

INDEPENDENT CONTRACTOR AGREEMENT

THIS INDEPENDENT CONTRACTOR AGREEMENT (the "Agreement") is made and entered into effective as of the 12th day of July, 2024 (the "Effective Date"), by and between the CITY OF BAY CITY, TEXAS (the "City" or "Applicant") and DEBRISTECH, LLC, a Mississippi limited liability company (the "Contractor").

RECITALS

WHEREAS, the City desires to engage Contractor to perform certain Contractor Services (as hereinafter defined) and Contractor desires to perform such Contractor Services, all on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the premises, the mutual covenants and agreements contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Duties of Contractor. Effective as of the date of this Agreement, Contractor agrees to supply personnel as specifically requested in writing by the City to perform the services described in Exhibit A attached hereto (collectively, the "Contractor Services").

2. Independent Contractor Relationship. Contractor is an independent contractor and is solely responsible for all taxes, withholdings, and other similar statutory obligations in connection with the personnel supplied and services provided by Contractor pursuant to this Agreement, including, but not limited to, workers' compensation insurance and unemployment insurance. Nothing in this Agreement shall be deemed to create an agency, partnership, or joint venture between the parties, nor shall this Agreement be interpreted or construed as creating or establishing the relationship of employer and employee between the City and Contractor. Neither party hereto has the authority to act on behalf of or to enter into any contract, incur any liability or make any representation on behalf the other party. It is expressly understood that the Contractor is an independent contractor in every respect.

3. No Exclusive Duty. The Contractor shall devote sufficient time, attention, personnel and other resources to perform the Contractor Services, provided, however, the Contractor shall not be required to perform work exclusively for the City and Contractor may have other business interests and may engage in other activities in addition to those relating to the City.

4. Term. The term of this Agreement shall commence on the Effective Date and terminate on August 11, 2024, subject to the provisions of Paragraphs 5 and 6 (the "Initial Term"). Upon expiration of the Initial Term, this Agreement may continue in 30 day increments as set forth in Section 5 below or otherwise extended pursuant to mutually agreeable written terms.

5. Termination. Either party shall have the right to terminate this Agreement immediately upon written notice thereof to the other party, if such other party breaches any of the material terms of this Agreement or fails to perform or observe any of its material obligations hereunder, and such breach or failure is not cured within a period of thirty (30) days after the receipt

by such party of written notice of such breach or failure specifying the nature of the breach or failure. The City or Contractor may terminate this Agreement for convenience and without cause at any time for any reason without any further obligation to the other party by providing the other party with two (2) days written notice. In the event of termination in accordance with this Paragraph, the City shall pay Contractor for services rendered (as set forth in Paragraph 6 of this Agreement) through the effective termination date and the City shall be liable for the same until such amounts are fully and finally settled.

(a) Authority to Modify, Change or Direct Work. The City understands and agrees it is important for Contractor to receive any and all Project directives, changes, guidance and other scope-related correspondence (collectively "Directives") from authorized representatives of the City. As such, the City designates the below listed individuals as City representatives authorized to issue Directives to Contractor on the City's behalf. In the event any additional City representatives are designated for this Project, the City shall promptly notify Contractor of such designation(s) in writing.

Owner-designated representative: Scotty Jones, Interim City Manager.

6. Compensation. The City will pay Contractor an hourly rate for the personnel provided by Contractor pursuant to the payment schedule attached to Exhibit B. For each hour of services provided by any Contractor personnel in excess of forty (40) hours per week, the City will pay Contractor at one and one-half times (1.5x) the hourly rate on Exhibit B. Contractor agrees to track the number of hours worked per week and to provide invoices for services rendered to the City on a weekly basis. Payment shall be due from the City to the Contractor within fifteen (15) days of the regular meeting of the City Council immediately following receipt of the invoice. For any amounts more than sixty (60) days overdue, Contractor shall have the right to suspend its provision of the Contractor Services until such payment is received. In no event shall the amount payable under this Agreement exceed **\$75,000.00** (the "Cap"). If the Contractor performs services such that the amount payable under this Agreement reaches the Cap, this Agreement shall automatically terminate unless the parties agree to amend this Agreement to increase the amount of the Cap.

7. Taxes. Contractor shall be solely responsible for the payment of all taxes and/or assessments imposed on the payments of compensation for the performance of services outlined herein, including, without limitation, any unemployment insurance or tax, self-employment tax, federal, state and foreign income taxes, and any federal social security payment or similar taxes (and Contractor shall provide evidence to the City, upon the City's request, that such have been paid). Notwithstanding, the City may withhold from any amounts payable under this Agreement such federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation; provided, however, that the City shall provide the Contractor with written substantiation of withholding and remittance of such taxes upon Contractor's request.

8. No Breach. Each party hereby represents and warrants to the other party that: (a) it has all right, power and authority to grant the rights granted herein and to perform all of its obligations hereunder; (b) by entering into this Agreement and performing the obligations herein, it will not breach or violate any agreement, charter, instrument or other document to which it is a party or otherwise bound; and (c) it is currently in compliance and, throughout the term of this Agreement, it shall comply, in all material respects, with all applicable laws, rules and regulations.

9. Non-Disclosure. In connection with the Contractor Services, the City may be exposed to certain information that Contractor considers to be confidential or proprietary, or which is otherwise designated by the Contractor as confidential or secret (collectively, "Confidential Information"). During the term of this Agreement and for three (3) years thereafter, the City: (a) shall use reasonable care to protect all Confidential Information it receives; (b) shall not use Confidential Information for any purpose unrelated to the Contractor Services; and (c) shall not, directly or indirectly, disclose any Confidential Information to any third party except to such of the City's employees, agents and representatives who have a need to know such information for purposes of the Contractor Services and are bound by confidentiality obligations no less restrictive than those imposed on the City under this Agreement. The City shall be responsible for any unauthorized disclosure or use of Confidential Information by the City's employees, agents and representatives.

The obligations set forth in this Paragraph 9 shall not apply to such Confidential Information which (i) is or becomes generally available to the public other than as a result of a disclosure by the City; (ii) was available to City on a non-confidential basis prior to its disclosure by the Contractor or its agents; or (iii) becomes available to City on a non-confidential basis from a source other than the Contractor or its agents.

Notwithstanding the foregoing, if City is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, City shall promptly notify the Contractor of such request(s) so that the Contractor may seek an appropriate protective order or waive compliance with the provisions of this Agreement. City agrees to cooperate fully with the Contractor in seeking any protective order. If, in the absence of a protective order or the receipt of a waiver hereunder, City is, nonetheless, in the reasonable opinion of their counsel, compelled to disclose any such Confidential Information or else stand liable for contempt or suffer other censure or penalty, then it may disclose such information pursuant to such request or requirement without liability hereunder.

10. Dispute Resolution.

(a) Should any dispute between the Parties arise under this Agreement (a "Dispute"), written notice of such Dispute shall be delivered from one party to the other and thereafter, the parties, through their appointed representatives or designees (each an "Authorized Representative"), shall first meet and attempt to resolve the Dispute in face-to-face negotiations. This meeting shall occur within thirty (30) days of the date on which a written notice of such Dispute is received from the complaining party.

(b) If no resolution is reached through the informal process set forth in Section 10(a) above, at the direction of either party's Authorized Representative, the parties shall engage in non-binding mediation. The mediation shall be conducted in Bay City, Texas by a single mediator mutually selected by the parties. The parties shall share equally in the fees of the mediator. If the Dispute remains unresolved for a period of at least sixty (60) days following the mediation, either party may seek any remedy at law or in equity that may be available. Any disputes shall be brought in the appropriate court in Matagorda, Texas.

11. Relationship with Debris Removal Contractor. The City acknowledges that the Contractor and the debris removal contractor are not partners or joint ventures with each other. The

City further acknowledges that the Contractor's relationship with the debris removal contractor is limited to documenting the work that is performed by the debris removal contractor, that the Contractor does not direct the operations of the debris removal contractor, does not have any control over the acts or operations of the debris removal contractor, and is not responsible for the acts or omissions of the debris removal contractor.

12. Standards. The Contractor shall follow the generally accepted standard of care typically exhibited by similarly situated consultants performing like services on projects of similar size, scope, nature and complexity. The City and Contractor agree and understand that Contractor's services hereunder constitute professional services and Contractor makes no warranty or guarantee, express or implied, and guarantees no particular result.

13. Insurance. Contractor shall maintain as a condition precedent to this Agreement an approved and satisfactory general comprehensive liability insurance policy in the minimum amount of \$1,000,000.00, and naming the City, its employees and elected officials as additional insureds. Such general comprehensive insurance, the premiums for which have been paid by the Contractor, shall cover any claim for damages of whatever nature brought by any person, corporation or business entity against the Contractor, the City, its employees, named insureds, or additional insureds, or any of them arising out of or in any manner connected with the services provided to the City. A certificate of insurance shall be provided by its producing agent to the City prior to the Contractor's beginning work under this Agreement.

Contractor shall furnish the City as a condition precedent to this Agreement evidence of approved and satisfactory workers' compensation insurance providing workers' compensation insurance to Contractor's employees, unless Contractor is not required by law to have such insurance coverage.

14. Assignment. This Agreement shall not be assigned, in whole or in part, by Contractor without the prior written consent of the City, which shall not be unreasonably withheld.

15. Solid Waste Disposal Act. During the term of this Agreement and any extensions thereof, the Contractor shall at all times comply with all applicable provisions of The Solid Waste Disposal Act of 1965, as amended (42 USCA § 6901, et seq.).

16. Contract Work Hours and Safety Standards Act.

(a) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each

individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section. (3) Withholding for unpaid wages and liquidated damages. The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section. (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

17. Clean Air Act. Where applicable, the Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

18. Federal Water Pollution Control Act (Clean Water Act). Where applicable, the Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. The Contractor agrees to report each violation to the (insert name of the non-federal entity entering into the contract) and understands and agrees that the (insert name of the nonfederal entity entering into the contract) will, in turn, report each violation as required to assure notification to the (insert name of the pass-through entity, if applicable), Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

19. Energy Policy and Conservation Act. During the term of this Agreement and any extensions thereof, the Contractor shall at all times comply with all applicable federal, state and local laws pertaining to energy efficiency, including but not limited to, the Energy Policy and Conservation Act, as amended (42 U.S.C.A § 6201 et seq.).

(a) The Contractor shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered material practicable, consistent with maintaining a satisfactory level of competition,

where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

20. Byrd Anti-Lobbying Amendment. During the term of this Agreement and any extensions thereof, the Contractor shall at all times comply with all applicable provisions of the Byrd Anti-Lobbying Amendment (42 U.S.C. § 1352, et seq.).

21. Non-Discrimination.

(a) Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(c) Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Contractor's legal duty to furnish information.

(d) Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(f) Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(g) In the event of Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(h) Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be

imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

22. Prohibition on Contracting for Covered Telecommunications Equipment or Services.

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause.

(b) Prohibitions. (1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons. (2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to: (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system; (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system; (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions. (1) This clause does not prohibit contractors from providing:

(i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles. (2) By necessary implication and regulation, the prohibitions also do not apply to: (i) Covered telecommunications equipment or services that: i. Are not used as a substantial or essential component of any system; and ii. Are not

used as critical technology of any system. (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement. (1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information. (2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause: (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended. (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

23. Domestic Preference for Procurements. As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause: Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

24. Access to Records. The Contractor agrees to provide the City, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

In compliance with section 1225 of the Disaster Recovery Reform Act of 2018, the City and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

25. DHS Seal, Logo, and Flags. The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. The contractor shall include this provision in any subcontracts.

26. Compliance with Federal Law, Regulations, And Executive Orders and Acknowledgement of Federal Funding. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The Contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

27. No Obligation by Federal Government. The federal government is not a party to this contract and is not subject to any obligations or liabilities to the non-federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

28. Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

29. Byrd Anti-Lobbying Amendment. Contractors who apply or bid for an award of more than \$100,000 shall file the required certification attached as Exhibit D. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.

30. Affirmative Socioeconomic Steps. If subcontracts are to be let, the Contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

32. Force Majeure. Except with respect to payment obligations under this Agreement, neither party hereto shall be liable for any failure to perform due to strikes, riots, civil disturbances, acts of terrorism, wars, failures or fluctuations in electrical power or telecommunications equipment, or any other cause beyond such party's reasonable control (each an "Event of Force Majeure"). The parties shall use their commercially reasonable efforts to minimize the consequences of any Event of Force Majeure.

33. Miscellaneous.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without reference to principles of conflict of laws. The captions of this Agreement are not part of the provisions hereof and shall have no force or effect. This

Agreement may not be amended or modified otherwise than by a written agreement executed by the parties hereto or their respective successors and legal representatives.

(b) All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Contractor:
DebrisTech, LLC
Attn: Brooks Wallace
923 Goodyear Boulevard
Picayune, Mississippi 39466

If to the City:
City of Bay City, Texas
Attn: Scotty Jones
1901 Fifth Street
Bay City, Texas 77414

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

(c) The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

(d) The parties' respective rights under this Agreement are cumulative and either party's exercise or enforcement of any right or remedy under this Agreement will not preclude such party's exercise or enforcement of any other right or remedy which such party is entitled to enforce at law or in equity.

(e) Contractor's or the City's failure to insist upon strict compliance with any provision of this Agreement or the failure to assert any right Contractor or the City may have hereunder shall not be deemed to be a waiver of such provision or right or any other provision or right of this Agreement.

(f) If any provision of this Agreement shall be deemed unlawful, void or unenforceable for any reason, it shall be deemed severable, and in no way shall affect the validity or enforceability of, the remaining provisions of this Agreement.

(g) This Agreement shall not be construed or interpreted in favor of or against Contractor or the City on the basis of draftsmanship or preparation of the Agreement.

(h) This Agreement, together with the Exhibits attached hereto, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and shall supersede all prior and contemporaneous agreements and understandings between Contractor and the City, whether written or oral, with respect to the subject matter hereof.

(i) This Agreement can only be amended or modified in a written document signed by both Contractor and the City.

(j) All rights and obligations of the parties hereto that either expressly, or by their nature, survive the expiration or termination of this Agreement shall survive such expiration or termination.

(k) This Agreement and any amendment, waiver, approval or consent relating hereto may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. The delivery by any party of an executed signature page to this Agreement or any amendment, waiver, approval or consent relating hereto by facsimile transmission or by electronic email in Adobe Corporation's Portable Document Format (or PDF) shall be deemed to be, and shall be enforceable to the same extent as, an original signature page hereto or thereto. Any party who delivers such a signature page agrees to later deliver an original counterpart to any party that requests it.

IN WITNESS WHEREOF, the parties have executed this Independent Contractor Agreement as of the date first written above.

-CONTRACTOR-

-CITY-

DEBRISTECH, LLC

BAY CITY, TEXAS

By: _____
Brooks R. Wallace, President

By:  _____
Robert K. Nelson, Mayor

EXHIBIT A

SCOPE OF SERVICES

I. BACKGROUND

The City requires management, recovery, and consulting services related to disaster recovery. Upon request of the City other services may include, but not limited to, facilitating communication with FEMA, FHWA, the State of Texas and other agencies, coordination with insurance representatives, pre-event planning, and post-event reconstruction, grant funding, and reimbursement services.

II. SCOPE

A. DISASTER DEBRIS MONITORING SERVICES

The selected firm will be expected to provide disaster debris monitoring services to include debris generated from the public rights-of-way, private property, drainage areas/canals, waterways, and other areas designated as eligible by the City. Specific services may include:

1. Providing technical support and guidance in selecting a debris removal contractor. This shall include the preparation, review and recommendations of Request for Proposals and/or Bids for debris removal.
2. Coordinating daily briefings, work progress, staffing, and other key items with the City.
3. Support with the selection and permitting of Temporary Debris Storage and Reduction Site (TDSRS) locations and other permitting/regulatory issues as requested.
4. Scheduling work for team members and contractors on a daily basis.
5. Hiring, scheduling, and managing field staff.
6. Monitoring recovery contractor operations and making/implementing recommendations to improve efficiency and speed up recovery work.
7. Assisting the City with responding to public concerns and comments.
8. Certifying contractor vehicles for debris removal using methodology and documentation practices appropriate for contract monitoring.
9. The Debris monitoring company shall utilize an Electronic Ticketing System to generate

electronic debris load tickets for each load of debris generated. The Electronic Ticketing System shall capture a digital photograph, GPS coordinates, Electronic Signature, and a timestamp for each load of debris generated as it is loaded and as it dumped. The System shall also capture before and after photos of each Leaner, Hanger, and Stump removed along with GPS coordinates and timestamps. This information shall be transmitted electronically to a central information database that provides real time access to debris removal activities via a web-based interface. Along with the digital records, the system shall also have the ability to generate paper receipts in the field for redundancy and debris removal crew validation if requested by the City at no additional cost. The System shall also be capable of providing a real time connection to the City's GIS system and shall be customizable to meet specific needs of the City with no additional cost to the City. The purpose of the Electronic Ticketing System is to provide the City with complete documentation of every load of debris generated for auditing and reimbursement purposes.

10. Developing daily operational reports to keep the City informed of work progress.
11. Development of maps, GIS applications, etc. as necessary.
12. Comprehensive review, reconciliation, and validation of debris removal contractor(s) invoices prior to submission to the City for processing.
13. Project Worksheet and other pertinent report preparation required for reimbursement by FEMA, FHWA and any other applicable agency for disaster recovery efforts by City staff and designated debris removal contractors.
14. Final report and appeal preparation and assistance.

END OF SCOPE

EXHIBIT B

PAYMENT SCHEDULE

The hourly labor rates shall include all applicable overhead and profit. All non-labor related project costs will be billed to the City at cost without mark-up. All Per Diem expenses shall be billed directly to the City at a rate not to exceed the GSA Per Diem Allowance for the project area. The rates listed below shall be straight time rates. All hours in excess of 40 hours per week shall be billed at 1.5 times the straight time rate.

DISASTER DEBRIS MONITORING SERVICES

POSITIONS	HOURLY RATES
Project Manager	\$ <u>85.00</u>
Operations Manager	\$ <u>70.00</u>
Field Supervisor	\$ <u>50.00</u>
Load Site Monitors	\$ <u>38.00</u>
Debris Site/Tower Monitor	\$ <u>38.00</u>

EXHIBIT C

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS -Certification in accordance with Section 29.510 Appendix A,
C.F.R./Vol. 53, No. 102, page 19210 and 19211:

- (1) The CONTRACTOR certifies to the best of its knowledge and belief that it and its principals:
 - (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - (b) have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification: and
 - (d) have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default;
 - (e) has not either directly or indirectly entered into any agreement participated in any collusion; or otherwise taken any action in restraint of free competitive negotiation in connection with this CONTRACT.

- (2) The CONTRACTOR further certifies, to the best of his/her knowledge and belief, that:
 - (f) No federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or employee of a member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - (g) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer of employee of Congress, or any employee of a member of Congress in connection with this CONTRACT, Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions will be completed and submitted.

The certification contained in (1) and (2) above is a material representation of fact upon which reliance is placed and a pre-requisite imposed by Section 1352, Title 31, U. S. Code prior to entering into this CONTRACT. Failure to comply shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000. The CONTRACTOR shall include the language of the certification in all subcontracts exceeding \$100,000 and all sub-contractors shall certify and disclose accordingly.

I hereby certify that I am the duly authorized representative of the CONTRACTOR for purposes of making this certification, and that neither I, nor any principal, officer, shareholder or employee of the above firm has:

- (a) employed or retained for commission, percentages, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONTRACTOR) to solicit or secure this agreement,
- (b) agreed, as an express or implied condition for obtaining this CONTRACT, to employ or retain the services of any firm or person in connection with carrying out the agreement, or
- (c) paid, or agreed to pay, to any firm, organization or person (other than a bone fide employee working solely for me or the above CONTRACTOR) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the agreement; except as herein expressly stated (if any).

I acknowledge that this Agreement may be furnished to the Federal Emergency Management Agency, in connection with the Agreement involving participation of federal disaster relief funds, and is subject to applicable state and federal laws, both criminal and civil.

SO CERTIFIED this day of _____, 20__.

DebrisTech, LLC

Brooks Wallace, President

ATTEST: _____
Notary

EXHIBIT D

BYRD ANTI-LOBBYING AMENDMENT CERTIFICATION

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, DebrisTech, LLC, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Brooks Wallace, President

Date