to guide traffic, to clearly delineate traffic lanes, illuminate parking areas, and to warn of hazardous areas.

2.12.19. Flag personnel shall use lights in directing traffic during periods of low visibility.

Parking Control:

2.12.20. CONTRACTOR shall control all CONTRACTOR related vehicular parking so as to not interfere with public traffic and parking, access to emergency vehicles, the City's operations, or Work operations.

2.12.21. CONTRACTOR shall coordinate with the CITY to provide temporary parking facilities for the public as Work operations dictate.

2.12.22. CONTRACTOR shall provide parking areas for worker's private vehicles that comply with applicable laws, regulations, codes, and ordinances.

2.12.23. CONTRACTOR shall ensure free vehicular access to and through the parking areas.

2.12.24. CONTRACTOR shall not permit parking on or adjacent to access roads or in non-designated areas.

Haul Routes:

2.12.25. CONTRACTOR shall consult with governing authorities and establish thoroughfares, which shall be used as haul routes and site access.

2.12.26. CONTRACTOR shall confine the prosecution of the Work to designated haul routes.

2.12.27. CONTRACTOR will be required to provide traffic control at critical points of haul routes to expedite traffic flow and minimize interference with normal public traffic.

2.12.28. As part of the Work Plan required in paragraph 3.1 below, the CONTRACTOR shall prepare and submit traffic control plans for approval by both the CITY and the governing Authority prior to commencement of work.

Demobilization:

2.13. CONTRACTOR will complete all Work under this contract and remove all equipment, supplies, and other materials involved in the prosecution of the Work from the site. All temporary debris-processing sites and Work areas will be cleaned and restored to the satisfaction of the CITY.

FEMA Support:

2.14. CONTRACTOR shall provide assistance to the CITY in the City's FEMA reimbursement efforts by:

- 2.14.1. maintaining an accounting system in conformance with Federal guidelines and provide such accounting data to the CITY.
- 2.14.2. maintaining and providing to the CITY all record documents identified in paragraph 7.25.
- 2.14.3. reviewing all Federal and State reimbursement applications prepared by the CITY prior to submittal for sufficiency in meeting the reimbursement requirements of these organizations and notifying the CITY of any recommended changes, corrections, alterations or deletions.
- 2.14.4. responding to Federal and State agencies' requests for additional information when directed to do so by the CITY.

ARTICLE 3 - PRELIMINARY MATTERS

Work Plan:

- 3.1. The CONTRACTOR will develop a Work Plan for acceptance by the CITY prior to the commencement of the Work.
 - 3.1.1. The Work plan must describe the Contractor's proposed means, methods, and sequencing of the Work outlined in Article 2 of this Agreement and shall include, at a minimum:
 - 3.1.1.1. a listing of the Contractor's key staff, their responsibilities, means of communicating with the key staff including their cellular phone and pager numbers,
 - 3.1.1.2. Contractor's representative and substitute personnel who will be authorized to act on its behalf and who will be present at all times at the Communication Center mobilized pursuant to paragraph 2.2.1. including personnel that will staff and operate the Center for the duration of each specific storm event.
 - 3.1.1.3. a listing of the Contractor's subcontractors and the areas of the Work that each subcontractor will execute,
 - 3.1.1.4. a listing of the equipment that will be used for the Project,
 - 3.1.1.5. a listing of temporary debris-processing sites that are needed and how they will be set up,
 - 3.1.1.6. a description of procedures that will be followed by the CONTRACTOR to document all Work efforts,
 - 3.1.1.7. a proposed progress schedule indicating the number of days for execution and completion of all areas of Work assigned under Article 2 of this Agreement including any Milestones specified in the Contract Documents.
 - 3.1.1.8. a traffic control plan as required by paragraphs 2.11.7 and Sections 2.12.
 - 3.1.1.9. a listing of any items or decisions that are needed by the CONTRACTOR from the CITY to complete the Work in accordance with the requirements of the Contract Documents.
 - 3.1.1.10. the CONTRACTOR cannot amend or modify the Work Plan nor commence with any modifications to the Work without the prior acceptance of the proposed amendments by the City.

Schedule of Values:

- 3.2. Prior to the commencement of the Work, the CONTRACTOR is to provide proposed unit costs for each category of debris removal work being requested by the CITY based on the Work assigned under Article 2 of this Agreement for each disaster event. These costs will not exceed the unit costs established in the Schedule of Values for this Contract. If a mutual agreement concerning the unit costs to be applied for a specific disaster event cannot be reached, the CITY may, at its sole discretion, elect to have all or a portion of the Work performed by other parties. The unit costs contained in the Schedule of Values agreed to for each specific storm event will be used as the basis for payment for all Work performed by the CONTRACTOR for that specific event.

Delivery of Bonds:

- 3.3. When CONTRACTOR delivers the executed Agreements to the CITY, CONTRACTOR shall also deliver to THE CITY such Bonds as CONTRACTOR may be required to furnish in accordance with Sections 6.5 and 6.6. for the Contractor's workforce.
- 3.4. Within twenty-four (24) hours of the Notice to Proceed but before any Work at the site is started, CONTRACTOR shall deliver to the CITY certificates of insurance and other evidence of insurance which the CITY or any additional insured may reasonably request which CONTRACTOR is required to purchase and maintain in accordance with Sections 6.1, 6.5, and 6.5 for the Contractor's workforce and subcontractors.

Copies of Documents:

- 3.5. The CITY shall furnish to CONTRACTOR up to two copies of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.

Commencement of Contract Times; Notice to Proceed:

- 3.6. The Contract Times will commence to run on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time after the Effective Date of the Agreement.

Starting work:

- 3.7. CONTRACTOR shall start to perform the Work on the date when the Contract Times commence to run, but no Work shall be done at the site prior to the date on which the Contract Times commence to run.

Before Starting Work:

- 3.8. Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to the CITY any conflict, error, ambiguity or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from the CITY before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to the CITY for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents, unless CONTRACTOR knew or reasonably should have known thereof.
- 3.9. Within twenty-four (24) hours after the Notice to Proceed but before any Work at the site is started, CONTRACTOR shall attend a pre-work conference with the CITY and others as appropriate to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 3.1., procedures for processing Applications for Payment, and requirements for record maintenance.

ARTICLE 4 - CONTRACT DOCUMENTS: INTENT, AMENDMENT, REUSE

Intent:

- 4.1. The Contract Documents comprise the entire agreement between the CITY and CONTRACTOR concerning the Work. The Contract Documents are complementary: what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of Florida.
- 4.2. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be executed in accordance with the Contract Documents. Any Work, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed whether or not specifically called for. When words or phrases which have a well-known technical or construction industry or trade meaning are used to describe the Work, materials, or equipment, such words or phrases shall be interpreted in accordance with the meaning. The CITY as provided in paragraph 10.4 shall issue clarifications and interpretations of the Contract Documents.
- 4.3. Reference to Standards and Specifications of Technical Societies: Reporting and Resolving Discrepancies:
 - 4.3.1. Reference to standards, specifications, manuals or codes of any technical society, organization, or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard, specification, manual, code or Laws or Regulations in effect on the effective date of the Agreement, except as may be otherwise specifically stated in the Contract Documents.
 - 4.3.2. If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any such Law or Regulation applicable to the performance of the Work or of any such standard, specification, manual, or code or of any instruction of any supplier. CONTRACTOR shall report it to the CITY in writing at once, and, CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as authorized by paragraph 7.30) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 4.5 or 4.6; provided, however, that CONTRACTOR shall not be liable to the CITY for failure to report any such conflict, error, ambiguity or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.
 - 4.3.3. Except as otherwise specifically stated in the Contract Documents or as may be provided by amendment or supplement thereto issued by one of the methods indicated in paragraph 4.5 or 4.6, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - 4.3.3.1. the provisions of any such standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents): or
 - 4.3.3.2. the provisions of any such Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).
 - 4.3.4. No provision of any such standard, specification, manual, code, or instruction shall be effective to change the duties and responsibilities of the CITY, or CONTRACTOR, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to the CITY, or any of City's Consultants, agents, or employees any duty or authority to supervise or direct the furnishing or performance of the

Work or any duty or authority to undertake responsibility inconsistent with the provisions of paragraph 10.13 or any other provision of the Contract Documents.

- 4.4. Whenever in the Contract Documents the terms "as ordered," "as directed," "as required," "as allowed," "as approved" or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of the CITY as to the Work, it is intended that such requirement, direction, review, or judgment will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to the CITY any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 10.13 or any other provision of the Contract Documents.

Amending and Supplementing Contract Documents:

- 4.5. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:
- 4.5.1. a formal Written Amendment.
 - 4.5.2. a Change Order (pursuant to paragraph 11.4) or
 - 4.5.3. a Work Change Directive (pursuant to paragraph 11.1).
- 4.6. In addition, the requirements of the Contract Documents may be supplemented, and minor variations, and deviations of the Work may be authorized, in one or more of the following ways:
- 4.6.1. a Field Order (pursuant to paragraph 10.5).
 - 4.6.2. City's written interpretation or clarification (pursuant to paragraph 10.4).

Reuse of Documents:

- 4.7. CONTRACTOR and any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with the CITY (i) shall not have or acquire any title to or the ownership rights in any of the documents (or copies of any thereof) prepared by or bearing the seal of the CITY or the City's Consultant, and (ii) shall not reuse any of such documents, or copies on extensions of the Project or any other project without written consent of and verification by the CITY.

ARTICLE 5 - AVAILABILITY OF AREA: SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

Availability of Area:

- 5.1. The CITY indicates in the Contract Documents, the designated area upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other areas that are designated for the use of CONTRACTOR. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary storage of materials and equipment.

Subsurface and Physical Conditions:

- 5.2. No reports or explorations and tests of subsurface conditions at or contiguous to the site have been utilized by the CITY in preparing the Contract Documents; and
 - 5.2.1. Aerial Photographs of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) that have been utilized by the CITY in preparing the Contract Documents are available to the CONTRACTOR.

Notice of Differing Subsurface or Physical Conditions:

- 5.3. If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the site that is uncovered or revealed either:
 - 5.3.1. is of such a nature as to require a change in the Contract Documents, or
 - 5.3.2. differs materially from that shown or indicated in the Contract Documents, or
 - 5.3.3. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents; then

CONTRACTOR shall promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as permitted by paragraph 7.30), notify the CITY in writing about such condition. CONTRACTOR shall not further disturb such conditions or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

- 5.4. The CITY will promptly review the pertinent conditions, determine the necessity of the CITY obtaining additional exploration or tests with respect thereto.
- 5.5. If the CITY concludes that a change in the Contract Documents is required as a result of a condition that meets one or more of the categories in Section 5.3, a Work Change Directive or a Change Order will be issued as provided in Article 11 to reflect and document the consequences of such change.
- 5.6. An equitable adjustment in the Contract Price or in the Contract Times, or both, will be allowed to the extent that the existence of such uncovered or revealed condition causes an increase or decrease in Contractor's cost of, or time required for performance of the Work; subject, however, to the following:
 - 5.6.1. such condition must meet any one or more of the categories described in Section 5.3;
 - 5.6.2. a change in the Contract Documents pursuant to paragraph 5.6 will not be an automatic authorization of nor a condition precedent to entitlement to any such adjustment;
 - 5.6.3. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract price will be subject to the provisions of paragraph 10.10 and Section 12.7; and
 - 5.6.4. CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Times if;
 - 5.6.4.1. CONTRACTOR knew of the existence of such conditions at the time CONTRACTOR made a final commitment to the CITY with respect to Contract Price and Contract Times by the submission of a Proposal or becoming bound under a negotiated contract: or
 - 5.6.4.2. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the site and contiguous areas required by the Proposal Requirements or Contract Documents to be

conducted by or for CONTRACTOR prior to Contractor's making such final commitment;
or

5.6.4.3. CONTRACTOR failed to give the written notice within the time and as required by Section 5.3.

- 5.7. If the CITY and CONTRACTOR are unable to agree on entitlement to or as to the amount or length of any such equitable adjustment in the Contract Price or Contract Times, a claim may be made therefore as provided in Articles 12 and 13. However, the CITY, and the City's Consultants shall not be liable to CONTRACTOR for any claims, costs, losses, or damages sustained by CONTRACTOR on or in connection with any other project or anticipated project.

Physical Conditions - Underground Conditions:

- 5.8. The information and data shown or indicated in the Contract Documents with respect to existing Underground Conditions at or contiguous to the site is based on information available at the time the contract drawings were prepared.

5.8.1. the CITY shall not be responsible for the accuracy or completeness of any such information or data; and

5.8.2. CONTRACTOR shall be responsible to examine the area of the work, and verify all above water and under water or underground conditions.

Reference Points:

- 5.9. CONTRACTOR shall be responsible for laying out the Work, shall protect and preserve established reference points and shall make no changes or relocations without the prior written approval of the CITY. CONTRACTOR shall report to the CITY whenever any reference point is lost or destroyed or requires relocation because of necessary prosecution of the Work and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material:

- 5.10. CONTRACTOR shall be responsible for removing and legally disposing of any Asbestos, PCBs, Petroleum, or Hazardous Waste uncovered or revealed at the site. The CITY shall not be responsible for any such materials brought to the site by CONTRACTOR, Subcontractor, Suppliers, or anyone else for whom CONTRACTOR is responsible.

5.10.1. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless the CITY and the City's Consultants and the officers, directors, employees, agents, other consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages arising out of or resulting from such hazardous condition, provided that: (i) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) nothing in this subparagraph 5.10.1. shall obligate the CITY to indemnify any person or entity from and against the consequences of that person's or entity's own negligence.

ARTICLE 5 - BONDS AND INSURANCE

Performance, Payment, and Other Bonds:

- 6.1. CONTRACTOR shall furnish a Performance Construction Bond in conformance with Florida Statute 255.05 in an amount at least equal to the Contract Price as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department. A certified copy of such agent's authority to act must accompany all Bonds signed by an agent.
- 6.2. If the surety on any Bond furnished by CONTRACTOR is declared a bankrupt or becomes insolvent or its right to do business is terminated in Florida or it ceases to meet the requirements of paragraph 6.1. CONTRACTOR shall within ten days thereafter substitute another bond and surety, both of which must be acceptable to the CITY.

Licensed Sureties and Insurers; Certificates of Insurance:

- 6.3. All Bonds and insurance required by the Contract Documents to be purchased and maintained by CONTRACTOR shall be obtained from surety or insurance companies that are duly licensed or authorized in City of Marathon, Florida to issue Bonds or insurance policies for the limits and coverages so required.
- 6.4. CONTRACTOR shall deliver to the CITY certificates of insurance (and other evidence of insurance requested by the CITY or any other additional insured) which CONTRACTOR is required to purchase and maintain in accordance with Section 6.5.

Contractor's Liability Insurance:

- 6.5. CONTRACTOR shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and furnished and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance and furnishing of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed or furnished by CONTRACTOR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable:
 - 6.5.1. claims under workers' compensation, disability benefits and other similar employee benefit acts;
 - 6.5.2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
 - 6.5.3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
 - 6.5.4. claims for damages insured by customary personal injury liability coverage which are sustained:
 - (i) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or by any other person for any other reason;
 - 6.5.5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
 - 6.5.6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

- 6.6. The policies of insurance so required by Section 6.5 to be purchased and maintained shall:
 - 6.6.1. with respect to insurance required by paragraphs 6.5.3 through 6.5.6 inclusive, include as additional insured (subject to any customary exclusion in respect of professional liability) the CITY and the City's Consultants all of whom shall be listed as additional insured, and include coverage for the respective officers and employees of all such additional insured;
 - 6.6.2. include the specific coverages and be written for not less than the limits of liability provided below or required by Laws or Regulations, whichever is greater;

CONTRACTOR'S LIABILITY INSURANCE LIMITS

- 6.7. Comprehensive general liability insurance covering all operations, including legal liability and completed operations/products liability, with minimum limits of One Million Dollars (\$1,000,000.00) combined single limit per occurrence. Such liability insurance shall provide Blanket Broad Form contractual coverage and if applicable, Blanket XCU. Property damage insurance shall include a policy endorsement providing an extension of the policy for Broad Form Property Damage coverage.
- 6.8. Comprehensive Automobile and Water Vehicle Liability Insurance covering owned, non-owned or rented automotive equipment to be used in performance of the work with minimum limits of One Million Dollars (\$1,000,000.00) combined single limit per occurrence.
- 6.9. Workers' compensation insurance shall be in the amounts and in the form prescribed by the laws of Florida.
- 6.10. The aggregate limit of paragraphs 6.7 through 6.9 is five million dollars (\$5,000,000). Umbrella policies are acceptable.

ADDITIONAL INSURANCE

- 6.11. Physical damage insurance covering owned or rented machinery, tools, equipment, office trailers and vehicles.
- 6.12. The policies of insurance so required by paragraphs 6.5 through 6.11 to be purchased and maintained shall:
 - 6.12.1. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to the CITY and to each other additional insured to whom a certificate of insurance has been issued;
 - 6.12.2. remain in effect at least until final payment and at all times thereafter when CONTRACTOR may be correcting, removing or replacing **defective** Work in accordance with paragraph 14.9; and
 - 6.12.3. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and CONTRACTOR shall furnish the CITY and each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued evidence satisfactory to the CITY and any such additional insured of continuation of such insurance at final payment and one year thereafter).

ARTICLE 7 - CONTRACTOR'S RESPONSIBILITIES

Supervision and Superintendence:

- 7.1. CONTRACTOR shall supervise, inspect and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of the Work, but CONTRACTOR shall not be responsible for the negligence of others in the design or specification of a specific means, method, technique, sequence or procedure of the Work which is shown or indicated in and expressly required by the Contract Documents. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.
- 7.2. CONTRACTOR shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to the CITY except under extraordinary circumstances. The superintendent will be Contractor's representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications to the superintendent shall be as binding as if given to CONTRACTOR.

Labor, Materials and Equipment:

- 7.3. CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out, and execute the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. Except as otherwise required for the safety or protection of persons or the Work or property at the site or adjacent thereto, all Work at the site shall be performed from sunrise to sunset seven day per week, including holidays, unless otherwise directed by the CITY in writing. If conditions warrant, the CITY by written notice may require CONTRACTOR to execute the Work on a twenty-four (24) hour per day basis. The CITY may also by written notice reduce the Contractor's working hours as the Project progresses.
- 7.4. CONTRACTOR shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.
- 7.5. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Contract Documents shall expressly run to the benefit of the CITY. If required by the CITY, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

Progress Schedule:

- 7.6. CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 3.1.1.7 as it may be adjusted from time to time as provided below:
 - 7.6.1. CONTRACTOR shall submit to the CITY for acceptance proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

Concerning Subcontractors, Suppliers and Others:

- 7.7. CONTRACTOR shall not employ any Subcontractor, Supplier or other person or organization (including those acceptable to the CITY as indicated in paragraph 7.8), whether initially or as a substitute, against whom the CITY may have reasonable objection. CONTRACTOR shall not be

required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

- 7.8. All Subcontractors, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials or equipment) must be submitted to the CITY for acceptance prior to the execution of the Work. The City's acceptance (either in writing or by failing to make written objection thereto) of any such Subcontractor, Supplier or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case CONTRACTOR shall submit an acceptable substitute. No acceptance by the CITY of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of the CITY to reject **defective** Work.
- 7.9. CONTRACTOR shall be fully responsible to the CITY for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other person or organization any contractual relationship between the CITY and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of the CITY to pay or to see to the payment of any moneys due any such Subcontractor. Supplier or other person or organization except as may otherwise be required by Laws and Regulations.
- 7.10. CONTRACTOR shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR. CONTRACTOR shall require all Subcontractors, Suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with the CITY through CONTRACTOR.
- 7.11. The divisions and sections of the Contract Documents do not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- 7.12. All Work performed by CONTRACTOR by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor or Supplier that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of the CITY. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 614. or 6.15. the agreement between the CONTRACTOR and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against the CITY, CONTRACTOR, the City's Consultants and all other additional insured for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, CONTRACTOR will obtain the same.

Patent Fees and Royalties:

- 7.13. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of the CITY its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by the CITY in the Contract Documents. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless the CITY, the City's Consultants and the officers, directors, employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages arising out of or resulting from any infringement of

patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents.

Permits:

7.14. Unless otherwise provided, CONTRACTOR shall obtain and pay for all permits and licenses that are necessary and incidental to the prosecution of the Work. THE CITY shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and the CITY shall pay all charges of such utility owners for capital costs related thereto such as plant investment fees.

7.14.1. Prior to operation of any temporary debris-processing site, CONTRACTOR will comply with all applicable permitting requirements and provide the CITY with copies of such permits.

Laws and Regulations:

7.15. CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to furnishing and performing the Work.

7.16. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, CONTRACTOR shall bear all claims, costs, losses and damages caused by, arising out of or resulting therefrom: however, it shall not be Contractor's primary responsibility to make certain that the Contract Documents are in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR or Contractor's obligations under paragraph 4.3.2.

Taxes:

7.17. CONTRACTOR shall pay all sales, consumer, use, and other similar taxes required to be paid by CONTRACTOR in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

Use of Premises:

7.18. CONTRACTOR shall confine equipment, the storage of materials, and the operations of workers to the site and confine operations within the debris removal and transfer areas identified in and permitted by the Contract Documents and shall not unreasonably encumber areas serving the public with equipment or other materials.

7.19. CONTRACTOR shall assume full responsibility for any damage to any such area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work. Should any claim be made by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law. CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless the CITY, the City's Consultant and anyone directly or indirectly employed by any of them from and against all claims costs, losses and damages arising out of or resulting from any claim or action, legal or equitable, brought by any such owner or occupant against the CITY, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

7.20. During the progress of the Work, CONTRACTOR shall keep the site free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, CONTRACTOR shall remove all waste materials, rubbish and debris from and about the site as well as all tools, appliances, equipment and machinery and surplus materials. CONTRACTOR shall leave

the site clean. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

- 7.21. CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will be dangerous, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.
- 7.22. CONTRACTOR shall not use areas outside debris removal and transfer areas for parking or storage of materials, except as approved the CITY.
- 7.23. CONTRACTOR shall schedule deliveries to minimize space and time requirements for storage of materials and equipment on site.
- 7.24. CONTRACTOR is responsible for coordinating the use of any public or private area with the appropriate local authorities and affected landowners.

Record Documents:

- 7.25. CONTRACTOR shall maintain in a safe place at the site one record copy of all load tickets, disposal tickets, field inspection reports, and other data sufficient to provide substantiation of debris removal costs for Federal and State reimbursement applications along with Written Amendments, Change Orders, Work Change Directives, Field Orders and written interpretations and clarifications (issued pursuant to paragraph 9.4) in good order and annotated to show all changes made during the execution of the Work. These record documents together with all approved Samples will be available to the CITY for reference. Upon completion of the Work, these record documents and Samples will be delivered to the CITY.

Safety and Protection

- 7.26. CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
 - 7.26.1. all persons on the Work site or who may be affected by the Work;
 - 7.26.2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and
 - 7.26.3. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of the prosecution of the Work.
- 7.27. CONTRACTOR shall comply with all applicable Laws and Regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify the owners of adjacent property and of Underwater Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraph 7.19. or 7.20 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of the Contract Documents or to the acts or omissions of the CITY or the City's Consultant or anyone employed by any of them or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier or other person or organization directly or indirectly employed by any of them). Contractor's duties and responsibilities

for safety and for protection of the Work shall continue until such time as all the Work is completed and the CITY has issued a notice to CONTRACTOR in accordance with paragraph 15.14. that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

Safety Representative:

- 7.28. CONTRACTOR shall designate a qualified and experienced safety representative at the site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

Hazard Communication Programs:

- 7.29. CONTRACTOR shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in accordance with Laws or Regulations.

Emergencies:

- 7.30. In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from the CITY, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give the CITY prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If the CITY determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Work Change Directive or Change Order will be issued to document the consequences of such action.

7.30.1. If the CITY notifies the CONTRACTOR of any hazardous practices with the Contractor's prosecution of the Work, the CONTRACTOR shall immediately cease those operations associated with the hazardous practice and take necessary remedial action to eliminate or mitigate the hazard to the satisfaction of the CITY.

Continuing the Work:

- 7.31. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with the CITY. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 16.9 or as the CITY and CONTRACTOR may otherwise agree in writing.

Contractor's General Warranty and Guarantee:

- 7.32. CONTRACTOR warrants and guarantees to the CITY and the City's Consultants that all Work will be in accordance with the Contract Documents and will not be **defective**. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

7.32.1. abuse, modification or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors or Suppliers; or

7.32.2. normal wear and tear under normal usage.

- 7.33. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accor-

dance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

- 7.33.1. observations by the CITY;
- 7.33.2. the issuance of a certificate of Substantial Completion or any payment by the CITY to CONTRACTOR under the Contract Documents;
- 7.33.3. use or occupancy of the Work or any part thereof by the CITY;
- 7.33.4. any acceptance by the CITY or any failure to do so;
- 7.33.5. any review and approval of a Sample submittal or the issuance of a notice of acceptability by the CITY pursuant to paragraph 15.14;
- 7.33.6. any inspection, test or approval by others; or
- 7.33.7. any correction of **defective** Work by the CITY.

Indemnification:

- 7.34. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify, save, defend and hold harmless the CITY, the City's Consultants and the officers, directors, employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from the performance of the Work, provided that any such claim, cost, loss or damage: (i) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of a person or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such person or entity.
- 7.35. In conformance with requirements of Section 725.06, Florida Statutes, both parties acknowledge that specific consideration has been exchanged for CONTRACTOR'S these provisions.

Survival of Obligations:

- 7.36. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Agreement.

ARTICLE 8 - OTHER WORK

Related Work at Site:

- 8.1. The CITY may perform other work related to the Project at the site by the City's own forces, or let other direct contracts therefore which shall contain conditions similar this Agreement, or have other work performed by utility owners. If the fact that such other work is to be performed was not noted in the Contract Documents, then; (i) written notice thereof will be given to CONTRACTOR prior to starting any such other work, and (ii) CONTRACTOR may make a claim therefore as provided in

Articles 12 and 13 if CONTRACTOR believes that such performance will involve additional expense to CONTRACTOR or requires additional time and the parties are unable to agree as to the amount or extent thereof.

- 8.2. CONTRACTOR shall afford each other contractor who is a party to such a direct contract and each utility owner (and the CITY if the CITY is performing the additional work with the City's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of the CITY and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between the CITY and such utility owners and other contractors.
- 8.3. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 8, CONTRACTOR shall inspect such other work and promptly report to the CITY in writing any delays, defects, or deficiencies in such other work that renders it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent or non-apparent defects and deficiencies in such other work.

Coordination:

- 8.4. If the CITY contracts with others for the performance of other work on the Project at the site, the following will be provided to the CONTRACTOR in writing:
- 8.4.1. the person, firm or corporation who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified;
 - 8.4.2. the specific matters to be covered by such authority and responsibility will be itemized; and
 - 8.4.3. the extent of such authority and responsibilities will be provided.
- 8.5. The CITY shall have sole authority and responsibility in respect of such coordination under Section 8.4.

ARTICLE 9 - CITY'S RESPONSIBILITIES

- 9.1. Except as otherwise provided in this Agreement, the CITY shall issue all communications to CONTRACTOR.
- 9.2. The CITY shall furnish the data required of the CITY under the Contract Documents promptly and shall make payments to CONTRACTOR promptly when they are due as provided in paragraphs 15.2 and 15.14.
- 9.3. The CITY is obligated to execute Change Orders as indicated in paragraph 11.4.
- 9.4. The City's responsibility in respect of certain inspections, tests and approvals is set forth in paragraph 14.4.

- 9.5. In connection with the City's right to stop Work or suspend Work, see paragraphs 14.8 and 16.1. Paragraph 16.2 through 16.8 deal with the City's right to terminate services of CONTRACTOR under certain circumstances.
- 9.6. The CITY shall not supervise, direct or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences or procedures for prosecution of the Work or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work. The CITY will not be responsible for Contractor's failure to perform or furnish the Work in accordance with the Contract Documents.

ARTICLE 10 - CITY'S STATUS DURING PROSECUTION OF THE WORK

Project Representative:

- 10.1. The CITY will be the representative during the prosecution of the Work. The duties and responsibilities and the limitations of authority of the CITY during prosecution of the Work are set forth in the Contract Documents.
- 10.2. The City's Consultant may assist the CITY in providing more continuous observation of the Work. The responsibilities and authority and limitations thereon of any such consultant will be the same as the City's as provided in paragraphs 10.14 through 10.17.

Visits to Site:

- 10.3. The CITY will make visits to the site at intervals appropriate to the various stages of Work as CITY deems necessary in order to observe as an experienced and qualified professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, the CITY will endeavor to determine, in general, if the Work is proceeding in accordance with the Contract Documents. The CITY will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. City's efforts will be directed toward providing a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and on-site observations, the CITY will keep informed of the progress of the Work and will endeavor to guard against **defective** Work. The City's visits and on-site observations are subject to all the limitations on the City's authority and responsibility set forth in paragraphs 10.14 through 10.17, and particularly, but without limitation, during or as a result of the City's on-site visits or observations of Contractor's Work. The CITY will not supervise, direct, control or have authority over or be responsible for Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work.

Clarifications and Interpretations:

- 10.4. The CITY will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as the CITY may determine necessary, which shall be consistent with the intent of and reasonably inferable from Contract Documents. Such written clarifications and interpretations will be binding on the CITY and CONTRACTOR. If the CITY or CONTRACTOR believes that a written clarification or interpretation justifies an adjustment in the Contract Price or the Contract Times and the parties are unable to agree to the amount or extent thereof, if any, the CITY or CONTRACTOR may make a written claim therefore as provided in Article 12 or Article 13.

Authorized Variations in Work:

- 10.5. The CITY may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the concept of the completed Project as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on the CITY and also on CONTRACTOR who shall perform the Work involved promptly. If the CITY or CONTRACTOR believes that a Field Order justifies an adjustment in the Contract Price or the Contract Times and the parties are unable to agree as to the amount or extent thereof, CITY or CONTRACTOR may make a written claim therefore as provided in Article 12 or 13.

Rejecting Defective Work:

- 10.6. The CITY will have authority to disapprove or reject Work that the CITY believes to be **defective**, or that the CITY believes will not produce a complete Project that conforms to the Contract Documents. The CITY will also have authority to require special inspection or testing of the Work as provided in paragraph 14.9, whether or not the Work is fabricated, installed or completed.

Change Orders and Payments:

- 10.7. In connection with the City's authority as to Change Orders, see Articles 11, 12, and 13.
- 10.8. In connection with the City's authority as to Applications for Payment, see Article 15.

Determinations for Unit Price Work:

- 10.9. The CITY will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR by measuring all loads brought by the CONTRACTOR to each temporary debris-processing site or solid waste disposal facility.
- 10.9.1. The CITY will provide a copy of each load ticket or disposal ticket indicating the measured quantity of the load to the driver operating each of the Contractor's trucks.
- 10.9.2. All trucks used by the CONTRACTOR must be measured for capacity and appropriately marked by the CITY prior to use of the truck in the commencement of the Work in accordance with paragraph 2.2.5.
- 10.10. The CITY will review with CONTRACTOR the City's preliminary determinations on quantities of Unit Price Work before rendering a written decision thereon. The City's written decision thereon will be final and binding upon the CITY and CONTRACTOR, unless, within ten days after the date of any such decision, CONTRACTOR delivers written notice of intention to appeal the City's decision and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction to exercise such rights or remedies as the appealing party may have with respect to City's decision, unless otherwise agreed in writing by CITY and CONTRACTOR. Such appeal will not be subject to procedures of paragraph 10.11.

Decisions and Disputes:

- 10.11. The CITY will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and Claims under Articles 12 and 13 in respect of changes in the Contract Price or Contract Times will be delivered to the CITY in writing with a request for a formal decision in accordance with this paragraph within ten days after the start of the occurrence or event giving rise thereto. Written supporting data will be submitted to the CITY within thirty (30) days after the start of such occurrence or event unless the CITY allows an additional period of time for the submission of additional or more accurate data in support of such claim, dispute or other matter. The CITY will render a formal decision in writing within thirty (30) days after receipt of the submittal. The

City's written decision on such claim, dispute or other matter will be final and binding upon the CITY and CONTRACTOR unless a written notice of intention to appeal the City's written decision is delivered by CONTRACTOR to the CITY within ten (10) days after the date of such decision and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction to exercise such rights or remedies as the appealing party may have with respect to such claim, dispute or other matter in accordance with applicable Laws and Regulations within thirty days of the date of such decision, unless otherwise agreed in writing by the CITY and CONTRACTOR.

- 10.12. When functioning as interpreter and judge under paragraphs 10.10 and 10.11, the CITY will not show partiality to the CITY or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by the CITY pursuant to paragraphs 10.10 or 10.11 with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in Section 15.15) will be a condition precedent to any exercise by the CITY or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such claim, dispute or other matter pursuant to Article 17.

Limitations on City's Authority and Responsibilities:

- 10.13. Neither the City's authority or responsibility under this Article 10 or under any other provision of the Contract Documents nor any decision made by the CITY in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise or performance of any authority or responsibility by the CITY shall create, impose or give rise to any duty owed by the CITY to CONTRACTOR, any Subcontractor, and Supplier, any other person or organization, or to any surety for or employee or agent of any of them.
- 10.14. CITY will not supervise, direct, control or have authority over or be responsible for Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work. CITY will not be responsible for Contractor's failure to perform or furnish the Work in accordance with the Contract Documents.
- 10.15. The CITY will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.
- 10.16. The City's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests, and approvals will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests and approvals that the results certified indicate compliance with the Contract Documents.
- 10.17. The limitations upon authority and responsibility set forth in paragraphs 10.14 through 10.17 shall also apply to the City's Consultants and assistants.

ARTICLE 11 - CHANGES IN THE WORK

- 11.1. Without invalidating the Agreement and without notice to any surety, the CITY may, at any time or from time to time, order additions, deletions or revisions in the Work. A Written Amendment, a Change Order, or a Work Change Directive will authorize such additions, deletions or revisions. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved that will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

- 11.2. If the CITY and CONTRACTOR are unable to agree as to the extent, if any, of an adjustment in the Contract Price or an adjustment of the Contract Times that should be allowed as a result of a Work Change Directive, a claim may be made therefore as provided in Article 12 or Article 13.
- 11.3. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in Sections 4.5 and 4.6 except in the case of an emergency as provided in paragraph 7.30 or in the case of uncovering Work as provided in paragraph 14.5.
- 11.4. The CITY and CONTRACTOR shall execute appropriate Change Orders (or Written Amendments) covering:
- 11.4.1. changes in the Work which are (i) ordered by the CITY pursuant to paragraph 11.1, (ii) required because of acceptance of **defective** Work under paragraph 14.11 or correcting **defective** Work under paragraph 14.9, or (iii) agreed to by the parties;
 - 11.4.2. changes in the Contract Price or Contract Times which are agreed to by the parties; and
 - 11.4.3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by the CITY pursuant to paragraph 10.11;
- Provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 7.6.
- 11.5. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be Contractor's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

ARTICLE 12 - CHANGE OF CONTRACT PRICE

- 12.1. The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at Contractor's expense without change in the Contract Price.
- 12.2. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any claim for an adjustment in the Contract Price shall be based on written notice delivered by the CONTRACTOR to the CITY promptly (but in no event later than thirty days) after the start of the occurrence or event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty days after the start of such occurrence or event (unless the CITY allows additional time to submit additional or more accurate data in support of the claim) and shall be accompanied by CONTRACTOR's written statement that the adjustment claimed covers all known amounts to which the claimant is entitled as a result of said occurrence or event. The CITY in accordance with paragraph 10.11 shall determine all claims for adjustment in the Contract Price if the CITY and CONTRACTOR cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this paragraph 12.2.
- 12.3. The value of any Work covered by a Change Order or of any claim for an adjustment in the Contract Price will be determined as follows:

- 12.3.1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Section 12.7).
- 12.3.2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum:
- 12.3.3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 12.3.2, on the basis of the Cost of the Work.

Cost of the Work:

- 12.4. The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by the CITY, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in Section 12.5.
 - 12.4.1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by the CITY and CONTRACTOR. Such employees shall include without limitation superintendents, foremen and other personnel employed full-time at the site. Payroll costs for employees not employed full-time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, worker's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto.
 - 12.4.2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless the CITY deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to the CITY. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to the CITY, and CONTRACTOR shall make provisions so that they may be obtained.
 - 12.4.3. Payments made by CONTRACTOR to the Subcontractors for Work performed or furnished by Subcontractors. If required by the CITY, CONTRACTOR shall obtain competitive Proposals from subcontractors acceptable to the CITY and CONTRACTOR and shall deliver such Proposals to the CITY, who will then determine which Proposals, if any, will be accepted. All subcontracts shall be subject to the provisions of the Contract Documents insofar as applicable.
 - 12.4.4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the Work.
 - 12.4.5. Supplemental costs including the following:
 - 12.4.5.1. The proportion of necessary transportation, travel and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - 12.4.5.2. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost

less market value of such items used but not consumed which remain the property of CONTRACTOR.

- 12.4.5.3. Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by the CITY and the costs of transportation, loading, unloading, installation, dismantling and removal thereof all in accordance with the terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.
 - 12.4.5.4. Sales, consumer, use or similar taxes related to the work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.
 - 12.4.5.5. Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - 12.4.5.6. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance and furnishing of the Work (except losses and damages within the deductible amounts of property insurance established by the CITY in accordance with paragraph 5.9), provided they have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of the CITY. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
 - 12.4.5.7. The cost of utilities, fuel and sanitary facilities at the site.
 - 12.4.5.8. Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.
 - 12.4.5.9. Cost of premiums for additional Bonds and insurance required because of changes in the Work.
- 12.5. The term Cost of the Work shall not include any of the following:
- 12.5.1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in Contractor's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 12.4.1 or specifically covered by paragraph 14.4.4 all of which are to be considered administrative costs covered by the Contractor's fee.
 - 12.5.2. Expenses of Contractor's principal and branch offices other than Contractor's office at the site.
 - 12.5.3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against CONTRACTOR for delinquent payments.
 - 12.5.4. Cost of premiums for all Bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 12.4.5.9 above).

12.5.5. Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of **defective** Work, disposal of materials or equipment wrongly supplied and making good any damage to property.

12.6. Whenever the cost of any work is to be determined pursuant to Sections 12.4 and 12.5, CONTRACTOR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in form acceptable to CITY an itemized cost breakdown together with supporting data.

Unit Price Work:

12.7. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by the CITY in accordance with paragraph 10.9.

12.7.1. Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover Contractor's overhead and profit for each separately identified item.

ARTICLE 13 - CHANGE OF CONTRACT TIMES

13.1. The Contract Times (or Milestones) may only be changed by a Change Order or a Written Amendment. Any claim for an adjustment of the Contract Times (or Milestones) shall be based on written notice delivered by the party making the claim to the other party promptly (but in no event later than thirty days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within sixty days after such occurrence (unless the CITY allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Times (or Milestones) shall be determined by the CITY in accordance with paragraph 10.11 if the CITY and CONTRACTOR cannot otherwise agree. No claim for an adjustment in the Contract Times (or Milestones) will be valid if not submitted in accordance with the requirements of this paragraph 13.1.

13.2. All time limits stated in the Contract Documents are of the essence of the Agreement.

13.3. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a claim is made therefore as provided in paragraph 13.1. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by the CITY, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 8, fires, floods, epidemics, abnormal weather conditions or acts of God. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR.

13.4. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both the CITY and CONTRACTOR, an extension of

the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be Contractor's sole and exclusive remedy for such delay. In no event shall the CITY be liable to CONTRACTOR, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from (i) delays caused by or within the control of CONTRACTOR, or (ii) delays beyond the control of both parties including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 8.

ARTICLE 14 - TESTS AND INSPECTION: CORRECTION, REMOVAL OR ACCEPTANCE OF - DEFECTIVE WORK

Notice of Defects:

- 14.1. Prompt notice of all **defective** Work of which the CITY has actual knowledge will be given to CONTRACTOR. **Defective** Work may be rejected, corrected, or accepted as provided in this Article 14.

Access to Work:

- 14.2. The CITY, City's Consultants, other representatives and personnel of the CITY, independent testing laboratories and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspecting and testing. CONTRACTOR shall provide them proper and safe conditions for such access and advise them of Contractor's site safety procedures and programs so that they may comply therewith as applicable.

Tests and Inspections:

- 14.3. CONTRACTOR shall give the CITY timely notice of readiness of the Work for all required inspections, tests or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- 14.4. The CONTRACTOR shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents.
- 14.4.1. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith, and furnish the CITY the required certificates of inspection, or approval. CONTRACTOR shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for the City's acceptance of materials or equipment to be incorporated in the Work, or of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Uncovering Work:

- 14.5. If any Work (or the work of others) that is to be inspected, tested or approved is covered by CONTRACTOR without written concurrence of CITY, it must, if requested by CITY, be uncovered for observation and replaced at the Contractor's expense.

- 14.6. If any Work is covered contrary to the written request of the CITY, it must, if requested by the CITY, be uncovered for the City's observation and replaced at Contractor's expense.
- 14.7. If the CITY considers it necessary or advisable that covered Work be observed by the CITY or inspected or tested by others in excess of paragraphs 14.5 and 14.6, CONTRACTOR, at the City's request, shall uncover, expose or otherwise make available for observation, inspection or testing as the CITY may require that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is **defective**, CONTRACTOR shall pay all claims, costs, losses and damages caused by, arising out of or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others; and the CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, may make a claim therefore as provided in Article 12. If, however, such Work is not found to be **defective**, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction; and, if the parties are unable to agree as to the amount or extent therefore, CONTRACTOR may make a claim therefore as provided in Articles 12 and 13.

CITY May Stop the Work:

- 14.8. If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents. The CITY may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the CITY to stop the Work shall not give rise to any duty on the part of the CITY to exercise this right for the benefit of CONTRACTOR or any surety or other party.

Correction or Removal of Defective Work:

- 14.9. If required by the CITY, CONTRACTOR shall promptly, as directed, either correct all **defective** Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by the CITY, remove it from the site and replace it with Work that is not **defective**. CONTRACTOR shall pay all claims, costs, losses and damages caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of work of others).

Correction Period:

- 14.10. If within one year after the date of Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be **defective**, CONTRACTOR shall promptly, without cost to the CITY and in accordance with the City's written instruction: (i) correct such **defective** Work, or, if it has been rejected by the CITY, remove it from the site and replace it with Work that is not **defective**, and (ii) satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in any emergency where delay would cause serious risk of loss or damage, the CITY may have the **defective** Work corrected or the rejected Work removed and replaced, and all claims, costs, losses and damages caused by or resulting from such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR.
- 14.10.1. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Technical Specifications or by Written Amendment.

14.10.2. Where defective Work (and damage to other Work resulting therefrom) has been corrected, removed or replaced under this Section 14.10, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

Acceptance of Defective Work:

14.11. If, instead of requiring correction or removal and replacement of **defective** Work, the CITY prior final payment prefers to accept it, the CITY may do so. CONTRACTOR shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such **defective** Work with such costs to be approved by the CITY as to reasonableness. If any such acceptance occurs prior to the City's final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, the CITY may make a claim therefore as provided in Article 12. If the acceptance occurs after such payment, CONTRACTOR will pay an appropriate amount to CITY.

CITY May Correct Defective Work:

14.12. If CONTRACTOR fails within a reasonable time after written notice from the CITY to correct **defective** Work or to remove and replace rejected Work as required by the CITY in accordance with paragraph 14.9, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, the CITY may, after written notice to CONTRACTOR, correct and remedy any such deficiency. In connection with such corrective and remedial action, the CITY may exclude CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which the CITY has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow the CITY, City's Consultants, agents, employees, and other contractors access to the site to enable the CITY to exercise the rights and remedies under this paragraph. All claims, costs, losses and damages incurred or sustained by the CITY in exercising such rights and remedies will be charged against CONTRACTOR and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, the CITY may make a claim therefore as provided in Article 12. Such claims, costs, losses and damages will include but not be limited to all costs of repair or replacement of work of others destroyed or damaged by correction, removal or replacement of Contractor's **defective** Work. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by the CITY of the City's rights and remedies hereunder.

ARTICLE 15 - PAYMENTS TO CONTRACTOR AND COMPLETION

Schedule of Values:

15.1. The schedule of values established as part of this contract will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to the CITY. Progress payments on account of Unit Price Work will be based on the number of units completed.

Application of Progress Payment:

15.2. At least twenty days before the date established for each progress payment (but not more often than once a month), CONTRACTOR shall submit to the CITY for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by copies of load tickets, disposal tickets, current Project Schedule, and other such supporting documentation required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that CITY has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect City's interest therein, all of which will be satisfactory to CITY.

15.2.1. The CITY shall hold a ten percent (10%) retainage from each progress payment.

15.2.2. Upon completion and acceptance of the Work in accordance with paragraph 14.13, the CITY shall pay all accumulated retainage.

Contractor's Warranty Title:

15.3. CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to CITY no later than the time of payment free and clear of all Liens and claims against the Contractor's Payment Bond.

Review of Applications for Progress Payment:

15.4. Within Thirty days of receipt of an Application for Payment, the CITY will accept the Application for Payment or reject the Application and indicate in writing the City's reasons for refusing to accept the Application. CONTRACTOR shall make the necessary corrections and resubmit the Application.

15.5. The City's payment of an Application for Payment will constitute a representation by the CITY, based on the City's on-site observations of the executed Work as experienced professionals and the City's review of the Application for Payment and the accompanying data and schedules, that to the best of the City's knowledge, information and belief:

15.5.1. the Work has progressed to the point indicated.

15.5.2. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 10.10, and to any other qualifications stated in the recommendation), and

15.5.3. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is City's responsibility to observe the Work.

15.6. However, by paying any such payment the CITY will not thereby be deemed to have represented that: (i) exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to the CITY in the Contract Documents or (ii) that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by the CITY or entitle the CITY to withhold payment to CONTRACTOR.

15.7. The CITY may refuse to make payment of the whole or any part of any payment if, in the City's opinion, it would be incorrect to make the representations referred to in Section 15.5. The CITY may

also refuse to make any such payment, to such extent as may be necessary in City's opinion to protect the CITY from loss because:

- 15.7.1. the Work is **defective**, or completed Work has been damaged requiring correction or replacement;
 - 15.7.2. the Contract Price has been reduced by Written Amendment or Change Order;
 - 15.7.3. the CITY has been required to correct **defective** Work or complete Work in accordance with paragraph 14.12.;
 - 15.7.4. the CITY has actual knowledge of the occurrence of any of the events enumerated in paragraph 16.2;
 - 15.7.5. claims have been made against the CITY on account of Contractor's performance or furnishing of the Work;
 - 15.7.6. claims have been made against the Contractor's Payment Bond in connection with the Work;
 - 15.7.7. there are other items entitling CITY to a set-off against the amount; or
 - 15.7.8. subsequently discovered evidence or the results of subsequent inspections or tests, nullify any payment previously made.
- 15.8. If the CITY refuses to make payment of the whole or any part of any payment, the CITY must give CONTRACTOR immediate written notice stating the reasons for such action. When CONTRACTOR corrects to City's satisfaction the reasons for such action, the CITY will promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by CITY and CONTRACTOR.
- 15.9. The City's payment of any Application for Payment, including final payment, shall not mean that the CITY is responsible for Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of Work, or for any failure of CONTRACTOR to perform or furnish Work in accordance with the Contract Documents.

Substantial Completion:

- 15.10. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify the CITY in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that the CITY issue a certificate of Substantial Completion. Within a reasonable time thereafter, the CITY, CONTRACTOR, and Representatives from FEMA and FDEM shall make an inspection of the Work to determine the status of completion. If the CITY does not consider the Work substantially complete, the CITY will notify CONTRACTOR in writing giving the reasons therefore. If CITY considers the Work substantially complete, the CITY will prepare and deliver a certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. At the time of delivery of the certificate of Substantial Completion, the CITY will deliver to CONTRACTOR a written recommendation as to division of responsibilities pending final payment between the CITY and CONTRACTOR with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties and guarantees. Unless the CITY and CONTRACTOR agree otherwise in writing, the City's aforesaid recommendation will be binding on CITY and CONTRACTOR until final payment.

15.10.1. The CITY shall have the right to exclude CONTRACTOR from the Work after the date of Substantial Completion, but the CITY shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

Partial Utilization:

15.11. The CITY may use any substantially completed part of the Work that the CITY and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by CITY for its intended purpose without significant interference with Contractor's performance of the remainder of the Work.

Final Inspection:

15.12. Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, CITY will make a final inspection with CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or **defective**. CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

Final Application for Payment:

15.13. After CONTRACTOR has completed all such corrections to the satisfaction of the CITY and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance required by paragraph 6.5, certificates of inspection, marked-up record documents (as provided in paragraph 7.25) and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, (ii) consent of the surety, if any, to final payment, and (iii) complete and legally effective releases or waivers (satisfactory to the CITY) of all claims against the Contractor's Payment Bond arising out of or filed in connection with the Work. If any Subcontractor or Supplier fails to furnish such a waiver against claims or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to the CITY to indemnify the CITY against any such claims.

Final Payment and Acceptance:

15.14. If on the basis of City's observation of the Work during construction and final inspection, and City's review of the final application for Payment and accompanying documentation as required by the Contract Documents, CITY is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, the CITY will, within ten days after receipt of the final Application for Payment, indicate in writing the City's that the Work is acceptable subject to the provisions of paragraph 15.15. Otherwise, the CITY will return the Application to CONTRACTOR, indicating in writing the reasons for refusing to make final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. Forty-five days after the presentation to the CITY of the Application and accompanying documentation, in acceptable form and substance the final payment will become due by the CITY and will be paid to CONTRACTOR.

Waiver of Claims:

15.15. The making and acceptance of final payment will constitute:

15.15.1. a waiver of all claims by the CITY against CONTRACTOR, except claims arising from unsettled claims against the Contractor's Payment Bond, from **defective** Work appearing after final inspection pursuant to paragraph 15.12, from failure to comply with the Contract

Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and

- 15.15.2. a waiver of all claims by CONTRACTOR against the CITY other than those previously made in writing and still unsettled.

ARTICLE 16 - SUSPENSION OF WORK AND TERMINATION

CITY May Suspend Work:

- 16.1. At any time and without cause, the CITY may suspend the Work or any portion thereof for a period of not more than thirty days by notice in writing to CONTRACTOR which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if CONTRACTOR makes an approved claim therefore as provided in Articles 12 and 13.

TERMINATION FOR DEFAULT

- 16.2. CONTRACTOR shall be considered in material default of the Agreement and such default shall be considered cause for the CITY to terminate the Agreement, in whole or in part, as further set forth in this Section, if Contractor (1) fails to begin the work under the Contract Documents within the time specified herein; or (2) fails to properly and timely perform the work as directed by the CITY or as provided for in the approved progress schedule; or (3) performs the work unsuitably or neglects or refuses to remove materials or to correct or replace such work as may be rejected as unacceptable or unsuitable; or (4) discontinues the prosecution of the work; or (5) fails to resume work which has been suspended within a reasonable time after being notified to do so; or (6) becomes insolvent or is declared bankrupt, or commits any act of bankruptcy; or (7) allows any final judgment to stand against it unsatisfied for more than ten (10) days; or (8) makes an assignment for the benefit of creditors; or (9) fails to obey any applicable codes, laws, ordinances, rules or regulations with respect to the work; or (10) materially breaches any other provision of the Contract Documents.
- 16.3. CITY shall notify CONTRACTOR in writing of Contractor's default(s). If CITY determines that CONTRACTOR has not remedied and cured the default(s) within seven (7) calendar days following receipt by CONTRACTOR of said written notice, then the CITY, at its option, without releasing or waiving its rights and remedies against the Contractor's sureties and without prejudice to any other right or remedy it may be entitled to hereunder or by law, may terminate Contractor's right to proceed under the Agreement, in whole or in part, and take possession of all or any portion of the work and any materials, tools, equipment, and appliances of CONTRACTOR, take assignments of any of Contractor's subcontracts and purchase orders, and complete all or any portion of Contractor's work by whatever means, method or agency which the CITY, in its sole discretion, may choose.
- 16.4. If the CITY deems any of the foregoing remedies necessary, CONTRACTOR agrees that it shall not be entitled to receive any further payments hereunder until after the project is completed. All monies expended and all of the costs, losses, damages and extra expenses, including all management, administrative and other overhead and other direct and indirect expenses (including attorneys' fees) or damages incurred by the CITY incident to such completion, shall be deducted from the Contract Price, and if such expenditures exceed the unpaid balance of the Contract Price, CONTRACTOR agrees to pay promptly to CITY on demand the full amount of such excess, including costs of collection, attorneys' fees (including appeals) and interest thereon at the maximum legal rate of interest until paid. If the unpaid balance of the Contract amount exceeds all such costs, expenditures and damages incurred by the CITY to complete the work, such excess shall be paid to the CONTRACTOR. The amount to be paid to the CONTRACTOR or the CITY, as the case may be, and this obligation for payment shall survive termination of the Agreement.

- 16.5. The liability of CONTRACTOR hereunder shall extend to and include the full amount of any and all sums paid, expenses and losses incurred, damages sustained, and obligations assumed by CITY in good faith under the belief that such payments or assumptions were necessary or required, in completing the work and providing labor, materials, equipment, supplies and other items therefor or reletting the work, in settlement, discharge or compromise of any claims, demands, suits, and judgments pertaining to or arising out of the work hereunder.
- 16.6. If, after Notice of Termination of Contractor's right to proceed pursuant to this section, it is determined for any reason that CONTRACTOR was not in default, or that its default was excusable, the termination by CITY shall be the same as and limited to those afforded CONTRACTOR under paragraphs 16.7 below, Termination for Convenience.

TERMINATION FOR CONVENIENCE AND RIGHT OF SUSPENSION.

- 16.7. The CITY shall have the right to terminate this Agreement without cause upon seven (7) calendar days written notice to CONTRACTOR. In the event of such termination for convenience, Contractor's recovery against CITY shall be limited to that portion of the Contract amount earned through the date of termination, together with any retainage withheld and reasonable termination expenses incurred, but CONTRACTOR shall not be entitled to any other or further recovery against CITY, including, but not limited to, damages or any anticipated profit on portions of the work not performed.
- 16.8. The CITY shall have the right to suspend all or any portions of the work upon giving CONTRACTOR two (2) calendar days prior written notice of such suspension. If all or any portion of the work is so suspended, Contractor's sole and exclusive remedy shall be to seek an extension of time to its schedule in accordance with the procedures set forth in the Contract Documents. In no event shall the CONTRACTOR be entitled to any additional compensation or damages. Provided, however, if the ordered suspension exceeds thirty days, the CONTRACTOR shall have the right to terminate the Agreement with respect to that portion of the work that is subject to the ordered suspension.

CONTRACTOR May Stop Work or Terminate:

- 16.9. If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than thirty days by the CITY or under an order of court or other public authority, or the CITY fails to act on any Application for Payment within forty-five (45) days after it is submitted or the CITY fails for ninety (90) days to pay CONTRACTOR any sum finally determined to be due by the CITY, then CONTRACTOR may, upon seven (7) days' written notice to the CITY, and provided the CITY does not remedy such suspension or failure within that time, terminate the Agreement and recover from the CITY payment on the same terms as provided in paragraph 16.4. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if the CITY has failed to act on an Application for Payment within forty-five (45) days after it is submitted, or the CITY has failed for ninety days to pay CONTRACTOR any sum finally determined to be due by the CITY, CONTRACTOR may upon seven (7) day's written notice to the CITY stop the Work until payment of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 16.5 are not intended to preclude CONTRACTOR from making claim under Articles 12 and 13 for an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping Work as permitted by this paragraph.
- 16.10. If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety days by CITY or under an order of court or other public authority, or CITY fails to act on any Application for Payment within forty-five days after it is submitted or CITY fails for forty-five days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days' written notice to CITY, and provided CITY does not remedy such suspension or failure within that time, terminate the Agreement and recover from CITY payment on the same terms as provided in paragraph 16.4. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if CITY has failed to act on an Application for Payment within forty-five days after it is submitted, or CITY has failed for forty-five days to pay CONTRACTOR any sum finally determined to

be due, CONTRACTOR may upon seven day's written notice to CITY stop the Work until payment of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 16.5 are not intended to preclude CONTRACTOR from making claim under Articles 12 and 13 for an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping Work as permitted by this paragraph.

ARTICLE 17 - EQUAL EMPLOYMENT OPPORTUNITY

Policies of Employment:

- 17.1. CONTRACTOR shall maintain policies of employment as follows:
 - 17.1.1. neither the CONTRACTOR nor any of its Subcontractors or Sub-Subcontractors shall discriminate against any employee or applicant for employment on the basis of race, religion, color, sex, or national origin. The CONTRACTOR shall take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex or national origin. The CONTRACTOR shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these policies of non-discrimination;
 - 17.1.2. the CONTRACTOR and its Subcontractors, and Sub-Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive considerations for employment without regard to race, religion, color, sex or national origin.

Business Participation:

- 17.2. CONTRACTOR shall provide, and shall require its Subcontractors to provide, full and fair utilization of all segments of society and all members of the business community in the performance of the Work, including minority, women, and small business entities.

ARTICLE 18 - MISCELLANEOUS

Giving Notice:

- 18.1. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

Computation of Times:

- 18.2. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.
 - 18.2.1. A calendar day of twenty-four hours measured from midnight to the next midnight will constitute a day.

Notice of Claim:

- 18.3. Should the CITY or CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of the other part or of any of the other party's employees or agents or others for

whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph 18.3 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

Cumulative Remedies:

18.4. The duties and obligations imposed by this Agreement and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR and all of the rights and remedies available to OWNER thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

Professional Fees and Court Costs Incurred:

18.5. Whenever reference is made to "claims, costs, losses and damages," it shall include in each case, but not be limited to, all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs

Assignment:

18.6. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

18.7. The CITY and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

Independent Contractor:

18.8. It is agreed by the parties that, at all times and for all purposes within the scope of this Agreement, the relationship of CONTRACTOR to the CITY is that of independent contractor, and not that of employee. No statement contained in this Agreement shall be construed so as to define CONTRACTOR as an employee of the CITY, and CONTRACTOR shall be entitled to none of the rights, privileges or benefits of City of Marathon employees.

Claims for Services:

18.9. No claim for services rendered by CONTRACTOR not specifically provided for in this Agreement will be honored by the CITY.

Entire Agreement:

18.10. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this

Agreement that are not contained or referred to in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements, whether oral or written.

Modification, Amendment or Alteration:

18.11. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed by the parties with the same formality as herewith.

Severability:

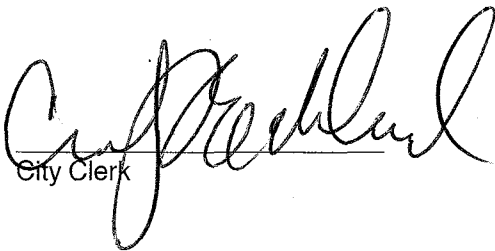
18.12. Any provisions or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon The CITY and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

Amended Pricing

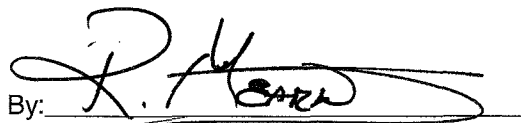
18.13. The pricing of services in this contract reflects the anticipated severity and magnitude of a major disaster event. The CITY may choose to activate the CONTRACTOR in response to a disaster event of less magnitude. Upon CONTRACTOR activation, by notice to proceed, for a lesser event the CONTRACTOR reserves the right to submit to the CITY an amended/reduced pricing schedule. Any such amended pricing schedule will be submitted within three (3) business days of activation or upon the completion of the AshBritt damage assessment survey, which ever 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.

IN WITNESS WHEREOF, the CITY and CONTRACTOR have executed this Agreement in duplicate on the day and year first written above. One counterpart each has been delivered to the CITY and CONTRACTOR.

ATTEST:


City Clerk


CITY OF MARATHON, FLORIDA

By: 
Mayor

ATTEST:



Ashbritt, Inc.

By: 
(Name) Vice President

QUOTE FOR DISASTER RECOVERY SERVICES

ITEM 1: MIXED DEBRIS COLLECTION, TRANSPORTATION, PROCESSING. AND DISPOSAL

The Contractor shall:

1. Pursuant to the direction of the City of Marathon (the "City"), collect, remove, process, and deliver disaster debris to the one of City's solid waste disposal facilities or other facility within the City.
 - a. Collection of debris shall include any reduction, separation, or other processing of material needed for the further removal to a temporary debris-processing site or to a disposal site within the City.
 - b. Collection, removal, processing and disposal of debris shall include roadway clearing.
 - c. Collection, removal, processing, and disposal of debris shall include hazardous stumps.
 - d. Processing of debris shall include the establishment and operation of one or more temporary debris-processing sites throughout the City where collected debris may be sorted, screened for sand, recycled, ground, mulched, burned, or otherwise segregated for transport and disposal as designated by the City.]
 - i. All processing activities shall be conducted in compliance with all federal, state, and local rules and regulations.
 - ii. The Contractor shall be responsible for obtaining and paying for all permits needed to construct, operate, maintain, close and reclaim the debris-processing sites.
 - iii. Each processing site shall have erected upon it a roofed inspection tower sufficient to support a minimum of three (3) inspectors.
 - iv. All loads brought to a temporary debris-processing site shall be inspected and recorded by the Contractor and the City.
 - v. The Contractor shall maintain the site in accordance with all local, state, and federal rules and regulations including erosion control, storm water management, and fire control.
 - vi. The Contractor shall provide stabilized ingress and egress to each debris-processing site and shall maintain such access throughout the life of the site.
 - vii. The Contract shall reclaim the site upon the completion of the processing activities to include at a minimum removal of all equipment and debris, grading of the site to historical condition, and seeding and mulching of the exposed areas.
 - e. The Contractor shall not be responsible for disposal fees at the City's landfills or other City designated disposal facility.
 - f. The Contract shall provide an emergency communication and operations center within the City in order to maintain continuous communications with ancillary site and facilities, word crews, and City personnel.
 - g. The Contractor shall provide and pay for all the necessary labor, tools, and equipment to execute the work described in this Scope of Services.
2. The Contract shall provide assistance to the City in the City's FEMA reimbursement efforts.
 - a. The Contractor shall accompany and assist the City in assessing damage and preparing damage assessment reports for submittal to FEMA as required by the City.
 - b. The Contractor shall provide all records, disposal tickets, field inspection reports, and other data sufficient to provide substantiation for Federal (FEMA) and State reimbursement applications.
 - c. The Contractor shall review and assist the City with all reimbursement applications prepared by the City prior to submittal for sufficiency in meeting the reimbursement requirements of these organizations and notify the City of any recommended changes, corrections, alterations or deletions.

- d. The Contractor shall assist the City in responding to federal and state agencies' request for additional information as directed by the City.

UNIT PRICE PER CUBIC YARD FOR ITEM 1: \$19.75

ITEM 2: HAZARDOUS WASTE COLLECTION TRANSPORTATION, PROCESSING AND DISPOSAL

The Contractor shall:

1. Identify potentially hazardous waste, perform necessary field testing to categorize waste as hazardous wastes has been identified, and obtained authorization from the City to remove such waste.
2. Transport the waste to one of the City's household hazardous waste collection centers; consolidate, lab pack, bulk or overpack the waste according to all applicable regulations; and transport the waste to a permitted hazardous waste disposal facility approved by the City. The waste will be removed from the City's household hazardous waste collection centers within 60 days of delivery. Payments will be contingent upon the City receiving a waste disposal manifest from the approved disposal facility documenting the delivery and acceptance of the hazardous waste.

UNIT PRICE PER 55-GALLON DRUM FOR ITEM 2: \$255.00

ITEM 3: BIOHAZARDOUS WASTE COLLECTION, TRANSPORTATION, PROCESSING, DISPOSAL

The Contractor shall:

1. Identify potentially biohazardous waste, secure the sites by placing stakes and flagging tape around the area where biohazardous waste has been identified, and obtain authorization from the City to remove such waste. Package for transport all biohazardous waste according to federal, state, and local regulation.
2. Transport the waste at one of the City's household hazardous waste collection centers; consolidate, bulk or overpack the waste according to all applicable regulations; and transport the waste by a licensed biohazardous waste transporter to a permitted biohazardous waste disposal facility approved by the City. The waste will be removed from the City's household hazardous waste collection centers within 30 days of delivery to the center. Payments will be contingent upon the City receiving a waste disposal manifest and a certificate of destruction from the approved disposal facility documenting the delivery and incineration for the biohazardous waste.

UNIT PRICE PER POUND FOR ITEM 3: \$3.00

ITEM 4: DEAD ANIMAL COLLECTION, TRANSPORTATION AND DISPOSAL

The Contractor shall:

1. Collect and transport dead animals to the City's Central Disposal Facility. The Contractor will not be responsible for disposal fees.

UNIT PRICE PER POUND FOR ITEM 4: \$7.50

ITEM 5: DEBRIS-LADEN SAND COLLECTION, TRANSPORTATION, AND SCREENING.

The Contractor shall:

1. Collect debris-laden white beach sand from right-of-ways and roadways as directed by the City and transport the debris-laden sand to a temporary debris-processing site designated by the City. Screen debris-laden white beach sand using equipment designed with a heavy-duty grid and screens to filter and remove debris larger than a ¼ inch from the sand. All filtered and screened debris shall be transported and disposed, as designated by the City.

UNIT PRICE PER CUBIC YARD FOR ITEM 5:

\$12.00