



AGREEMENT BETWEEN

CITY OF MARGATE

AND

CERES ENVIRONMENTAL SERVICES, INC.

FOR

RFP 2018-016 DISASTER DEBRIS MANAGEMENT SERVICES

THIS AGREEMENT ("Agreement") made and entered into this ____ day of July 2018, by and Between City of Margate, as a political subdivision of the State of Florida; hereinafter referred to as "CITY" and Ceres Environmental Services, Inc., hereinafter referred to as "CONTRACTOR," possessing FEIN 41-1816075.

WHEREAS, the CITY lies in the State of Florida and, as such, may experience massive destruction wrought by the impact of a hurricane landfall, violent storms spawning tornadoes as well as other natural and/or manmade disasters ("Events"); and

WHEREAS, it is foreseen that it may be necessary to provide for debris removal and disaster recovery technical assistance to appointed and elected officials within the CITY, resulting from these Events; and

WHEREAS, the CONTRACTOR will perform as an alternate CONTRACTOR for operational areas within the City of Margate, including public property, public rights-of-way, and all city canals as assigned in the sole discretion of the City of Margate.

I. SCOPE OF SERVICE – DEBRIS REMOVAL

It is the intent of the Agreement for the CONTRACTOR to remove as quickly as possible all hazards to life and property in the CITY resulting from an Event(s). Clean up, demolition and removal will be limited to (1) that which is determined to eliminate immediate threats to life, public health and safety; (2) that which has been determined to eliminate immediate threats of significant damage to improved public or private property; and (3) that which is considered essential to ensure economic recovery of the affected community to the benefit of the community at large. The Services shall consist of cleanup, demolition, removal, reduction and disposal of debris as directed by the designated representative of the CITY. Specifically the Scope of Services will include the items listed and priced in Exhibit I, including CONTRACTOR's submitted Best and Final Offer (BAFO) Price Sheet for all-inclusive services.

As per the terms and conditions of this agreement, all attachments including RFP 2018-016 (Exhibit III), CONTRACTOR response to RFP 2018-016 (Exhibit II) with all submitted pricing, including Best and Final Offer (BAFO) Price Sheet for all-inclusive services, technical specifications, insurance and all other information required or provided, etc. shall become a part of this Agreement.

II. TECHNICAL DISASTER RECOVERY ASSISTANCE

It is the intent of this Agreement for the CONTRACTOR to provide disaster recovery technical assistance to appointed and elected officials within the CITY. This service shall include Program Management Assistance.

III. SERVICES AND FACILITIES

It is understood that, except as otherwise specifically stated in this Agreement and all Attachments/Exhibits thereto, the CONTRACTOR shall provide and pay for all labor, tolls, equipment, transportation, supervision, and all other services and facilities of any nature whatsoever necessary to execute, complete and deliver the services within the time specified in the Notice to Proceed as agreed upon by both parties.

IV. PERMITS AND REGULATIONS

Permits and licenses of a temporary nature necessary for the prosecution of the Services shall be secured and paid for by the CONTRACTOR unless otherwise stated in this Agreement.

V. SUPERVISION BY CONTRACTOR

The CONTRACTOR will supervise and direct all services. The CONTRACTOR is

solely responsible for the means, methods, techniques, sequences, safety program and procedures related to the services provided to the City. The CONTRACTOR will employ and maintain on the work site(s), a qualified supervisor(s) who shall have full authority to act on behalf of the CONTRACTOR, and all communications given to the supervisor by an Authorized Representative of the City shall be as binding as if given to the CONTRACTOR directly by the City. The name(s) of the supervisor(s) will be supplied to the CITY for each issuance of a Notice to Proceed through an attachment to this Agreement in the form of a Memorandum for the Record. The CONTRACTOR shall also provide the CITY an accurate list of all subcontractors used within 72 hours of the disaster event.

VI. CHANGES IN SERVICES

The CITY and CONTRACTOR may at any time order changes within the scope of services without invalidating this Agreement. All changes affecting the project's costs or modifications of the terms, conditions, and the scope of services of this Agreement shall be authorized by means of an official written Contract Change Order that is mutually agreed upon and signed by the CITY and the CONTRACTOR. All changes must be recorded on a Written Contract Change Order before CONTRACTOR may proceed with the changes to the Services provided.

TERM OF AGREEMENT

The term of this Agreement shall be for five consecutive years beginning on the date of acceptance by and signatures of the CITY and CONTRACTOR, whichever comes later.

VII. RENEWAL OF AGREEMENT

This Agreement may be renewable on a five-year basis after a concurrence of both parties on any negotiated changes to the terms and specifications contained in this Agreement and Attachments. Agreement will be reviewed on an annual basis (December). Amended unit costs (up to 5%) may be submitted by CONTRACTOR to CITY to reflect the current disaster recovery market value of services listed in the attachments of this Agreement. The City Manager shall have the authority to negotiate and approve up to 5% for pricing amendments. Such amendments shall become part of this Agreement after a concurrence and signature of both parties. In the event that CONTRACTOR and CITY cannot come to an agreement the CONTRACTOR shall maintain all current conditions, specifications and pricing for a period of six (6) months so the CITY can prepare specifications, advertise and award a new contract.

VIII. TERMINATION

(a) Termination for Cause - In the event the Successful Offeror (CONTRACTOR)

shall default in any of the terms, obligations, restrictions or conditions in the Agreement documents, the CITY shall give the CONTRACTOR written notice by certified mail of the default and that such default shall be corrected or actions taken to correct such default shall be commenced within three (3) calendar days thereof. In the event the CONTRACTOR has failed to correct the conditions(s) of the default or the default is not remedied to the satisfaction and approval of the City, the City shall have all legal remedies available to it, including, but not limited to termination of the Agreement in which case the CONTRACTOR shall be liable for any and all damages permitted by law arising from the default and breach of the contract.

(b) Termination for Convenience - Upon thirty (30) calendar days written notice to the CONTRACTOR, the CITY may without cause and without prejudice to any other right or remedy, terminate the Agreement for the CITY'S convenience whenever the CITY determines that such termination is in its best interest. Where the contract is terminated for the convenience of the CITY, the notice of termination to the CONTRACTOR must state that the Agreement is being terminated for the convenience of the CITY under the termination clause and the extent of termination. The CONTRACTOR shall discontinue all work on the appointed last day of service.

(c) Cancellation for Unappropriated Funds - The obligation of the CITY for payment to a CONTRACTOR is limited to the availability of funds appropriated in a current fiscal period, and continuation of the contract into a subsequent fiscal period, regardless of Agreement term, is subject to appropriation of funds, unless otherwise authorized by law.

IX. INSURANCE AND BONDS

CONTRACTOR shall name the CITY as an additional insured on CONTRACTOR'S insurance policies. CONTRACTOR shall maintain the following insurance limits.

WORKER'S COMPENSATION – Statutory Limits of the State of Florida(or the applicable State at the time of an event);

GENERAL LIABILITY – One Million Dollars (\$1,000,000.00) any single occurrence;

ADDITIONAL LIABILITY UMBRELLA – Five Million Dollars
(\$5,000,000:00)

AUTOMOBILE – One Million Dollars (\$1,000,000.00)

CONTRACTOR shall provide CITY with a Certificate of Insurance evidencing such coverage.

Upon activation and within three (3) business days of a Notice to Proceed (for each event) by the CITY, CONTRACTOR shall provide CITY with a Performance and Payment Bond in the amount of \$1,000,000. CITY reserves the right to reasonably increase bond amount based on the severity of the event.

Final release of bonding requirement by CITY is contingent upon the following:

- *CONTRACTOR submitting final invoices
- *All damage has been repaired to CITY'S satisfaction
- *Rehabilitation of all TDSRS to CITY'S satisfaction
- *Release of Liens received from subcontractors
- *All other identified issues have been resolved to the CITY'S satisfaction

X. CERTIFICATES OF INSURANCE

Required insurance shall be documented in certificates of insurance which provide that the CITY shall be notified at least thirty (30) days in advance of cancellation, non renewal, or adverse change. New certificates of insurance are to be provided to the CITY at least fifteen (15) days prior to coverage renewals. Receipt of Certificates or other documentation of insurance or policies or copies of policies by the CITY or by any of its representatives, which indicate less coverage than is required, does not constitute a waiver of CONTRACTOR'S obligation to fulfill the insurance requirements herein.

XII. WARRANTY OF TITLE AND WAIVER OF LIEN

The CONTRACTOR shall not at any time suffer or permit any lien, attachment, or any other encumbrance under the laws of the State of Florida, or otherwise by any person or persons whomsoever to remain on file with the CITY against any money due or to become due for any work done or materials furnished under this Agreement or by reason or claim or demand against CONTRACTOR. Such lien, attachment, or encumbrance, until it is removed, shall preclude any and all claims or demands for any payment by virtue of this Agreement.

XIII. SUBCONTRACTING

The CONTRACTOR shall be fully responsible to CITY for the acts and omissions of its subcontractors and of persons directly or indirectly employed by them, and for the acts and omissions of persons employed by it.

The CONTRACTOR shall cause appropriate provisions to be inserted in all subcontractor agreements and/or contracts relative to the services; giving the CONTRACTOR the same powers as regards terminating any subcontract that the CITY may exercise over the CONTRACTOR under any provisions of this Agreement.

Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and the CITY. The CONTRACTOR shall supply the names and addresses of subcontractors, materials suppliers and debris site

locations (The CONTRACTOR shall pre-select a minimum of four (4) locations with a minimum of twenty (20) acres each, or at the discretion of the CITY) upon activation of the Agreement, whenever requested by the City and the same must be updated by the CONTRACTOR on a biweekly basis during said activities. Additionally, the CONTRACTOR shall provide to the CITY, a list of temporary debris locations within 30 days of execution of this Agreement, and updated annually by May 30 of every year.

The CONTRACTOR shall not use a subcontractor or material supplier against whom the CITY has a reasonable objection to, and shall make all reasonable attempts to subcontract with local firms currently doing business within the CITY. All subcontractors will operate in strict accord with Subcontracting Plans and Policies, as well as local, State and Federal laws governing this type of work.

XIV. CITY OBLIGATIONS

The CITY shall furnish all information and documents necessary for the commencement of work, including, but not limited to, a valid written Notice to Proceed. A representative will be designated by the CITY as the primary contact person for inspection of the work and answering any on-site questions prior to and after activation of this Agreement via a Notice to Proceed. Providing inspectors for the monitoring of debris operations shall be the responsibility of the CITY, as required by Federal law and policy governing those specific operations.

The primary contact shall be the City of Margate City Manager or his appointed designee.

XV. PAYMENT

Payment to the CONTRACTOR by the CITY will not be contingent on funding from any source.

XVI. ENTIRE AGREEMENT

This Agreement and Attachments referred to herein, contain the entire Agreement of the parties and there are no other binding promises or conditions in any other Agreement whether oral or written.

XVII. LITIGATION VENUE

This Agreement shall have been deemed to have been executed within the State of Florida. The validity, construction, and effect of the Agreement shall be governed and construed by the laws of the State of Florida. Any claim, objection, or dispute arising out of this Agreement shall be in Broward County, Florida.

XVIII. INDEMNIFICATION

To the extent permitted by Florida law, CONTRACTOR agrees to indemnify, defend, save, and hold harmless the CITY, their officers and employees, from or on account of all damages, losses, liabilities, including but not limited to reasonable attorney's fees, and costs to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of this agreement. Nothing contained in the foregoing indemnification shall be construed to be a waiver of any immunity or limitation of liability the City may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.

XIX. DISPUTES

NOT WITHSTANDING ANY PROVISIONS PROVIDED IN THIS CONTRACT, ANY DISPUTE ARISING UNDER THIS CONTRACT WHICH IS NOT DISPOSED OF BY AGREEMENT SHALL BE DECIDED BY THE CITY MANAGER OF THE CITY OF MARGATE, FLORIDA, WHO SHALL REDUCE HIS DECISION IN WRITING AND FURNISH A COPY THEREOF TO THE CONTRACTOR. THE DECISION OF THE CITY MANAGER OF THE CITY OF MARGATE, FLORIDA AND THOSE PERSONS TO WHOM HE DELEGATES AUTHORITY TO DECIDE DISPUTES, SHALL BE FINAL AND CONCLUSIVE UNLESS DETERMINED BY A COURT OF COMPETENT JURISDICTION TO BE FRAUDULENT, CAPRICIOUS, ARBITRARILY, OR GROSSLY ERRONEOUS AS TO NECESSARILY IMPLY BAD FAITH, OR NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

XX. NOTICE

14.1.1 Giving Notice:

All notices required by any of the Contract Documents shall be in writing and shall be deemed delivered upon mailing by certified mail, return receipt requested to the following:

The business address of CONTRACTOR is:

Ceres Environmental Services, Inc.
6968 Professional Parkway East
Sarasota, FL 34240

The business address of CITY is:

City Manager
City of Margate

5790 Margate Blvd.
Margate, Florida 33063

XXI. WAIVER OF JURY TRIAL

CITY AND CONTRACTOR HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY ACTION, PROCEEDING, LAWSUIT OR COUNTERCLAIM BASED UPON THE CONTRACT, ARISING OUT OF, UNDER, OR IN CONNECTION WITH THE CONSTRUCTION OF THE WORK, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR THE ACTIONS OR INACTIONS OF ANY PARTY.

XXII. PAYMENT TO CONTRACTOR

The CONTRACTOR may invoice the CITY not more than once every seven (7) days. The payment request shall be filled out and signed by the CONTRACTOR covering the work performed during the invoice period and supported by such data as the CITY may reasonably require. The CITY shall, within forty five (45) days of receiving such payment request, finalize review of documentation and make payment to CONTRACTOR.

CONTRACTOR will be subject to audit by Federal, State and local agencies pursuant to audit requirements outlined in Title 2 Code of Federal Regulations (CFR) Part 200. Payment to the CONTRACTOR for services outlined in this Agreement shall not be contingent on funding from any source.

Invoices submitted with incomplete forms and/or tickets will result in no payment for that item.

XXIII. FORCE MAJEURE

Except for CITY's duty to pay sums due hereunder, neither party will be liable for any act, omission, or failure to fulfill its obligations under this Agreement if such act, omission or failure arises from any cause beyond its control including acts of nature, strikes, lockouts, riots, acts of war, acts of terrorism, epidemics, governmental action after the date of this Agreement, fire communication line failures, power failures, earthquakes or other disasters. The party unable to fulfill its obligations due to Force Majeure will immediately:

- a. Notify the other in writing of the reasons for its failure to fulfill its obligations and the effect of such failure; and
- b. Use all responsible endeavors to avoid or remove the cause and perform its obligations.

XXIV. HEADINGS AND USAGE

The headings, captions, and section numbers contained herein are provided for convenience only and are not part of the terms of this Agreement. When the context of the words used in this Agreement indicate that such is the intent, words in the singular shall include the plural, and vice versa, and the references to the masculine, feminine or neuter shall be construed as the gender of the person, persons, entity or entities actually referred to require.

XXV. WAIVER

No failure or delay, in any one or more instances, to enforce or require strict compliance with any term of this Agreement shall be deemed to be a waiver of such term nor shall such failure or delay be deemed a waiver of any other breach of any other term contained in this Agreement.

XXVI. EXECUTION IN COUNTERPARTS

This Agreement may be executed in counterparts, all of which taken together shall be deemed one original. The date of this Agreement shall be the latest date on which any party executes this Agreement.

XXVII. SAVINGS CLAUSE

In the event any part, provision, or term of this Agreement is deemed to be illegal or unenforceable, this Agreement shall be construed as if such unenforceable part, provision, or term had not been included herein. Such illegal or unenforceable part, provision, or terms shall be deemed revised to the extent necessary to cure its defect and such revision and the remainder of the Agreement shall be and remain in full force and effect.

XXVIII. NON-DISCRIMINATION.

CONTRACTOR agrees that it will not discriminate against any employees or applications for employment or against persons for any other benefit or service under this perform in accordance with the requirements of this Agreement.

XXIX. PUBLIC RECORDS

CITY is a public agency subject to Chapter 119, Florida Statutes. CONTRACTOR shall comply with Florida's Public Records Law. Specifically, CONTRACTOR shall:

- a. Keep and maintain public records required by the CITY to perform under the Agreement;

- b. Upon request from the CITY, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Fla. Stat., or as otherwise provided by law;
- c. Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and, following completion of the Agreement, CONTRACTOR shall destroy all copies of such confidential and exempt records remaining in its possession after CONTRACTOR transfers the records in its possession to the CITY; and
- d. Upon completion of the Agreement, CONTRACTOR shall transfer to the CITY, at no cost to the CITY, all public records in CONTRACTOR's possession. All records stored electronically by CONTRACTOR must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.
- e. The failure of CONTRACTOR to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement and CITY shall enforce the Default in accordance with the provisions set forth herein.

**IF CONTRACTOR HAS A QUESTION REGARDING THE
APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS
DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS
AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS
AT: CITY CLERK, 5790 MARGATE BOULEVARD, MARGATE, FL
33063, (954) 935-5327, cityclerk@margatefl.com**

WITNESS WHEREOF, the parties hereto have made an executed Agreement on the respective dates under each signature; City of Margate through its City Commission signing by and through its Mayor and City Manager, authorized to execute same by City Commission the _____ of _____ 2018 and _____ of _____, signing by and through its representatives is duly authorized to execute same.

CITY OF MARGATE

Arlene R. Schwartz, Mayor

 day of _____, 2018

ATTEST:

Joseph J. Kavanagh, City Clerk

 day of _____, 2018

Samuel A. May, City Manager

 day of _____, 2018

APPROVED AS TO FORM:

James A. Cherof, Interim City Attorney
Firm of Goren, Cherof, Doody & Ezrol,
P.A.

 day of _____, 2018

CONTRACTOR

FOR CORPORATION: CERES ENVIRONMENTAL SERVICES, INC.

President

Printed Name

(CORPORATE SEAL)

Secretary

Printed Name

Exhibit I – Pricing Schedules
Exhibit II – RFP 2018-016 Response
Exhibit III – RFP 2018-016 Solicitation