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MEMORANDUM

TOWN OF PONCE INLET – PUBLIC WORKS DIVISION

THE TOWN OF PONCE INLET STAFF SHALL BE PROFESSIONAL, CARING, AND FAIR IN DELIVERING COMMUNITY EXCELLENCE WHILE ENSURING PONCE INLET CITIZENS OBTAIN THE GREATEST VALUE FOR THEIR TAX DOLLAR.

TO: Jeaneen Witt, Town Manager
FROM: Keith Gunter, General Manager of Public Works
DATE: June 14, 2016
SUBJECT: Emergency Debris Monitoring Contract

MEETING DATE: June 23rd, 2016

Request:

To place an item on the Town Council Meeting Agenda for consent.

The Town Manager has requested that the Public Works Department secure a contract for Debris Management & Disaster Recovery Planning in the event of a natural disaster such as a hurricane or tornado. This Contract will ensure we are in compliance with the Federal Emergency Management Agency (FEMA), and Federal Highway Administration (FHWA) regulations, guidelines, operating policies, and will ensure us proper reimbursement.

We would like to request approval to again renew a Disaster Debris Monitoring contract with Witt O'Brien's, LLC, piggybacking off the Volusia County Agreement (Contract #15-P-54JD), termed 06-11-2016 to 06-11-2018.

Recommendations:

It is staff's recommendation that Council approve signing this contract between the Town of Ponce Inlet and Witt O'Brien's LLC.

Attachments:

**Contract #15-P-54JD Volusia County, FL Agreement for Disaster Debris Management & Support Services;
Cooperative Purchasing Agreement Amendment between the Town of Ponce Inlet and Witt O'Brien's LLC.**

KG/ad

Cooperative Purchasing Agreement Amendment

This Cooperative Purchasing Agreement Amendment ("Amendment") is made as of June 14, 2016 between Ponce Inlet, FL ("Client") and Witt O'Brien's, LLC ("Consultant").

Whereas, the Client selected the Consultant to provide services, as defined in the Cooperative Purchasing Agreement (the "Agreement") dated June 1, 2015 attached hereto as Exhibit A.

Whereas, Client and Consultant desire to amend the Agreement in accordance with the terms and conditions described below.

Now, therefore, in consideration of the terms and conditions contained in this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Client and Consultant hereby agree as follows:

1. Term of the Agreement. The term of this Agreement shall be extended from June 1, 2016 to June 5, 2018 to follow the timeline of the Piggyback Contract No. 15-P-54JD with Volusia County, FL.

IN WITNESS WHEREOF, Client and Consultant have executed this Amendment as of the date first above written:

Ponce Inlet, Florida

Witt O'Brien's, LLC

Signature

Signature

Name (Typed or Printed)

Name (Typed or Printed)

Title

Title

Date

Date



**'ORIGINAL - DO NOT REMOVE
FROM PROJECT FILE'**

**AGREEMENT FOR
DEBRIS MANAGEMENT SERVICES**

Between

THE COUNTY OF VOLUSIA

AND

WITT O'BRIEN'S, LLC

Contract No. 15-P-54JD

**County of Volusia
Purchasing and Contracts Division
123 West Indiana Avenue, Room 304
Deland, Florida 32720-4608
www.volusia.org/purchasing**

AGREEMENT FOR DISASTER MANAGEMENT SERVICES

This Agreement for Disaster Management Services, (hereafter, the "Agreement") made and entered by and between Witt O'Brien's, LCC, duly authorized to conduct business in the State of Florida, whose principal place of business is located at 2200 Eller Drive, Fort Lauderdale, Florida 33316 (hereinafter the "Consultant") and County of Volusia, a body corporate and politic and a subdivision of the State of Florida, whose address is County of Volusia, 123 West Indiana Avenue, DeLand, Florida 32720 (hereinafter the "County").

RECITALS:

Whereas, the County requested proposals to provide professional services to assist with the management of disaster debris collection activities for the County; and

Whereas, the Consultant represents itself to be knowledgeable in Federal Emergency Management Agency (FEMA) and Federal Highway Administration (FHWA) regulations, guidelines, operating policies and reimbursement; and

Whereas, the Consultant shall advise and support the County during a disaster recovery effort and shall be responsible for the overall monitoring of debris collection contractors, including but not limited to monitoring recovery contractors' progress and recommending efficiencies to improve and expedite recovery work; and

Whereas, the Consultant shall coordinate with the disaster debris contractor(s) and the County to ensure a compliant, well-managed and organized approach to debris collection and disposal; and

Whereas, due to the nature of services being provided only in disaster conditions, the exact time of performance and quantity of services to be performed during the Agreement Term is unknown.

THEREFORE, in consideration of the foregoing recitals which are incorporated herein by reference, and other specific consideration set forth in this Agreement, the receipt and sufficiency of which is acknowledged by the Consultant and County, the parties agree and stipulate as follows:

1.0 DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below:

ADMS: Automated Debris Management System.

USACE: United States Army Corps of Engineers.

Change Order: A written order issued by the County that orders minor changes in the Scope of Service described in Exhibit A, but which does not involve a change in the contract price or terms unless specifically stated in writing.

Collection Monitor: Personnel assigned to monitor debris removal contractors' performance. The duties include but are not limited to ensuring the debris is eligible and accurately documented.

Consultant: Witt O'Brien's, LLC

Consultant's Project Manager: The Project Manager has responsibility for administering this Agreement for the Consultant and he/she shall be designated to the County on or before the Effective Date of this Agreement

Contract Administrator: The Director of Purchasing and Contracts or designee shall serve as Contract Administrator. The Contract Administrator shall be responsible for addressing any concerns within the scope of this Agreement. Any changes this Agreement shall be done in writing and authorized by the Director of Purchasing and Contracts.

County: The word County refers to the County of Volusia, Florida.

County's Project Manager(s): The Project Manager(s) have responsibility for the day to day administration of this Agreement for the County.

Day: The word "day" means each calendar day or accumulation of calendar days.

Database: Collection of data stored in a digital format, typically structured by the use of tables of similar data types.

Debris: Scattered items and materials broken, destroyed, or displaced by a natural disaster. Example: trees, construction and demolition material, personal property.

Department of Public Works (DPW): Department typically responsible for clearing debris from the roads and rights-of-way.

Director: The Director is the Director of Purchasing and Contracts for the County of Volusia.

Disposal Site: Any area of land or water within the property boundaries of a solid waste management facility where one or more solid waste processing, resource recovery, recycling, storage, or disposal areas are located.

Disposal Site Monitor: Personnel assigned to the debris disposal site to manage disposal operations and monitor removal contractors' performance. The duties include but are not limited to ensuring the debris is eligible, to quantify and accurately document debris loads consistent with FEMA guidelines, inspect, measure and certify debris vehicle capacities, check loads for hazardous waste, and perform quality control checks.

ESRI: Environmental Systems Research Institute, a Geographic Information System software vendor.

Exceptions to RFP: An exception is defined as the Respondent's inability or unwillingness to meet a term, condition, specification, or requirement in the manner specified in the RFP.

FEMA: Federal Emergency Management Agency.

FHWA: Federal Highway Administration.

FLDEM: Florida Department of Emergency Management.

Geodatabase: Spatial database storing data referenced by spatial or geographic coordinates.

GIS: Geographic Information System, an information system that works with data referenced by spatial or geographic coordinates.

GPS: Global Positioning System, a satellite based navigation system that provides time and location anywhere on the earth to those with a compatible receiver.

Hazardous Waste: Material and products from institutional, commercial, recreational, industrial and agricultural sources that contain certain chemicals with one or more of the following characteristics, as defined by the Environmental Protection Agency: 1) Toxic, 2) Flammable, 3) Corrosive, and/or 4) Reactive. In accordance with Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

Incident: Each disaster for which a Notice to Proceed (NTP) is issued.

Inspector: An authorized representative of the County assigned to make all necessary inspections of the Work performed, or being performed.

LSA: Logistical Staging Area, County designated location for the staging of disaster recovery resources including, but not limited to trucks, cranes, trailers, heavy equipment, etc.

Notice to Proceed: A written notice issued to the Consultant by the County's Project Manager fixing the date on which the Consultant shall start to perform the Consultant's obligations under the Agreement with respect to a specific Incident.

pdf: Portable Document Format, an open standard developed by Adobe Systems that allows documents to be utilized across platforms regardless of hardware, operating system and application software.

Person or Persons: An individual, firm, partnership, corporation, association, executor, administrator, trustee or other legal entity, whether singular or plural, masculine or feminine, as the context may require.

Project: The total Work to be provided under this Agreement

REST: Representational State Transfer, a software architecture used in web services.

Rights-of-Way (ROW): The portions of land over which a facility, such as highways, railroads, or power lines are built. Includes land on both sides of the highway up to the private property line.

Spotter: Personnel assigned to the debris disposal site to observe and assist in the debris unloading operations. The duties include, but are not limited to, ensuring debris disposal site safety and debris eligibility.

SQL: Structured Query Language, a programming language used in relational database management systems.

Storage Site: A location where debris is temporarily stored until it is reduced in volume and/or taken to a permanent landfill.

Storm Debris: Debris that may be eligible for clearance, removal and disposal includes trees, sand and gravel, building wreckage, vehicles and personal property. The debris must be a direct result of the declared event, must occur within the designated disaster area and must be the responsibility of the applicant at the time of the disaster. Debris removal may be eligible when it:

- Eliminates immediate threats to lives, public health and safety;
- Eliminates immediate threats of significant damage to improved public or private property; and/or
- Ensures economic recovery of the affected areas to the benefit of the community-at-large.

TDSRS: Temporary Debris Storage and Reduction Sites(s), including citizen site(s), located at various points within the County for the gathering, storage and reduction of debris related to a severe weather event or any other natural or manmade disaster or emergency.

Ticket: County approved tracking document used to determine eligibility for payment requests.

2.0 SCOPE OF SERVICES

All documentation and record keeping shall comply with current Federal Emergency Management Agency (FEMA) and Federal Highway Administration (FHWA) regulations, guidelines and operating policies.

2.1 Project Management and Administration

A. The Consultant shall appoint a qualified Project Manager for overall coordination and communication with the County. The Project Manager shall remain on the job and be available to the County at all times during the operational phases of the debris collection and disposal project.

B. The Consultant shall supply a temporary field office for the monitoring staff. The field office shall include all necessary communication and office equipment, and supplies to effectively implement assigned duties.

- C. Project management and administrative responsibilities include but are not limited to:
1. Coordinate daily briefings with key operational staff, County staff and debris removal contractor(s) to review, formulate and update debris removal operations and strategies. Schedule, manage and conduct periodic meetings with field staff and contractors. Meetings shall be scheduled so that they will not impede, hinder nor delay the debris removal contractor(s) and the debris removal operation.
 2. Provide a daily report of the current day debris contractor crew assignments, working locations and number of trucks assigned; from the previous day, the total number of loads, cubic yards collected by debris type, an updated map of streets where debris has been collected, and other key operational statistics to the County's Project Manager or designee.
 3. Two websites shall be provided by the Consultant for display of debris collection and planning efforts. One shall be provided for in-house county use for staff with all information available in the working database, with the ability to view the data geographically utilizing ESRI mapping software compatible with county standards. The second website shall be for public access to communicate information and data approved by the County for public communication. If interactive website maps are used, County access to the associated ESRI REST services is preferred.
 4. Coordinate daily scheduling, dispatching and logistical operations of the field collection monitors.
 5. Hire, train, deploy and supervise all field collection monitors and staff.
 6. Conduct debris surveys and perform debris estimation by debris types.
 7. Maintain accurate records of all debris collection vehicles as specified in Section 2.5 Debris Vehicle Certification and conduct regular monitoring for vehicle modifications.
 8. Track and coordinate responses to problems identified in the field and citizen complaints, including commercial and/or residential property damage claims as a result of debris removal. Consultant shall maintain a detailed database of all problems and customer complaints and the corresponding resolutions.
 9. Ensure that debris reduction and disposal sites have access control and security. Conduct end of the day duties and verify that all vehicles have left the disposal site at the specified time established by the County.
 10. Ensure the field collection monitors are accurately recording the streets and locations where debris was collected. Digital maps prepared with ESRI GIS software and exported in the Adobe .pdf format shall be provided daily to the County via email and/or downloadable from a website. The maps shall be updated

no later than 10:00 AM of each business day illustrating the progress from the previous day's work. Mapping specifications will be approved by the County's Project Manager or designee.

11. Schedule work for all team members and contractors on a daily basis.
12. Conduct safety inspections on a regular, predetermined and random basis. Ensure the appropriate frequency of oversight is performed for all work crews, vehicles and locations.
13. Monitor the debris removal contractor for compliance.
14. Provide training to County staff in essential debris management and collection functions to ensure appropriate and responsive interface with disaster debris collection contractor(s), county, state and federal agencies.
15. Develop forms, databases, etc. for tracking field activities, submitting invoices for reimbursement, etc. Such forms and invoices shall be compatible with County software and approved by the County's Project Manager or designee. The County utilizes Microsoft products (Excel, Access and SQL Server).
16. Daily personnel tracking sheets (field reports) shall be maintained for all Consultant personnel assigned to the project.
17. Set up schedules for monitors each day and determine cleanup crew assignments. Survey and maintain a list of areas with special needs, including but not limited to, hazardous stumps, trees, hangers/leaners, debris types, and other potential problems.
18. Prepare daily and periodic tracking reports to support debris removal, Temporary Debris Storage and Recovery Site (TDSRS) Operations and final debris disposal and audit purposes. Includes maintaining a database of debris managed, costs incurred and reconciliation of debris collection and contractor invoices.
19. Compile records and assist the County with the preparation of required forms for reimbursement.

2.2 Collection Monitoring

- A. In order to obtain maximum reimbursement, all debris loads shall be monitored in the field by field collection monitors to ensure debris eligibility. The Consultant shall provide fully trained field collection monitors to assure proper and compliant documentation protocols are instituted and followed.
- B. The Consultant shall provide a field quality control team consisting of one field collection monitor per debris removal crew and at least one field supervisor for every seven monitors unless otherwise approved by the County. This team shall monitor the debris contractors for contract compliance, efficiency and regulatory compliance. The team shall provide daily feedback to the County through their Project Manager. All field

team members shall be equipped with the state-of-the-art technology, which shall include GPS enabled cameras, computers, communication devices with GPS, and other equipment as deemed necessary and/or appropriate.

C. When a field collection monitor signs or creates a load ticket, he or she is certifying that ALL the information on the document is complete and correct. The field collection monitor shall not sign, create or accept any incorrect or partially completed information. Only tickets that are one hundred (100%) percent complete will be paid by the County.

D. Collection monitoring quality control tasks include but are not limited to:

1. Verification that all debris picked up is a direct result of the disaster.
2. Accurately recording the addresses, streets and locations where debris was collected meeting or exceeding what is required by FEMA and FHWA for reimbursement;
3. Verification that the debris collection contractor(s) are working in their assigned collection areas and roads;
4. Stop work in progress that is not being performed or documented in the approved manner. Such work shall be documented, noted for nonpayment and brought to the attention of the County's Project Manager;
5. Inspect work in progress to ensure that removal efforts include debris of the proper type in the proper areas;
6. Ensure compliance with County contracts and federal, state and local requirements by all subcontractors;
7. Maintain and catalog/index all photo documentation of recovery work on a daily basis. Digital photographs shall be of a size between 4 to 8 megapixels and shall include GPS coordinates;
8. Identification of eligible stumps, hangers and leaners. Coordinate with the County and federal/state representatives for eligibility determination and ensure documentation (forms, photos, etc) is completed for reimbursement purposes;
9. Ensure that contractor(s) are working in compliance with all federal, state and local safety regulations appropriate for the task being performed;
10. Coordinate with the County to respond to problems in the field, such as property damage complaints, debris crew issues, other customer complaints, etc. Consultant shall maintain a detailed database of customer complaints and resolutions; and
11. When conditions allow, an electronic ticketing system shall be used. The system shall be in compliance with US Army Corps of Engineers (USACE) automated debris management systems (ADMS) specifications.

2.3 Load Ticket Process Development

A. The Consultant shall establish an organized process that ensures complete and accurate data is being recorded on an approved debris load ticket. Load tickets shall consist of a digital database system with the ability to print tickets. If the digital environment is not possible, a multi-copy pages system may be used. The Consultant shall retain the original completed tickets on behalf of the County and provide copies to the debris removal contractors, vehicle drivers, etc. as appropriate. The tickets shall be scanned if a digital database isn't utilized or is incomplete. Scanned tickets and supporting photographs shall be indexed by ticket number, street name and city, and be easily retrievable and printable. All hardcopy and electronic versions of the tickets shall be turned over to the County upon completion of the project. Digital data shall be provided to the County in a SQL Server database. Different database formats will only be considered if it is in the best interest of the County and must be approved by the County's Project Manager or designee.

B. Load tickets shall include the following minimum information:

1. Date
2. Time
3. Complete street address of closest property
4. Nearest cross street(s)
5. Vehicle tag number
6. Type of debris
7. Vehicle certification number
8. Percent of volume (PV)
9. Driver name (printed) and signature
10. Field monitor's name (printed) and signature
11. Name of sub-contractor
12. Tower monitor's name (printed) and signature

2.4 Disposal Site Monitoring

A. All debris collected and disposed of, and certifications of collection vehicles shall be documented and monitored by the disposal site monitors. The Consultant shall ensure that disposal site and field collection monitors are deployed and operational commensurate with the beginning of debris collection and the establishment of debris site(s).

B. The Consultant shall provide disposal site monitors and spotters to observe debris unloading operations at the County's designated disposal site(s). A minimum of two disposal site monitors are required per debris site. These staff members, in conjunction with the project management team and the debris contractor, shall coordinate the logistics of the disposal site to ensure efficient traffic flow and proper handling of load tickets that record FEMA/FHWA data (such as vehicle volume, type of waste, etc.). The Consultant shall observe all vehicles entering and exiting the disposal site, ensuring all vehicles are in good repair and safe with secure side boards and have a full tailgate. Additionally, the disposal site monitor shall calibrate their debris vehicle load determinations daily with the

FEMA/FHWA monitors. Disposal site monitors are expected to provide volume determination consistent with FEMA and FHWA regulations

C. When a field collection monitor signs a load ticket, he or she is certifying that ALL information on the document is complete and correct. The field collection monitor shall not sign, create or accept any incorrect or partially completed information. Only tickets that are one hundred (100%) percent complete will be paid by the County.

D. The Consultant's Project Manager shall conduct field quality inspections to check and verify information on debris removal and at Temporary Debris Staging and Reduction Sites (TDSRS) located throughout the County.

E. Disposal site monitoring tasks include but shall not be limited to:

1. Keeping accurate records of debris vehicles, cubic yard volume determinations, time in and out, number of loads per day and other data as requested by County.

2. Coordinate with all federal, state and local agencies as needed for TDSRS on issues such as notification, obtaining permits, determining reimbursement, etc.

3. Provide preliminary assessment and documentation of TDSRS and assist in the return of the site to original conditions.

4. Provide personnel to supervise the operation of TDSRS including monitoring incoming loads of debris, processing of debris and outgoing loads of processed debris.

5. Monitor and record the cubic yard capacity of each debris removal vehicle added into service; this shall be the physical internal measurement of the storage bed or trailer with deductions for unusable areas. Record data as specified in Section 2.5 Debris Vehicle Certification.

6. Conduct end of day activities, such as verifying completion of debris crew assignments, completion of all record keeping, that vehicles have left the disposal site and the locking down of the facilities.

2.5 Debris Vehicle Certification

A. All debris hauling vehicles shall be measured and certified prior to performing debris removal. The Consultant shall complete a certification on each vehicle deemed appropriate for collection. In addition to completing vehicle certification forms, photographs must be taken of each vehicle showing the vehicle number and type of vehicle. These photographs shall be attached with the certification. Original copies of these certifications, including photographs, shall be retained by the Consultant on behalf of the County and provided to the County upon project completion. One copy shall be provided to both the debris removal contractor and the vehicle driver. Once these vehicles are certified, random verifications shall be performed at least once every two weeks to ensure no vehicle modifications have been made and to confirm data accuracy.

B. The Consultant shall measure the usable space of each debris collection vehicle for volume and certify that capacity. This certification process includes developing certification forms and documents to accurately measure the cubic yard volume to the nearest cubic yard of each vehicle. These forms shall show the following at a minimum:

1. Vehicle make, model
2. Length
3. Width
4. Depth
5. Gross volume in cubic yards
6. Reduction areas such as wheel wells to reduce volume areas in cubic yards
7. Net volume in cubic yards
8. Tag number of vehicle
9. Company vehicle number
10. Driver of vehicle name (printed) and signature
11. Disposal site monitor name (printed) and signature certifying vehicle
12. Date
13. Vehicle certification number
14. Vehicle identification number

C. When a debris site monitor signs a vehicle certification, he or she is certifying that ALL information is complete and correct. The debris site monitor shall not sign or accept any partially completed information. Only tickets that are one hundred (100%) percent complete will be paid by the County.

2.6 Public Information Assistance

A. The Consultant shall provide regular status updates to the County's Project Manager for public information use. This may be done on websites, with emails, or other methods approved by the County Project Manager or designee.

B. The Consultant shall provide appropriate staff to assist with public telephone inquiries and complaints regarding debris removal operations. Customer calls shall be documented and a status maintained to track complaint resolution. Damage complaints resulting from debris removal shall be tracked and reported by debris contractor(s) and forwarded to the project management team to be resolved with the debris contractor. A database of such complaints and their resolution shall be provided to the County's Project Manager as defined in 2.2 D 10.

C. The Consultant shall provide the County's Project Manager and the debris contractor(s) with daily updates on the quantities and type of debris collected. Each daily report shall contain the following:

1. Contractor name
2. Contract number
3. Reports and graphs to delineate production rates of crews and their equipment, progress by area and estimations of total quantities remaining, estimated time to completion, and daily cumulative cubic yards of debris removed, processed, and hauled. This reporting is due no later than 10:00 A.M. the following business day or as requested by the County.

D. The Consultant shall provide a colored collection status map, electronically prepared with ESRI GIS software and provided in the ADOBE .pdf format, weekly. This is a different map from that specified in 2.1, C, 10. The map shall show areas currently collected, debris pass number, and areas to be collected for the upcoming week. The map shall be updated and provided to the County by noon (12:00 P.M.) every Monday. Mapping and associated GIS database (geodatabase) specifications will be approved by the County's Project Manager or designee.

2.7 Database Reporting

A. The Consultant shall be responsible for collecting, auditing for completeness and accuracy, tabulating and organizing debris disposal data, including the ticket and photos, vehicle certifications, etc., into electronic formats to support federal, (FEMA and FHWA), state and local reimbursements and subsequent audits.

B. A SQL Server Database shall be created by the Consultant and backed up at intervals approved by the County. This database shall include all information on debris removal and disposal including but not limited to:

1. Complete load ticket information,
2. Vehicle certification information,
3. Stump removal information,
4. Hanger removal data,
5. Leaner removal information.

Different database formats will only be considered if it is in the best interest of the County and must be approved by the County's Project Manager or designee.

All electronic reporting from the database shall be done in either the Adobe pdf format or Microsoft Excel. The database created by the Consultant shall be given to the County with user documentation at the conclusion of the event. The Consultant shall ensure the County can navigate, perform searches and produce reports from the final database in the same format provided for reimbursement.

2.8 Payment Monitoring and Reconciliation Process

The Consultant shall review, validate and reconcile debris removal contractor(s) invoices prior to submission to the County for processing. The Consultant shall conduct a meeting at the beginning of the debris removal operation to fully explain the process to the County, debris contractor(s) and FEMA/FHWA representatives. All invoices from the debris contractor(s) shall be directed to the Consultant. Within seven (7) calendar days of receipt, the invoices shall be reviewed by the Consultant to be accepted or rejected. The Consultant shall issue in writing to the County and the debris contractor, the acceptance or rejection of the invoices and a payment recommendation. If the invoice is rejected, the Consultant shall clearly state the reasons for rejection and work with the debris contractor to resolve immediately. Only invoices that are one hundred (100%) percent accurate and complete will be forwarded to the County's Project Manager for payment.

2.9 Reporting to the County's Project Manager

The Consultant shall contact the County's Project Manager no later than twenty-four (24) hours prior to a hurricane event or immediately upon the occurrence of a major disaster event within the County when there is no advance notification/warning. The Consultant shall report to the County Project Manager or designee within eight (8) hours of being given a Notice to Proceed.

2.10 Staffing / Management Plan

The Consultant shall maintain and update as necessary the management plan that outlines how the Consultant will perform the services, staffing (administrative and field), and equipment necessary to meet the County's requirements. The Consultant shall maintain a list of key personnel to be used in the performance of the Agreement, which shall include names and resumes. The supervising staff shall speak English and be able to effectively communicate with the drivers. The Consultant may use other positions as necessary. All such positions and their purpose or role in the monitoring operations shall be identified in the management plan.

2.11 Other Related Services

A. Event Closure

The Consultant shall assist the County in preparing final reports necessary for reimbursement by FEMA, FHWA (Federal Highway Administration) and other applicable agencies for disaster recovery efforts by County staff and designated debris removal contractors. The Consultant shall assist in reviewing and processing requests for payment by the debris removal contractor(s).

B. Federal Funding

To ensure that processing of federal funding is done as quickly as possible, the following information and its accuracy shall be the responsibility of the Consultant:

1. Debris related invoices,
2. Monitoring information,
3. Reports,
4. Load tickets,
5. Consultant payroll,
6. Equipment hours
7. Vehicle certifications
8. Start and end dates of the first debris removal pass and all subsequent passes.

C. Compliance

The Consultant shall provide professional oversight to ensure compliance with Florida Department of Environmental Protection (FDEP) regulations, Florida Department of Transportation (FDOT), Florida Forest Service (FFS), FEMA reporting requirements, and any other federal, state, or local regulation. The Consultant shall stay current with FEMA

and FHWA policies and procedures and notify the County's Project Manager immediately as changes occur.

D. Meetings with County Personnel

The Consultant shall meet with County representatives and the debris contractor daily during disaster event activation. During periods without a disaster, the Consultant shall meet with the County's Project Manager or designee at least once a year at no cost to the County. This meeting shall occur prior to the hurricane season.

E. Additional Services

The Consultant shall be capable of providing a toll free service to respond and report on resident inquiries during the debris recovery activity.

3.0 GENERAL CONDITIONS

3.1 Incorporation of Consultant's Proposal

The Parties agree that the County relied upon the content of the Consultant's proposal as a material inducement to enter into this Agreement. The content of Consultant's proposal is incorporated into this Agreement and shall be legally binding on the Consultant. The Consultant's proposal is attached hereto as Exhibit A. Pricing for Consultant's services is based on the terms of this Agreement and Consultant's Tab 7 in Exhibit A.

3.2 Change in Scope of Services/Work

A. The County may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the Agreement. No claims may be made by the Consultant that the scope of the project or of the Consultant's services has been changed, requiring changes to the amount of compensation to the Consultant or other adjustments to the Agreement, unless such changes or adjustments have been made by written amendment or change order to the Agreement signed by the County Representative, County's Director of Purchasing and Contracts, and the Consultant.

B. If the Consultant believes that any particular work is not within the Scope of Services of the Agreement, is a material change, or will otherwise require more compensation to the Consultant, the Consultant must immediately notify the County's Representative in writing of this belief. If the County's Representative believes that the particular work is within the scope of the Agreement as written, the Consultant will be ordered to and shall continue with the work as changed and at the cost stated in the original Agreement. The Consultant must assert its right to an adjustment under this clause within thirty (30) days from the date of receipt of the written order.

3.3 Modifications Due to Public Welfare or Change in Law

The County shall have the power to make changes in the Agreement as the result of changes in law and/or Ordinances of Volusia County to impose new rules and regulations

on the Consultant under the Agreement relative to the scope and methods of providing services as shall from time-to-time be necessary and desirable for the public welfare. The County shall give the Consultant notice of any proposed change and an opportunity to be heard concerning those matters. The Scope of Services and method of providing services as referenced herein shall also be liberally construed to include, but is not limited to the manner, procedures, operations and obligations, financial or otherwise, of the Consultant. In the event any future change in Federal, State, or County law or the Ordinances of Volusia County materially alters the obligations of the Consultant, or the benefits to the County, then the Agreement shall be amended consistent therewith. Should these amendments materially alter the obligations of the Consultant, then the Consultant or the County shall be entitled to an adjustment in the rates and charges established under the Agreement. Nothing contained in this Agreement shall require any party to perform any act or function contrary to law. The County and Consultant agree to enter into good faith negotiations regarding modifications to the Agreement which may be required in order to implement changes in the interest of the public welfare or due to change in law. When such modifications are made to the Agreement, the County and the Consultant shall negotiate in good faith, a reasonable and appropriate adjustment for any changes in services or other obligations required of the Consultant directly and demonstrably due to any modification in the Agreement under this clause.

3.4 Agreement Term

The term of the Agreement is for an initial term of three (3) years with two (2) subsequent one (1) year optional renewals. The initial term shall commence upon signature of the county chair. Renewal options are contingent upon mutual and written agreement and, when applicable, approval of County Council.

3.5 Public Records

Public Records - § 119.0701, Florida Statutes. Consultant acknowledges that the services and work to be performed pursuant to this Agreement may be performed by the County itself as a political subdivision of the State of Florida, which is subject to the public records requirements of Chapter 119, Florida Statutes and Article I, § 24 of the Florida Constitution. Given the foregoing, the Consultant hereby agrees to:

- A. Keep and maintain public records that ordinarily and necessarily would be required by the County to perform the services and work provided pursuant to this Agreement;
- B. Provide the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise may be provided by law;
- C. Ensure that public records that are statutorily exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law;
- D. Meet all requirements for retaining public records and transfer, at no cost, to the County all public records in the possession of the Consultant upon termination of the

Agreement and destroy any duplicate public records that are statutorily exempt or confidential and exempt from statutory public records disclosure requirements. For the purposes of complying with this paragraph, all records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the public agency;

E. In responding to any public records request, Consultant shall (i) notify the County of the request and the Consultant's intentions with regard to such request and (ii) provide the County with copies of all records requested and produced, as well as copies of all correspondence between the Consultant and the requestor. Consultant further agrees not to release any records that are statutorily exempt from disclosure or statutorily confidential and exempt without first receiving prior written authorization from the County, it being understood that the legislature has designated such records exempt or otherwise confidential based upon important public policy or safety reasons.

Consultant shall indemnify the County for and hold the County harmless against any and all claims, damage awards, and causes of action arising from the Consultant's failure to perform or otherwise adhere to the requirements of this Section, including, but not limited to, any third party claims or awards for attorneys fees and costs arising therefrom, claims for negligent disclosure of confidential or exempt records, and claims for failure to produce or otherwise timely produce records subject to disclosure. County shall further be authorized to seek declaratory, injunctive, or other appropriate relief from a court of competent jurisdiction on an expedited basis to enforce the requirements of this Section, it being understood that the maintenance and production of public records is of paramount public importance under Florida law. Regardless of the foregoing, the enumeration of the remedies recited herein shall not be interpreted to limit or otherwise restrict the County from seeking any other appropriate cause of action against or remedy from the Consultant, whether in law or in equity, in the County's enforcement of the requirements of this Section.

3.6 Payment Terms

A. The County will remit full payment on all undisputed invoices within forty-five (45) days from receipt by the appropriate person(s) of the invoice(s) or receipt of all products or services ordered.

B. Pursuant to Chapter 218, Florida Statutes, the County will pay interest not to exceed one percent (1%) per month on all undisputed invoices not paid within thirty (30) days after the due date.

C. The County has the capabilities of Electronic Fund Transfer (EFT). List any discounts for prompt payment and/or willingness to accept Electronic Funds Transfer (EFT) and the discount to be applied to such payments. If a prompt payment discount procedure is applicable, the discount shall be taken if the check issue date is within specified time period from date of invoice.

D. County may withhold from any payment monies owed by the Consultant to the County for any legal obligation between the Consultant and the County, including but not limited to real property taxes, personal property taxes, fees, and commissions.

E. Amount / rate of payment shall be based on Consultant's proposed rate in Tab 7 of Exhibit A.

3.7 Waiver of Claims After Final Payment

Once the Agreement expires, or final payment has been requested and made, the Consultant shall have no more than thirty (30) calendar days to present or file any claims against the County concerning the Agreement. After that period, the County will consider the Consultant to have waived any right to claims against the County concerning the Agreement.

3.8 Price Redeterminations

Wage Price Redetermination may be requested on the anniversary date of the Agreement. The Consultant shall refer to the Employment Cost Index, Total Compensation, Private Industry, Index Number, and Occupational Group at <http://data.bls.gov/PDO/outside.jsp?survey=ci>. The base figure will be tied to Trade, transportation, and utilities under the heading Service Providing Industries.

Minimum Wage Price Redetermination. If the minimum wage increases during the term of the Agreement and any renewal, the Consultant may petition the Director of Purchasing and Contracts for price redetermination for those job categories where the pay to the Consultant's employee(s) is the current minimum wage. The County will grant an increase of exactly the amount of the minimum wage increase (not the percentage increase). The Consultant must increase the pay to the employee(s) by the amount the Consultant has requested, which shall not exceed the amount of the minimum wage increase. The amount paid to the Consultant will be the increase plus any written and documented increase in FICA, Medicare, and Workers' Compensation insurance. The Consultant must supply written documentation of any other increase that is beyond the scope and control of the Consultant. All written documentation must satisfy the reasonable expectations of the Director of Purchasing and Contracts and Internal Auditor.

Example: Minimum wage increases from \$7.31 to \$7.56 per hour. The Consultant may petition for an increase of \$0.25 per hour to be paid to the affected employee(s) and shall provide written and documented cost increases for FICA, Medicare and Workers' Compensation. The resulting increase in costs shall be incorporated into fees/rates billed to the County.

If the Consultant bills the County at a higher price according to any price redetermination granted by the County, and the Consultant fails to increase the hourly rate paid to the employee for the same period, the Consultant will be considered in default and the Agreement will be immediately terminated.

3.9 Unusual Costs

The Consultant may petition the County at any time for an additional rate adjustment on the basis of extraordinary and unusual changes in the costs of operation that could not reasonably be foreseen by a prudent operator and which, by all reasonable expectations, will continue for at least one (1) year. If the Consultant petitions for such an increase, the Consultant shall also petition for a rate reduction on the basis of extraordinary and

unusual changes in the costs of operation that could not reasonably be foreseen by a prudent operator and which, by all reasonable expectations, will continue for at least one (1) year; failure to make such petition may be grounds for Agreement termination.

The Consultant's request shall contain substantial proof and justification to support the need for the rate adjustment. The County may request from the Consultant and the Consultant shall provide such further information as may be reasonably necessary in making its determination. The County shall approve or deny the request, in whole or in part, within sixty (60) days of receipt of the request and all other additional information required by the County. Any price redetermination shall be solely based upon the documentation provided and the County reserves the right to rescind any price relief granted should the circumstances change and prices decrease.

3.10 Insurance

A. Required Types of Insurance

The Consultant shall purchase and maintain at its own expense, during the term of this Agreement the following types and amounts of insurance with limits no less than those shown below, in the form and from companies satisfactory to the County:

<u>SCHEDULE</u>	<u>LIMITS</u>
Workers' Compensation	Florida Statutory Coverage
Commercial General Liability	\$2,000,000. General Aggregate
Premises-Operations	\$2,000,000. Products/CompOps Aggregate
Products-Completed Operation.....	\$1,000,000. Personal/Advertising Injury
.....	\$1,000,000. Each Occurrence

(The County of Volusia shall be named as an additional insured under all of the above Commercial General Liability coverage.)

Auto Liability.....\$1,000,000. CSL
 All autos-owned, hired or no-owned
 (Symbol 1 Coverage)

Professional Liability.....\$1,000,000.
 (Errors & Omissions)

1. Minimum underlying coverages shall include Commercial General Liability, Automobile Liability and Workers' Compensation/Employer's Liability. (Umbrella liability limit will not be required to be carried by SubConsultants.)

(If the services provided require the disposal of any hazardous or non-hazardous materials off the job site, the disposal site operator must furnish a certificate of insurance for Pollution Legal Liability with coverage for bodily injury and property damage for losses that arise from the facility that is accepting the waste under this Agreement).

2. Umbrella or Excess Liability policies may be used to obtain the total limits of liability required to meet the required limits of coverage stated above. Evidence of such coverage should clearly demonstrate the underlying coverages/policies that are included.
3. Workers' Compensation Insurance. Per Section 3.23, A, Workers' Compensation insurance is required for all employees of the Consultant, employed or hired to perform or provide work or services under this Agreement or that is in any way connected with work or services performed under this Agreement, without exclusion for any class of employee, and shall comply fully with the Florida Workers' Compensation Law (Chapter 440, Florida Statutes, Workers' Compensation Insurance) and include Employers' Liability Insurance with limits no less than the statutory amount shown above per occurrence.
 - a. Consultant and its SubConsultants, or any associated or subsidiary company doing work on County property or under this Agreement must be named in the Workers' Compensation coverage or provide proof of their own Workers' Compensation coverage, without exclusion of any class of employee, and with a minimum of the statutory limits per occurrence for Employer's liability coverage. Further, if the Consultant's SubConsultants fail to obtain Workers' Compensation insurance and a claim is made against the County by the uncovered employee of said SubConsultant of the Consultant, the Consultant shall indemnify, defend, and hold harmless the County from all claims for all costs including attorney's fees and costs arising under said employee(s) Workers' Compensation insurance claim(s).
4. Commercial General Liability Insurance. Per Section 3.23, A, Commercial General Liability insurance, with a limit of not less than the amounts shown above with an aggregate limit and per occurrence basis, including coverage for the Consultant's operations, independent Consultants, SubConsultants and "broad form" property damage coverages protecting itself, its employees, agents, Consultants or subsidiaries, and their employees or agents for claims for damages caused by bodily injury, property damage, or personal or advertising injury, products liability/completed operations including what is commonly known as groups A, B, and C (libel, false arrest, slander). Such policies shall include coverage for claims by any person as a result of actions directly or indirectly related to the employment of such person or entity by the Consultant or by any of its SubConsultants arising from work or services performed under this Agreement. Public liability coverage shall include either blanket contractual insurance or a designated contractual liability coverage endorsement, indicating expressly the Consultant's contract to indemnify, defend and hold harmless the County as provided in this Agreement. The commercial general liability policy shall be endorsed to include the County as an additional insured. The commercial general liability policy shall provide exclusive coverage for the location or project site where the work or services are to be performed under this Agreement.

In the alternative, the commercial general liability policy shall be endorsed to provide the designated aggregate per location endorsement or equivalent on a form approved or requested by the County Risk Manager.

5. Motor Vehicle Liability. Per Section 3.23, A, the Consultant shall secure and maintain during the term of this Agreement, motor vehicle coverage in the split limit amounts of no less than the amounts shown above per person, per occurrence for bodily injury and for property damage or a combined single limit of the amount shown above with **“Any Auto”, Coverage Symbol 1, providing coverage for all autos operated regardless of ownership, and protecting itself, its employees, agents or lessees, or subsidiaries and their employees or agents against claims arising from the ownership, maintenance, or use of a motor vehicle.**

6. Professional Liability. Per Section 3.23, A, the Consultant shall ensure that it secures and maintains, during the term of this Agreement, Professional Liability insurance with limits of no less than the amount shown above contemplated by this Agreement. Such policy shall cover all the Consultant’s or its SubConsultant’s professional liabilities whether occasioned by the Consultant or its SubConsultants, or their agents or employees.
 - a. If the Consultant fails to secure and maintain the professional liability insurance coverage required herein, the Consultant shall be liable to the County and agrees to indemnify, defend, and hold harmless the County against all claims, actions, losses or damages that would have been covered by such insurance.

 - b. The Consultant must maintain a retroactive date prior to or equal to the effective date of this Agreement. The Consultant shall purchase a Supplemental Extended Reporting Period (“SERP”) with a minimum reporting period of not less than three (3) years in the event a SubConsultant’s policy is canceled, not renewed, switched to occurrence form, or any other event which requires a purchase of SERP to cover a gap in insurance for claims which may arise under or related to this Agreement. The Consultant’s purchase of the SERP shall not relieve the Consultant of the obligation to provide replacement coverage. In addition, the Consultant shall require that the SubConsultant’s carrier immediately inform the Consultant, the County of Volusia’s Risk Management Division, and the Purchasing and Contracts Division of any contractual obligations that may alter its professional liability coverage under this Agreement.

7. Coverage for professional liability shall be provided on an occurrence form or a claims made form with a retroactive date equal to at least the first date of this Agreement and with a three (3) year reporting option beyond the expiration date of this Agreement including any amendments to the Agreement term.

8. Primary and Excess Coverage. Any insurance required may be provided by primary and excess insurance policies.

B. Insurance Requirements

1. General Insurance Requirements:

- a. All insurance policies shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of A- in the "Best Key Rating Guide" published by A.M. Best & Company, Inc.
- b. Approval by County of any policy of insurance shall not relieve Consultant from its responsibility to maintain the insurance coverage required herein for the performance of Work or Services by the Consultant or its SubConsultants for the entire term of this Agreement and for such longer periods of time as may be required under other clauses of this Agreement.
- c. Waiver of Subrogation. The Consultant hereby waives all rights against the County and its SubConsultants to the extent of the risk coverage by any insurance policy required hereunder for damages by reason of any claim, demand, suit, or settlement (including workers' compensation) for any claim for injuries or illness of anyone, or perils arising out of this Agreement. The Consultant shall require similar waivers from all its SubConsultants. This provision applies to all policies of insurance required under this Agreement (including Workers' Compensation, and general liability).
- d. County Not Liable for Paying Deductibles. For all insurance required by Consultant, the County shall not be responsible or liable for paying deductibles for any claim arising out of or related to the Consultant's business or any SubConsultant performing Work or Services on behalf of the Consultant or for the Consultant's benefit under this Agreement.
- e. Cancellation Notices. During the term of this Agreement, Consultant shall be responsible for promptly advising and providing County of Volusia's Risk Management Division and the Purchasing and Contracts Division with copies of notices of cancellation or any other changes in the terms and conditions of the original insurance policies approved by the County under this Agreement within two (2) business days of receipt of such notice or change.
- f. For any on-site Work performed by or on behalf of Consultant on County property, the County shall be named as an additional insured or additional named insured subject to review and determination by County's Risk Manager on all policies required under this Agreement except professional liability and workers compensation.

- g. Deductibles. Consultants that maintain and administer a self-insured retention or a large deductible program exceeding the insurance requirements listed in this solicitation using a formal program to fund either program may submit an exception in accordance with Section 3.9, Questions, Exceptions, and Addenda Concerning RFP #15-P-54JD to be considered for this solicitation.

The request must include a summary of the program's design, funding method, and the program's supporting financial information. If additional information is necessary, the County will request more specific information, which must be provided by the Consultant. The County's Risk Manager will review the information submitted and determine whether the program is acceptable to the County.

Consultant with no formal risk management program in place to manage and fund deductibles or self-insured retentions may not be considered. Subject to County approval, Consultant may obtain a letter of credit in the amount equivalent to the deductible, which shall remain in effect during the term of the Agreement at no additional cost to the County.

C. Proof of Insurance

1. The Consultant shall be required to furnish evidence of all required insurance in the form of certificates of insurance which shall clearly outline all hazards covered as itemized herein, the amounts of insurance applicable to each hazard, and the expiration dates.
2. The Consultant shall furnish proof of insurance acceptable to the County prior to or at the time of execution of this Agreement and the Consultant shall not commence Work or provide any Service until the Consultant has obtained all the insurance required under this Agreement and such insurance has been filed with and approved by the County. Upon request from the County, the Consultant shall furnish copies of the following types of insurance policies and any changes or amendments thereto, immediately, to the County and County's Risk Management and Purchasing and Contracts Divisions prior to the commencement of any contractual obligations. This Agreement may be terminated by the County, without penalty or expense to County if at any time during the term of this Agreement proof of any insurance required hereunder is not provided to the County.
3. All certificates of insurance shall clearly indicate that the Consultant has obtained insurance of the type, amount and classification required by this Article. No Work or Services by Consultant or its SubConsultants shall be commenced until County has approved these policies or certificates of insurance. Further, the Consultant agrees that the County shall make no payments pursuant to the terms of this Agreement until all required proof or evidence of insurance has been provided to the County. This

Consultant may be terminated by the County, without penalty or expense, if proof of any insurance required hereunder is not provided to the County.

4. The Consultant shall file replacement certificates with the County at the time of expiration or termination of the required insurance occurring during the term of this Agreement. In the event such insurance lapses, the County expressly reserves the right to renew the insurance policies at the Consultant's expense or terminate this Agreement but County has no obligation to renew any policies.

- D. The provisions of this Article shall survive the cancellation or termination of this Agreement.

3.11 Claim Notice

The Consultant shall immediately report in writing to the County's designated representative or agent any incident that might reasonably be expected to result in any claim under any of the insurance coverage required by this Agreement. The Consultant agrees to cooperate with the County in promptly releasing reasonable information periodically as to the disposition of any claims, including a résumé of claims experience relating to all Consultant operations at the County project site. The designated representative for the County shall be:

County Risk Manager
Personnel/Risk Management Division
230 North Woodland Boulevard, Suite 250
DeLand, Florida 32720
Telephone: 386-736-5963
Fax: 386-822-5006

3.12 Limitation of Liability and Indemnification of County

A. The Consultant shall, at its own expense, indemnify, defend, and hold harmless the County and its public officials (elected and appointed), successors and assigns, agents, officers, and employees, from and against all claims of every kind and nature (including losses incurred or suffered in consequences either of bodily injury to a person or damage to property), damages, losses and expenses, including, but not limited to attorney's fees, arising out of or resulting from the performance of this Agreement provided that the claim, damage, loss and expense is caused by any negligent act or omission of the Consultant, or anyone directly or indirectly employed by Consultant, except that the Consultant will not be required to indemnify, defend and hold harmless the County if such claim, damage, loss and expense is the result of the sole negligence of the County, or of anyone directly or indirectly employed by the County or anyone for whose acts the County may be liable.

B. **Sovereign Immunity.** County expressly retains all rights, benefits and immunities of sovereign immunity in accordance with section 768.28, Florida Statutes (as amended). Notwithstanding anything set forth in any section of this Agreement to the contrary, nothing in this Agreement shall be deemed as a waiver of immunity or limits of

liability of the County beyond any statutory limited waiver of immunity or limits of liability which may have been or may be adopted by the Florida Legislature and the cap on the amount and liability of the County for damages, regardless of the number or nature of claims in tort, equity, or contract, shall not exceed the dollar amount set by the legislature for tort. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the County, which claim would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

C. Infringement Claim.

1. For all licensed software or derivate works of the licensed software used by County under the resulting Agreement, Consultant agrees to protect, defend, indemnify, and hold harmless County, its agents, elected officials and employees of County from and against any and all claims, demands, actions, and causes or action which may arise asserting that all or any part of Consultant's licensed software or applications that are owned and licensed by Consultant to County for use thereof by County, infringes or misappropriates any third party's valid state patent, copyright, trademark, or any trade secret protected under United States law.

2. In the event of an infringement claim, Consultant shall have the option: (i) to procure for County the right to continue using any product or service found to be infringing; (ii) to replace any such infringing product or service with a non-infringing product or service; or (iii) to modify such infringing product or service to make it non-infringing. Consultant shall have no obligation under this Section, Limitation of Liability and Indemnification of County, if the infringement claim is based upon the use of the system in combination with other hardware or software applications not furnished by Consultant, or if such a claim arises from County's modification of the system without the authorization of Consultant.

3.13 Damages

The Consultant shall be responsible and accountable for direct damages caused by the actions or inaction of its employees, staff, or SubConsultants. There are no limitations to the liability for direct damages. The parties expressly waive and release the other party from and against any and all consequential damages arising from or relating to this Agreement. Nothing herein shall be construed as limiting the applicability or amount of any insurance policy required by this Agreement.

3.14 Force Majeure

Neither party shall be liable for any failure or delay in the performance of its obligations under the Agreement to the extent such failure or delay necessarily results from the occurrence of a Force Majeure Event beyond the control or reasonable anticipation of either party, including, but not limited to, compliance with any unanticipated government law or regulation not otherwise in effect at the time of execution of this Agreement, acts of God, unforeseeable governmental acts or omissions, fires, strikes, natural disasters, wars, riots, transportation problems, and/or any other unforeseeable cause whatsoever beyond the reasonable control of the parties (and such cause being referred to as a "Force Majeure Event"). Accordingly, the parties further agree that:

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

B. Upon the occurrence of a Force Majeure Event, the non-performing party shall notify the other party of the occurrence of such event and describe in reasonable detail the effect(s) of such event upon the party's performance of its obligations and duties pursuant to this Agreement. Such notice shall be delivered or otherwise communicated to the other party within two (2) business days following the failure or delay caused by the Force Majeure Event, or as soon as possible after such failure or delay if the Force Majeure Event precludes the non-performing party from providing notice within such time period.

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

3.15 Compliance with Regulations (FTA)

Respondents must be in compliance with applicable Federal Transit Administration (FTA) regulations as indicated in the FTA Master Agreement and Best Practices Procurement Manual, Florida Statutes, Chapter 427, part 1 and the Florida Department of Transportation Rule Chapter 14-90. Respondents shall provide all requested information for State and Federal Reporting requirements in a timely manner. These documents can be found on the Internet at:

<http://www.fta.dot.gov/library/admin/BPPM/appA1.html>

<http://www.leg.state.us/statutes/>

<http://www.fta.dot.gov/fta/library/admin/BPPM/appA1.html>

3.16 Compliance with Laws and Regulations

Consultant shall be responsible to know and to apply all applicable federal, state, and local laws, ordinances, rules, regulations, and all orders and decrees of bodies or tribunals

having jurisdiction or authority which in any manner affect the work, or which in any way affect the conduct of the work. Consultant shall always observe and comply with all such laws, ordinances, rules, regulations, orders, and decrees. The Consultant shall protect and indemnify the County and all its officers, agents, servants, or employees against any claim or liability arising from or based on the violation of any such law, ordinance, rule, regulation, order, or decree caused or committed by Consultant, its representatives, sub-Consultants, professional associates, agents, servants, or employees.

Consultant must hold the required licensure to be the prime Consultant for all work to be performed under this RFP. If any Consultant proposes to use a sub-Consultant to perform any work under this RFP, such sub-Consultant shall, at the time of submittal, hold the required licensure for all work to be performed under this Agreement as a SubConsultant and shall maintain such license(s) in full force and effect during the term of the Agreement. All licenses and permits required to perform Consultant's duties under this RFP, whether such license or permit is required by the federal government, State of Florida, Volusia County, or any municipality, shall be at each Consultant's sole cost and expense, and shall not be a cost of the County. All required licenses and permits shall be maintained in full force and effect during the term of the Agreement.

Compliance with Federal E-Verify Regulations

The Consultant shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Consultant on or after the effective date of this Agreement and thereafter during the remaining term of the Agreement, including SubConsultants. Any subcontract entered into by Consultant with any SubConsultant performing work under this Agreement shall include the following language: "The SubConsultant shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Consultant on or after the effective date of this Agreement and thereafter during the remaining term of the Agreement." The Consultant covenants and agrees that if it is found in violation of this section or the Executive Order, such violation shall be a material breach of this Agreement and Consultant shall indemnify, defend and hold harmless the County from any fines or penalties levied by a government agency, including the loss or repayment of grant funds by the County.

3.17 Termination

- A. The Agreement may be terminated by either party upon the material breach by the other party if such breach is not cured within thirty (30) days written notice from the non-breaching party.
- B. County may terminate the Agreement for convenience or non-appropriation upon at least thirty (30) calendar days' prior written notice to Consultant.
- C. The Consultant may cancel the Agreement with one-hundred eighty (180) days written notice to the Director of Purchasing and Contracts. Failure to provide proper notice to the County may result in the Consultant being barred from future business with the County.

- D. After Consultant's receipt of a notice of termination pursuant to Paragraph A above (or to the extent Consultant has not cured a material breach within thirty (30) days notice from County), and except as otherwise directed by the County, the Consultant shall:
1. Stop work under the Agreement on the date specified in the notice of termination.
 2. Place no further orders or subcontracts for materials, services or facilities.
 3. Terminate all orders and subcontracts to the extent that they relate to the performance of work or services terminated by the notice of termination.
 4. With the approval of the County and to the extent required by the County, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts.
- E. After receipt of a notice of termination, the Consultant shall submit to the County a claim for final amounts owed by County (which shall include without limitation all amounts due for work or services performed through the date of termination), in the form and with a certification as prescribed by the County. Such claim shall be submitted promptly but in no event later than thirty (30) days from the effective date of termination, unless one or more extensions in writing are granted by the County, upon request of the Consultant made in writing within such thirty (30) days period or authorized extension thereof. Upon failure of the Consultant to submit its claim within the time allowed, the County may determine on the basis of information available to it, the amount, if any, due to the Consultant by reason of the termination and shall thereupon pay to the Consultant the amount so determined. In the event County terminates for convenience or non-appropriation, Consultant shall not be obligated to refund to County any prepaid fees.
- F. **Non-Appropriation.** The resulting Agreement may be terminated by the County or Consultant if the County does not appropriate the funding in any fiscal year necessary to pay the compensation set forth in the Agreement.
- G. In the event that the Agreement is terminated by the County or Consultant for non-appropriation, Consultant shall be paid in accordance with the terms of the Agreement. Consultant shall be paid (a) to the date of termination on a prorated basis for any task and deliverable designated for payment on the payment milestone schedule that was started but not completed and/or (b) for any work or deliverable that has been completed but not yet been paid. County's obligation to pay Consultant under this section is limited to the budgeted amount for the fiscal year approved by the Volusia County Council for the then current fiscal year of the Agreement. Consultant shall have no right to compel the Volusia County Council to appropriate funds for any fiscal year to pay the compensation.
- H. Upon being notified of County's election to terminate for default of Consultant, non-appropriation or convenience, Consultant and its SubConsultants shall refrain from performing further work or incurring additional expenses under the terms of

the resulting Agreement which is not specifically authorized in the notice of termination.

- I. If termination of the resulting Agreement occurs for any reason:
 1. Except as otherwise provided in the Agreement, Consultant shall return to the County, or destroy, all County confidential information in Consultant's possession and shall certify the destruction or return of said information in a written document signed by the duly authorized representative of the Consultant that all such information has been destroyed or returned, provided that Consultant shall be permitted to retain an archival copy of any such confidential information (provided it continues to maintain the confidentiality of such as prescribed herein) to the extent necessary to have a record of the work or service performed hereunder.
 2. For all undisputed outstanding invoices submitted to the County for Work completed or deliverables delivered prior to the effective date of the termination, the County shall cause payments to be made to Consultant within forty-five (45) days of receipt of invoice. Consultant shall invoice the County for any sums Consultant claims to be owed by County under the resulting Agreement for work performed from the last invoice to the effective date of termination. County shall review such invoice for payment within fifteen (15) days of receipt and County shall pay any undisputed amount within forty-five (45) days, subject to the terms of the Agreement. Any disputed amounts on any invoices shall be subject to the dispute resolution process set forth in the Agreement.
- J. In the event of termination by the County for non-appropriation, for all items or products ordered by Consultant before receipt by Consultant of the Notice of Termination which Consultant could not cancel without imposition of a fee, the County shall cause payments to be made to Consultant within forty-five (45) days of receipt of an undisputed invoice for all cancellation, restocking or residual fees resulting from the cancellation or return of third party products ordered from or shipped by the vendor thereof prior to the effective date of the termination.

3.18 Right to Require Performance

A. The failure of the County at any time to require performance by the Consultant of any provision hereof shall in no way affect the right of the County thereafter to enforce same, nor shall waiver by the County of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

B. In the event of failure of the Consultant to deliver services in accordance with the Agreement terms and conditions, the County, after due written notice, may procure the services from other sources and hold the Consultant responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the County may have.

3.19 Assignment

Consultant may not assign or otherwise convey Consultant's rights and/or obligations under this Agreement without first providing County with a processing fee of Five Hundred Dollars (US \$500.00) and obtaining County's prior written consent, which consent County may withhold, limit and/or condition in County's sole discretion. Any consent by the County under this section shall be by written amendment to the Agreement in a form and substance specified by the County in its sole discretion. If Consultant desires to assign or otherwise convey its rights and/or obligations under this Agreement, Consultant shall, no less than one hundred twenty (120) days prior to the assignment's proposed effective date, provide County with a written request for County's consent.

Failure by the Consultant to obtain the County's consent in accordance with this section prior to assignment or other conveyance shall: 1) constitute a material breach of the Agreement; and 2) entitle the County to retain any and all legal rights, claims and defense to enforce this section, including, but not limited to, injunctive, declaratory, damages and attorney's fees and costs. Payment of any sum by the County in accordance with the Agreement to the Consultant or any person or entity prior to the Consultant obtaining the County's consent to the assignment shall not constitute a waiver of the rights of the County under this section.

Nothing herein shall preclude the right of the County to waive its rights under this section but no waiver shall be granted by the County without amendment to the Agreement. The Consultant is hereby placed on notice that the County may demand a discount of up ten percent (10%) from those rates or compensation for the goods or services established in the Agreement as a condition to execution of the amendment.

3.20 Records & Right to Audit

The Consultant shall maintain such financial records and other records as may be prescribed by the County or by applicable federal and state laws, rules, and regulations. The Consultant shall retain these records for a period of three (3) years after final payment, or until an audit by the County has occurred and the County has given notice to the Consultant that the audit is complete, whichever event occurs first. These records shall be made available during the term of the Agreement and the subsequent three (3) year period for examination, transcription, and audit by the County, its designees, or other entities authorized by law.

3.21 Incurred Expenses

This Agreement does not commit the County of Volusia to issue a Notice to Proceed a Agreement, nor shall the County of Volusia be responsible for any costs or expenses which may be incurred by Consultant in preparing and submitting a proposal in response to the RFP that led to this Agreement, or any cost or expense incurred by Consultant except as otherwise provided in the Agreement.

3.22 Safety

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

3.23 Consultant's Personnel

The Consultant shall be responsible for ensuring that its employees, agents, and SubConsultants comply with all applicable laws and regulations and meet all federal, state, and local requirements related to their employment and position.

By submission of a proposal, each Consultant certifies that it does not knowingly or willingly and will not during the performance of the resulting Agreement employ illegal alien workers (i.e., non-U.S. citizens who have not been issued valid, appropriate, and current non-immigrant work visas, Form I-551s, or other similar governmental documentation necessary to authorize such persons to reside and perform compensated work or services, whether temporarily or permanently, within the United States) or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986, as amended.

During the performance of the Agreement, the Consultant shall agree to the following:

- The Consultant shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, handicap, or national origin, except when such condition is a bona fide occupational qualification reasonably necessary for the normal operations of the Consultant. The Consultant agrees to post in conspicuous places, visible to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- The Consultant, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, shall state that such Consultant is an Equal Opportunity Employer.

Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.

The Consultant shall include the provisions of the foregoing paragraphs above in every subcontract or purchase order so that the provisions will be binding upon each SubConsultant.

The Consultant and any SubConsultant shall pay all employees working on the Agreement not less than minimum wage specified in the Fair Labor Standards Act (29 CFR 510-794), as amended.

Any information concerning the County, its products, services, personnel, policies, or any other aspect of its business learned by the Consultant or personnel furnished by the Consultant in the course of providing services pursuant to the Consultant, shall be held in confidence and shall not be disclosed by the Consultant or any employee or agents of the Consultant or personnel furnished by the Consultant, without the prior written consent of the County.

3.24 Disadvantaged Business Enterprise Program

The County Council has adopted policies which assure and encourage the full participation of Disadvantaged Business Enterprises (DBE) in the provision of goods and services. The County encourages joint ventures between majority-owned firms and qualified disadvantaged / minority / women-owned firms.

3.25 County/Consultant Relationship

Consultant shall provide the services required herein strictly under a contractual relationship with the County and is not, nor shall be, construed to be an agent or employee of the County. As an independent contractor, the Consultant shall pay any and all applicable taxes required by law; shall comply with all pertinent Federal, State, and local statutes including, but not limited to, the Fair Labor Standards Act, the Americans with Disabilities Act, the Federal Civil Rights Act, and any and all relevant employment laws. The Consultant shall be responsible for all income tax, FICA, and any other withholdings from its employees or SubConsultant's wages or salaries. Benefits for same shall be the responsibility of the Consultant including, but not limited to, health and life insurance, mandatory social security, retirement, liability/risk coverage, and worker's and unemployment compensation.

The independent Consultant shall hire, compensate, supervise, and terminate members of its work force; shall direct and control the manner in which work is performed including conditions under which individuals will be assigned duties, how individuals will report, and the hours individuals will perform.

3.26 Non-Exclusive

The County reserves the right to make multiple awards based on experience and/or qualifications of respondents to the solicitation giving rise to this Agreement and to award only a portion of the items and/or services specified, if deemed to be in the County's best interest. The County shall have sole discretion as to when and to whom to issue a Notice to Proceed for any particular Incident(s) and Consultant is not guaranteed to receive any minimum quantity of Work under this Agreement.

3.27 Use of County Logo

The County owns and retains all proprietary rights in its logos, trademarks, trade names, and copyrighted images (Intellectual Property). Nothing in this Agreement permits or shall be construed as authorizing Consultant to use or display County's Intellectual Property on Consultant's letterhead, signage, advertisements, vehicles, uniforms, employee identification, or in any other manner without the express written consent of County.

3.28 Licenses and Certificates

A. The County reserves the right to require proof that Consultant is an established business and is abiding by the ordinances, regulation, and laws of its community and the state of Florida, such as but not limited to: Business Tax Receipts, business licenses, Florida sales tax registration, Federal Employers Identification Number; and

B. The Consultant shall be required, upon notification of recommendation of award, to register with the Florida Department of State Division of Corporations at www.sunbiz.org in order to provide services under the Agreement.

C. If a license is required, the Consultant shall be licensed to perform the required work in accordance with the laws of the State of Florida and local ordinances. Consultant shall also verify that their SubConsultants are licensed to perform the work in accordance with the laws of the State of Florida and local ordinances.

D. Failure to maintain these requirements shall be cause for immediate termination of the Agreement.

3.29 Venue and Governing Law

All legal proceedings brought in connection with the Agreement executed for the services provided as award under this RFP Contract shall only be brought in a state or federal court located in the State of Florida. Venue in state court shall be in Volusia County, Florida. Venue in federal court shall be in the United States District Court, Middle District of Florida, Orlando division. Each Consultant agrees to submit to the personal jurisdiction of these courts for any lawsuits filed there against Respondent. In the event of a legal proceeding, the action shall be by non-jury trial for the adjudication of such suit.

All questions concerning the validity, operation, interpretation, construction and enforcement of any terms, covenants or conditions of this Contract shall in all respects be governed by and determined in accordance with the laws of the State of Florida without giving effect to the choice of law principles thereof and unless otherwise preempted by federal law.

3.30 Notice

All notice required under this Agreement shall be in writing and shall be sent by certified United States Mail or national parcel service, postage prepaid, return receipt requested, or by hand-delivery with a written receipt of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

Director of Purchasing & Contracts
123 W. Indiana Avenue
DeLand, FL 32720
Phone (386) 736-5935
Fax (386) 736-5972

Copy to: County Attorney
123 W. Indiana Avenue
DeLand, FL 32720
Phone (386) 736-5950
Fax (386) 736-5990

Additional Copy to:

Public Works
123 W. Indiana Avenue
DeLand, Florida 32720
Phone (386) 736-5965

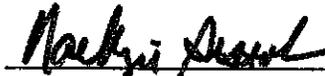
3.31 Entire Agreement

This Agreement, together with any exhibits, schedules, attachments and amendments thereto, and constitute the entire Agreement between County and Contractor and supersede all prior written or oral understandings.

IN WITNESS WHEREOF, the parties have made and executed this Agreement, the day and year first below written.

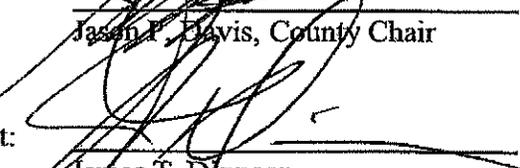
CONTRACTOR

By: 
Name: Ken Burns
Title: CEO

Attest: 
Name: MacKenzie Sostak
Title: Director, Contracts

COUNTY

By: 
Name: Jason P. Davis, County Chair

Attest: 
Name: James T. Dinneen
Title: County Manager

County Council Meeting Date: 5/7/2015

Exhibit A-Consultant's Proposal

