

Post Disaster Debris Removal Contract

This CONTRACT ("Contract") is entered into by and between Ceres Environmental Services, Inc ("Contractor"), located at 9625 Windfern Road Houston, Texas, 77064 and City of Seabrook ("City"), a municipal corporation, located at 1700 First Street, Seabrook, Texas 77586 on the date set forth below.

Terms:

1. **Scope of Services:** In the event of a disaster, Contractor agrees, as Primary Contractor to furnish the City with disaster restoration and recovery services as outlined and priced within the Proposal submitted in response to Seabrook Request for Proposal 2023-03 Post Disaster Debris Removal and Disposal, attached hereto. The Contractor shall comply with all city, state and federal laws and regulations.
2. **Term and Termination:** The term of this Contract shall be for three (3) years from the execution date. The Contract may be renewed for two (2) additional one (1) year terms with the mutual consent of both parties, not less than 60 days prior to the expiration of the initial Contract.

The Contract will not automatically renew. The Contractor shall perform in accordance with the terms and conditions of the Contract. Charges of poor performance shall be documented by the City and submitted to the Contractor for corrective action. If Contractor fails to timely take corrective action or if continued poor performance is determined by City, this will be deemed a breach of these specifications and shall be the cause for immediate termination of the Contract. Notwithstanding anything herein to the contrary, the City of Seabrook and/or Contractor reserves the right to terminate this contract for any reason by notifying the other party in writing thirty (30) days prior to the termination date.

If any section, sentence, phrase, clause, or any part of any section, sentence, phrase, or clause, of the Contract shall, for any reason, not be legally or factually valid, such invalidity shall not affect the remaining portions of the Contract.

3. **Escalation Clause:** The City acknowledges the fluctuating nature of prices, especially for fuel. Therefore in the case of gasoline and diesel fuel prices only, unit prices may be surcharged upward or downward on a weekly basis, based on the local prevailing market prices for fuel as long as the Contractor provides adequate documentation to support the increase in fuel cost. Furthermore, the fee schedule unit prices may be adjusted upward or downward, on the contract anniversary date, based on the United State Department of Labor, Bureau of Labor Statistics' Consumer Price Index for all Urban Consumers or as mutually agreed to by both parties.
4. **Termination for Cause:** Without prejudice to any other legal or equitable right or remedy that the City would otherwise possess hereunder or as a matter of law the City, upon giving the Contractor five (5) calendar days prior written notice, shall be entitled to terminate this Agreement in its entirety at any time for the following:
 - (1) If the Contractor becomes insolvent, commits any act of bankruptcy, makes a general assignment for the benefit of creditors, or becomes the subject of any proceeding commenced under any statute or law for the relief of debtors; or
 - (2) If a receiver trustee or liquidator of any of the property or income of the Contractor shall be appointed; or

- (3) If the Contractor shall fail to prosecute the work or any part thereof with diligence necessary to insure its progress and completion as prescribed by the time schedules; or
 - (4) If the Contractor shall fail to remedy any default within ten (10) days after written notice thereof from City; or
 - (5) If the Contractor commits a default under any of the terms, provisions, conditions, or covenants contained in this Agreement.
5. **Termination for Convenience:** The performance of the work may be terminated at any time in whole or, from time to time, in part, by the City and/or Contractor for its convenience. Any such termination shall be effected by delivery to the Contractor and/or City of a written notice (notice of termination) as provided in paragraph 2, specifying the extent to which performance of the work is terminated, and the date upon which termination becomes effective.

In the event of termination for convenience, the Contractor shall only be paid its reimbursable costs incurred prior to the effective date of the termination notice and shall not be entitled to receive any further fixed fee payments hereunder and shall be further subject to any claim the City may have against the Contractor under other provisions of this Agreement or as a matter of law, including the refund of any overpayment of reimbursable costs and/or fixed fee.

6. **Compensation:** Contractor shall be paid for the services, as set forth in the Proposal submitted in response to Seabrook Request for Proposal 2023-03 Post Disaster Debris Removal and Disposal, attached and incorporated for all purposes. The City shall pay Contractor in accordance with the Texas Government Code 2251 and any other applicable state or federal regulations. Contractor must timely submit invoices for all services. Payment for delivery of services rendered shall not be unreasonably withheld or delayed.

Contractor shall submit invoices directly to the City or to the authorized Monitoring Firm, as instructed by City in the Notice to Proceed. If the City disapproves any amount submitted for payment by Contractor, the City shall give Contractor specific reasons for disapproval in writing. Upon resolution of any disputed charges, Contractor shall submit an amended invoice covering any remaining charges to the City. All invoices must be emailed to accounts payable, payables@seabrooktx.gov or mailed to:

City of Seabrook
Attn: Accounts Payable
1700 First Street
Seabrook, TX 77586

7. **Insurance:** The Contractor shall keep and maintain during the term of this Contract, a comprehensive general liability policy, with the City named as Additional Named Insured, with limits of:

1. General Aggregate	\$1,000,000.00
2. Contractor's Liability	\$500,000.00
3. Bodily Injury	\$500,000.00
4. Property Damage	\$500,000.00
5. Workers Compensation	Requirements Per Texas State Law

Thirty (30) days prior notice of policy cancellation shall be provided to the City. The Contractor shall furnish the City with an Insurance Policy Endorsement evidencing such coverage. The companies

providing the required coverage shall be authorized under the laws of the State of Texas to underwrite insurance and be acceptable to City.

8. **Bonds:** Within five (5) days of issuance of Notice to Proceed, Contractor shall provide payment and performance bonds for the entire estimated cost of Debris Removal and Disposal for the disaster event, in standard forms for this purpose and companies authorized under the laws of the State of Texas to act as surety on the subject bonds for principals, guaranteeing faithful payment to all persons supplying labor and materials or furnishing the Contractor any equipment in the execution of the Contract. It is specifically stipulated and agreed that the Notice to Proceed shall not be in effect until such performance and payment bonds are furnished and approved by the City. Such performance bond shall expressly provide that the principal and surety shall be liable to the City for the full amount of such performance bond, thereby agreed upon and admitted as the amount of the damages to be suffered by the City on account of the failure of the proposer to so comply with the terms of his proposal.
9. **Independent Contractor:** Contractor is an independent contractor and is not an employee, partner, joint venture, or agent of the City. Contractor understands and agrees that he/she will not be entitled to any benefits generally available to City of Seabrook employees. Contractor shall be responsible for all expenses necessary to carry out the services under this Contract, and shall not be reimbursed by the City for such expenses except as otherwise provided in this Contract.
10. **Confidentiality:** During the course of the work and/or services to be provided under this Contract, Contractor may come in contact with confidential information of the City. Contractor agrees to treat as confidential the information or knowledge that becomes known to Contractor during performance of this Contract and not to use, copy, or disclose such information to any third party unless authorized in writing by the City. This provision does not restrict the disclosure of any information that is required to be disclosed under applicable law. Contractor shall promptly notify the City of any misuse or unauthorized disclosure of its confidential information and upon expiration of this Contract shall return to the City all confidential information in Contractor's possession or control. Contractor shall further comply with all information security policies of the City that may apply and shall not make any press releases, public statements or advertisement referring to the services provided under this Contract or the engagement of Contractor without the prior written approval of the City.
11. **Warranties and Representations:** Contractor warrants and agrees that Contractor shall perform the Services and conduct all operations in conformity with all applicable federal, state, and local laws, rules, regulations, and ordinances. For any Service performed on premises owned or controlled by the City, Contractor warrants and agrees that Contractor will perform the Services in compliance with all City Codes and Rules, including but not limited to, prohibitions related to tobacco use, alcohol, and other drugs.
12. **Licenses/Certifications:** Contractor represents and warrants that it will obtain and maintain in effect, and pay the cost of all licenses, permits or certifications that may be necessary for Contractor's performance of this Contract. If Contractor is a business entity, Contractor warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation; and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Contract and is authorized to execute this Contract according to its terms on behalf of Contractor.
13. **Performance/Qualifications:** Contractor agrees and represents that Contractor has the personnel, experience, and knowledge necessary to qualify Contractor for the particular duties to be performed

under this Contract. Contractor warrants that all services performed under this Contract shall be performed consistent with generally prevailing professional or industry standards.

14. **Liquidated Damages**

Should the Contractor fail to complete requirements set forth in this Contract and statement of work, the City will suffer damage. The amount of damage suffered by the City is difficult, if not impossible to determine at this time. Therefore, the Contractor shall pay the City, as liquidated damages, and not as a penalty, the following:

- The Contractor shall pay the City, as liquidated damages, \$5,000.00 per calendar day of delay to mobilize in the City with the resources required to begin debris removal operations, within 48 hours of notice to proceed.
- The Contractor shall pay the City, as liquidated damages, \$100 per load of disaster debris collected in the City that is not disposed of at a City approved DMS or City approved Final Disposal Site. Application of liquidated damages does not release the Contractor of all liability associated with hauling and depositing material to an unauthorized location.
- The Contractor shall pay the City, as liquidated damages, \$500.00 per incident where the Contractor fails to repair damages within 30 days of written notification to Contractor, for damages that are caused by the Contractor or subcontractor(s). Application of liquidated damages does not release the Contractor from the responsibility of resolving or repairing damages.
- The Contractor shall pay the City, as liquidated damages, \$500.00 per calendar day of delay to complete the project by the agreed upon project completion date.
- The Contractor shall pay the City, as liquidated damages, \$500.00 per calendar day of delay to remediate each DMS to the original condition based on the completion date set forth by the City and Contractor per DMS.

15. **Non-Transferable Contract:** The Contractor shall not assign or transfer, whether by an assignment or novation, any of its rights, duties, benefits, obligations, liabilities, or responsibilities under this Contract without the prior written consent of the City Manager who is hereby authorized to give such consent by the City Council of the City; provided, however, that assignments to banks or other financial institutions may be made without consent of the City. Furthermore, in the event of a merger, consolidation or transfer of all or substantially all of the assets of Contractor, the surviving or resulting corporation or transferee of Contractor's assets shall be bound by and shall have the benefit of the provisions of this Contract only upon the prior written consent of the City Manager. No assignment or novation of this Contract shall be valid unless the assignment or novation expressly provides that the assignment of any of the Contractor's rights or benefits under the Contract is subject to a prior lien for labor performed, services rendered, and materials, tools, and equipment supplied for the performance of the work under this Contract in favor of all persons, firms, or corporations rendering such labor or services or supplying such materials, tools, or equipment.

16. **Conflict of Interest:** Contractor warrants, represents, and agrees that Contractor presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of the Services hereunder. Contractor further warrants and affirms that no relationship or affiliation exists between Contractor and the City that could be construed as a conflict of interest with regard to this Contract.

17. **INDEMNIFICATION: THE CONTRACTOR HEREBY AGREES TO AND SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES,**

DEMANDS, CAUSES OF ACTION, SUITS AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS AND ATTORNEYS' FEES, FOR INJURY TO OR DEATH OF ANY PERSON, FOR LOSS OF USE OR REVENUE, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE ACTUAL OR ALLEGED MALFUNCTION, DESIGN OR WORKMANSHIP IN THE MANUFACTURE OF EQUIPMENT, THE FULFILLMENT OF CONTRACT, OR THE BREACH OF ANY EXPRESS OR IMPLIED WARRANTIES UNDER THIS CONTRACT. SUCH INDEMNITY SHALL APPLY WHERE THE CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS OR LIABILITY ARISE IN PART FROM (I) THE JOINT NEGLIGENCE OF THE CITY AND THE CONTRACTOR, AND/OR THEIR RESPECTIVE OFFICERS, AGENTS AND/OR EMPLOYEES OR (II) THE SOLE NEGLIGENCE OF THE CONTRACTOR, ITS OFFICERS, AGENTS AND EMPLOYEES. IT IS THE EXPRESSED INTENTION OF THE PARTIES HERETO, BOTH CONTRACTOR AND THE CITY, THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH IS INDEMNITY BY CONTRACTOR TO INDEMNIFY AND PROTECT THE CITY FROM THE CONSEQUENCE OF (I) THE CITY'S OWN NEGLIGENCE WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE WITH THAT OF THE CONTRACTOR OF THE INJURY, DEATH OR DAMAGE AND/OR (II) THE CONTRACTOR'S OWN NEGLIGENCE WHERE THAT NEGLIGENCE IS THE SOLE CAUSE OF THE INJURY, DEATH, OR DAMAGE. FURTHERMORE, THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL HAVE NO APPLICATION TO ANY CLAIM, LOSS, DAMAGE, CAUSE OF ACTION, SUIT AND LIABILITY WHERE IN INJURY, DEATH OR DAMAGE RESULTS FROM THE SOLE NEGLIGENCE OF THE CITY UNMIXED WITH THE FAULT OF ANY OTHER PERSON OR ENTITY. IN THE EVENT ANY ACTION OR PROCEEDING IS BROUGHT AGAINST THE CITY BY REASON OF ANY OF THE ABOVE, THE CONTRACTOR AGREES AND COVENANTS TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO THE CITY. THE INDEMNITY PROVIDED FOR HEREIN SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS CONTRACT.

18. **Notices:** Any notice given under this contract by either party to the other may be affected either by personal delivery in writing or by mail, registered or certified postage prepaid with return receipt requested. Mailed notices shall be addressed to the addresses of the parties as they appear in the contract. Notices delivered personally shall be deemed communicated at the time of actual receipt. Mailed notice shall be deemed communicated three (3) days after mailing.
19. **Texas Family Code Child Support Certification:** Pursuant to Section 231.006, *Texas Family Code*, Contractor certifies that it is not ineligible to receive the award of or payments under the Contract and acknowledges that the Contract may be terminated, and payment may be withheld if this certification is inaccurate.
20. **State Auditor:** Contractor understands that acceptance of funds under the Contract constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.
21. **Jurisdiction:** Any disputes under this Contract shall be brought in a court of competent jurisdiction exclusively in Harris County, Texas and governed by Texas law.

22. **Alternative Dispute Resolution:** To the extent that Chapter 2260, Texas Government Code, is applicable to this Contract and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General Pursuant to Chapter 2260, shall be used by the City and the Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. The Director of Finance of the City shall examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims. The parties hereto specifically agree that (i) neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Contractor, (ii) neither the issuance of this Contract by the City nor any other conduct, action or inaction of any representative of the City relating to this contract constitutes or is intended to constitute a waiver of the City's or the state's sovereign immunity to suit; and (iii) the City has not waived its right to seek redress in the courts.
23. **Changes to Contract:** Any changes made to this Contract must be reasonable for the completion of the project scope, made in writing and agreed to by both parties. Changes include but are not limited to extending the term of the Contract and any alterations to the method of work and prices.
24. **Entire Contract:** This Contract contains the entire Contract between the parties and supersedes all prior Contracts, arrangements, and understanding, oral or written between the parties relating to this Contract. This Contract may not be modified except by mutual written Contract of the parties executed subsequent to this Contract.
25. **Eligibility to Receive Payment:** Contractor certifies that, as a matter of State law, it is not ineligible to receive the Contract and payments pursuant to the Contract and acknowledges that the Contract may be terminated, and payment withheld if this representation is inaccurate.
26. **Payment of Debt/Delinquency to State:** Contractor certifies that it is not indebted to the City of Seabrook and is current on all taxes owed to the City of Seabrook. Contractor agrees that any payments owing to Contractor under the Contract may be applied directly toward any debt or delinquency that Contractor owes the City of Seabrook regardless of when it arises, until such debt or delinquency is paid in full.
27. **Products and Materials Produced in Texas:** If Contractor will provide services under the Contract, Contractor covenants and agrees that in performing its duties and obligations under the Contract, it will purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.
28. **Risk of Loss:** If applicable, all work performed by Contractor pursuant to the Contract will be at Contractor's exclusive risk until final and complete acceptance of the work by City. In the case of any loss or damage to the work prior to City's acceptance, such loss or damage will be Contractor's responsibility.
29. **Publicity:** Contractor shall not use City's name, logo or likeness in any press release, marketing materials or other public announcement without receiving City's prior written approval.
30. **Legal Construction/Severability:** In the event that any one or more of the provisions contained in this contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision, and this contract shall be construed as if such invalid, illegal or unenforceable provisions had never been contained in it. To this end, the provisions of this contract are declared to be severable. The Parties may mutually agree


to renegotiate the contract to cure such illegality/invalidity or unconstitutionality if such may be reasonably accomplished.

31. **Limitations:** The Parties are aware that there are constitutional and statutory limitations on the authority of City to enter into certain terms and conditions of the Contract, including, but not limited to, those terms and conditions relating to liens on City's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"), and terms and conditions related to the Limitations will not be binding on City except to the extent authorized by the laws and Constitution of the State of Texas.
32. **Sovereign Immunity:** Except as otherwise provided by Texas law, neither the execution of the Contract by City nor any other conduct, action or inaction of any City representative relating to the Contract is a waiver of sovereign immunity by City.
33. **Authority:** Contractor warrants and represents that Contractor has full power and authority to enter into and perform this Contract and to make the grant of rights contained herein. The person signing on behalf of the City represents that he/she has authority to sign this Contract on behalf of City.
34. **Non-Waiver:** No covenant or condition of this Contract may be waived except by written consent of the waiving party. Forbearance or indulgence by one party in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the other party.
35. **Prohibition on Boycotting Israel:** Pursuant to Section 2270.002, Texas Government Code, by executing this Contract Contractor verifies that Contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of this Contract.
36. **Prohibition Against Business with Iran, Sudan or Foreign Terrorists Organizations:** Contractor warrants, covenants, and represents that Contractor is not engaged in business with Iran, Sudan, or any company identified on the list referenced in Section 2252.152, Texas Government Code.

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signature block on next page)*

Executed this 12th day of May, 2023

CERES ENVIRONMENTAL SERVICES - "Contractor"


(Type Name and Position)
Tia Laurie, Corp. Secretary

CITY OF SEABROOK – “City”

Thom Kolupski, Mayor

Attest:

Robin Hicks, City Secretary

Approved as to Form:

Office of the City Attorney

Note: Modification of this Form requires approval by the Office of the City Attorney.