

## SPECIAL CALL MEETING

### AGENDA BOARD OF CITY COMMISSIONERS JUNE 9, 2023 AT 1:00 PM COMMISSION CHAMBERS AT CITY HALL 16 WEST 9TH STREET SHAWNEE, OKLAHOMA

Official action can only be taken on items which appear on the agenda. The public body may adopt, approve, ratify, deny, defer, recommend, amend, strike, or continue any agenda item. When more information is needed to act on an item, the public body may refer the matter to Staff or back to Committee or the recommending body. Under certain circumstances, items are deferred to a future date or stricken from the agenda entirely.

#### CALL TO ORDER

#### DECLARATION OF A QUORUM

1. Ratification of the Contract Extension between the City of Shawnee and DebrisTech, LLC for debris removal monitoring services.
2. Consideration of an amendment to the Contract between the City of Shawnee and DebrisTech, LLC for debris removal monitoring services.
3. Consideration of a Contract with DRC Emergency Services, LLC to provide disaster debris removal services.
4. Consideration of a Task Order in accordance with the agreement between the City of Shawnee and DRC Emergency Services, LLC for disaster debris removal related to the April 19, 2023 storm event.
5. Consideration of a Contract with Del Sol Consulting, Inc. to provide disaster recovery consultant services.
6. Consideration of a Contract with DebrisTech, LLC to provide disaster debris monitoring.
7. Consideration of the following budget amendments for Fiscal Year 2022 – 2023: 001 - General Fund - \$2,000,000, 302 - Street Improvement Fund - \$3,000,000, and 010 - Grant Fund - \$8,000,000.
8. Consideration of an ordinance for a temporary amendment of Chapter 7, Section 7-32, Section 109.2 regarding the requirement to pay permit fees to the

City for work done on structures as a result of the April 19, 2023, severe weather event in the City of Shawnee.

9. Adjournment

Respectfully submitted,

A handwritten signature in blue ink that reads "Lisa Lasyone". The signature is written in a cursive style with a large initial "L".

Lisa Lasyone, CMC, City Clerk

The City of Shawnee encourages participation from its citizens in public meetings. If participation is not possible due to a disability, notify the City Clerk, in writing, at least forty-eight hours prior to the scheduled meeting, and necessary accommodations will be made. (ADA 28 CFR 36)



City Manager Department  
16 W. 9th St.  
Shawnee, OK 74801  
ShawneeOK.org

**Date:** June 9, 2023  
**To:** Board of City Commissioners  
**From:** Danny Vise, Assistant City Manager  
**Subject:** Ratification of the Contract Extension between the City of Shawnee and DebrisTech, LLC for debris removal monitoring services.

**Background:** At the April 27, 2023, Special Call Board of Commissioners Meeting, City Commissioners approved an emergency agreement with DebrisTech, LLC for debris removal monitoring services for a period of thirty (30) days with a provision to extend the agreement in increments of thirty (30) days as needed. This emergency contract is intended to provide debris removal monitoring services during the procurement process for a competitively bid debris removal monitoring contract.

The initial term of the agreement ended on May 20, 2023, and pursuant to the terms of the agreement, City staff and DebrisTech, LLC signed a contract extension for a period of thirty (30) days, revising the termination date to June 19, 2023. City staff is requesting ratification of this contract extension pursuant to the terms of the initial agreement.

**Financial Impact:** No additional impact

**Attachments:** DebrisTech Contract Extension 5\_2023, Original DebrisTech Agreement 4\_2023

**Staff Recommendation:** Ratification of the agreement



## INDEPENDENT CONTRACT EXTENSION AGREEMENT

**This Extension Agreement**, made and entered into this 20<sup>th</sup> day of May, 2023 by and between **SHAWNEE, OK** hereinafter termed the "Owner", and **DEBRISTECH, LLC.**, a Mississippi limited liability company hereinafter termed the "Contractor".

### WITNESSETH

**WHEREAS**, the parties entered into a certain Contract Agreement for Disaster Debris Removal Services on the 27<sup>th</sup> day of April, 2023.

**WHEREAS**, the parties agree to extend the term of the Contract Agreement in accordance with the terms set forth below.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the parties hereby agree as follows:

1. The parties agree to extend the term of the Contract Agreement for DEBRIS MONITORING services for a period of 30 days, which shall be from the extension effective date of May 20, 2023 to June 19, 2023.
2. This extension agreement shall be binding upon and inure to the benefit of the parties, their successors, and personal representatives. This document, including the original Contract Agreement, is the entire agreement between the parties.

All other terms and conditions of the original Contract Agreement remain unchanged.

**SHAWNEE, OK**

By: *Andrea Anderson Schnitzer*  
Title: *City Manager*

**DEBRISTECH, LLC.**

By: *[Signature]*  
Title: *President*

## **DEBRIS REMOVAL MONITORING** **INDEPENDENT CONTRACTOR AGREEMENT**

THIS INDEPENDENT CONTRACTOR AGREEMENT (the “Agreement”) is made and entered into effective as of the 27<sup>th</sup> day of April, 2023 (the “Effective Date”), by and between SHAWNEE, OKLAHOMA (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 upon completion of the emergency debris removal and disposal documentation requirements. It is anticipated that this contract will last approximately **30 days** subject to the provisions of Paragraphs 5 and 6 (the “Initial Term”). Therefore, the Initial Term shall terminate on May 20, 2023. Upon expiration of the Initial Term, this Agreement can be extended in 30 day increments 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 ten (10) 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: Rachelle Erickson, EM Director at rachelle.erickson@shawneeok.org

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**. However, Contractor will not allow Contractor personnel to incur hours in excess of forty (40) hours without the consent of the City, said consent will not be unreasonably withheld. In addition, the City shall reimburse Contractor for all vehicle mileage and per diem expenses (including lodging and meals) incurred by the Contractor's personnel in accordance with the IRS rate for mileage and the GSA rate for per diem. 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 **\$500,000.00** (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; (iii) becomes available to City on a non-confidential basis from a source other than the Contractor or its agents; or (iv) is lawfully requested pursuant to the Oklahoma Open Meetings Act.

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 ten (10) 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 for a period of no less than sixty (60) days (or such longer period as may be mutually agreed by the parties) (the “Mediation Period”). The mediation shall be conducted in Shawnee, Oklahoma 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 following the Mediation Period, either party may seek any remedy at law or in equity that may be available. Any disputes shall be brought in the District Court of Pottawatomie County, Oklahoma.

11. Relationship with Debris Removal Contractor. The City acknowledges and understands that the Contractor’s relationship with the debris removal contractor is limited to documenting the work that is performed by the debris removal contractor. The City further acknowledges that the Contractor does not direct the operations of the debris removal contractor nor does the Contractor have any control over the acts or operations of the debris removal contractor.

12. 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.

13. 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.

14. 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.).

15. 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 therefor 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 (write in the name of the Federal agency or the loan or grant recipient) 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.

16. 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.

17. 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 City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the State of Oklahoma, 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. 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.

19. 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.).

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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 Oklahoma, 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 Shawnee, Oklahoma  
Attn: Andrea Weckmueller-Behringer, City Manager  
16 West 9<sup>th</sup> Street  
Shawnee, Oklahoma 74801

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) From and after the date this Agreement is signed by both City and Contractor, this Agreement 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.

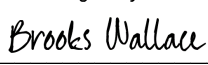
IN WITNESS WHEREOF, the parties have executed this Independent Contractor Agreement as of the date first written above.

-CONTRACTOR-

-CITY-

DEBRISTECH, LLC

CITY OF SHAWNEE, OKLAHOMA

By:   
2B0DEB504487459  
Brooks R. Wallace, Manager

By:   
312F137F2FCA4E8  
Andrea Weckmueller-Behringer, City Manager

## **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 Oklahoma 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:

- a. 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.
- b. Coordinating daily briefings, work progress, staffing, and other key items with the City.
- c. Support with the selection and permitting of Temporary Debris Storage and Reduction Site (TDSRS) locations and other permitting/regulatory issues as requested.
- d. Scheduling work for team members and contractors on a daily basis.
- e. Hiring, scheduling, and managing field staff.
- f. Monitoring recovery contractor operations and making/implementing recommendations to improve efficiency and speed up recovery work.
- g. Assisting the City with responding to public concerns and comments.
- h. Certifying contractor vehicles for debris removal using methodology and documentation practices appropriate for contract monitoring.

- i. 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 County 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.
- j. Developing daily operational reports to keep the City informed of work progress.
- k. Development of maps, GIS applications, etc. as necessary.
- l. Comprehensive review, reconciliation, and validation of debris removal contractor(s) invoices prior to submission to the City for processing.
- m. 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.
- n. Final report and appeal preparation and assistance.

END OF SCOPE

## EXHIBIT B PAYMENT SCHEDULE

| Position                            | Description                                                                                                                                                               | \$/hr   |
|-------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| Project Manager                     | The Project Manager's Prime role is to oversee total project operations and procedures from starting the project through completion.                                      | \$68.00 |
| Operations Manager                  | The Operations Manager's main purpose is to handle daily project operations from the start of the project thru the completion.                                            | \$57.00 |
| Field Supervisor                    | The Field Supervisor's main purpose is to handle coordination between upper management and no more than 10 monitors from the start of the project through the completion. | \$47.00 |
| Field Monitor                       | The Field Monitor's main purpose is to identify eligible debris and operate the DebrisTech device in the field.                                                           | \$34.00 |
| Fixed Site Monitor                  | The Fixed Site Monitor's main purpose is to score loads entering into the debris management site and operate the DebrisTech device in the field.                          | \$34.00 |
| Grant Management Clerical           | general clerical activities                                                                                                                                               | \$40.00 |
| Grant Management Consultant         | Responsible for overall management and oversight of the clients reimbursement process                                                                                     | \$95.00 |
| Grant Management Project Specialist | Responsible for compiling project worksheet                                                                                                                               | \$75.00 |

\*DebrisTech Devices Rates are factored into provided rates. This will be the price with or without the Automated Debris Tracking and Reporting System.

**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 bona 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 April 27 , 2023 .

DebrisTech, LLC

DocuSigned by:

*Brooks Wallace*

2B0DEB504487459...

Brooks Wallace, President

DocuSigned by:

*Debra McCormick*

764631C08716486...

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.

DocuSigned by:

*Brooks Wallace*

2B0DEBE64487459

Brooks Wallace, President

4/27/2023

Date



City Manager Department  
16 W. 9th St.  
Shawnee, OK 74801  
ShawneeOK.org

**Date:** June 9, 2023  
**To:** Board of City Commissioners  
**From:** Danny Vise, Assistant City Manager  
**Subject:** Consideration of an amendment to the Contract between the City of Shawnee and DebrisTech, LLC for debris removal monitoring services.

**Background:** During the April 27, 2023, Special Call Board of Commissioners Meeting, City Commissioners approved an emergency agreement with DebrisTech, LLC for debris removal monitoring services, which included a "not to exceed"/cap amount of \$500,000. This contract has already been extended, but the extension did not include provisions to increase the total cap. During the course of debris removal, it has become apparent that this cap is insufficient and will not cover the total cost necessary to provide FEMA-compliant monitoring services for the debris removal process.

This amendment will increase the cap from \$500,000 to \$1,000,000, which will allow DebrisTech, LLC to continue to provide the FEMA-required debris removal monitoring services for the debris cleanup process.

**Financial Impact:** \$500,000, Grant Fund, Emergency Management, Other Contractual Services - 010-5-0740-53390

**Attachments:** DebrisTech Contract 4-2023, Debristech Contract Amendment 5\_2023

**Staff Recommendation:** Approval of the contract amendment

## **DEBRIS REMOVAL MONITORING** **INDEPENDENT CONTRACTOR AGREEMENT**

THIS INDEPENDENT CONTRACTOR AGREEMENT (the “Agreement”) is made and entered into effective as of the 27<sup>th</sup> day of April, 2023 (the “Effective Date”), by and between SHAWNEE, OKLAHOMA (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 upon completion of the emergency debris removal and disposal documentation requirements. It is anticipated that this contract will last approximately **30 days** subject to the provisions of Paragraphs 5 and 6 (the “Initial Term”). Therefore, the Initial Term shall terminate on May 20, 2023. Upon expiration of the Initial Term, this Agreement can be extended in 30 day increments 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 ten (10) 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: Rachelle Erickson, EM Director at rachelle.erickson@shawneeok.org

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**. However, Contractor will not allow Contractor personnel to incur hours in excess of forty (40) hours without the consent of the City, said consent will not be unreasonably withheld. In addition, the City shall reimburse Contractor for all vehicle mileage and per diem expenses (including lodging and meals) incurred by the Contractor's personnel in accordance with the IRS rate for mileage and the GSA rate for per diem. 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 **\$500,000.00** (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; (iii) becomes available to City on a non-confidential basis from a source other than the Contractor or its agents; or (iv) is lawfully requested pursuant to the Oklahoma Open Meetings Act.

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 ten (10) 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 for a period of no less than sixty (60) days (or such longer period as may be mutually agreed by the parties) (the “Mediation Period”). The mediation shall be conducted in Shawnee, Oklahoma 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 following the Mediation Period, either party may seek any remedy at law or in equity that may be available. Any disputes shall be brought in the District Court of Pottawatomie County, Oklahoma.

11. Relationship with Debris Removal Contractor. The City acknowledges and understands that the Contractor’s relationship with the debris removal contractor is limited to documenting the work that is performed by the debris removal contractor. The City further acknowledges that the Contractor does not direct the operations of the debris removal contractor nor does the Contractor have any control over the acts or operations of the debris removal contractor.

12. 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.

13. 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.

14. 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.).

15. 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 therefor 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 (write in the name of the Federal agency or the loan or grant recipient) 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.

16. 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.

17. 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 City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the State of Oklahoma, 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. 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.

19. 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.).

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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 Oklahoma, 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 Shawnee, Oklahoma  
Attn: Andrea Weckmueller-Behringer, City Manager  
16 West 9<sup>th</sup> Street  
Shawnee, Oklahoma 74801

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) From and after the date this Agreement is signed by both City and Contractor, this Agreement 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.

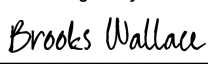
IN WITNESS WHEREOF, the parties have executed this Independent Contractor Agreement as of the date first written above.

-CONTRACTOR-

-CITY-

DEBRISTECH, LLC

CITY OF SHAWNEE, OKLAHOMA

By:   
2B0DEB504487459  
Brooks R. Wallace, Manager

By:   
312F137F2FCA4E8  
Andrea Weckmueller-Behringer, City Manager

## **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 Oklahoma 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:

- a. 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.
- b. Coordinating daily briefings, work progress, staffing, and other key items with the City.
- c. Support with the selection and permitting of Temporary Debris Storage and Reduction Site (TDSRS) locations and other permitting/regulatory issues as requested.
- d. Scheduling work for team members and contractors on a daily basis.
- e. Hiring, scheduling, and managing field staff.
- f. Monitoring recovery contractor operations and making/implementing recommendations to improve efficiency and speed up recovery work.
- g. Assisting the City with responding to public concerns and comments.
- h. Certifying contractor vehicles for debris removal using methodology and documentation practices appropriate for contract monitoring.

- i. 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 County 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.
- j. Developing daily operational reports to keep the City informed of work progress.
- k. Development of maps, GIS applications, etc. as necessary.
- l. Comprehensive review, reconciliation, and validation of debris removal contractor(s) invoices prior to submission to the City for processing.
- m. 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.
- n. Final report and appeal preparation and assistance.

END OF SCOPE

## EXHIBIT B PAYMENT SCHEDULE

| Position                            | Description                                                                                                                                                               | \$/hr   |
|-------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| Project Manager                     | The Project Manager's Prime role is to oversee total project operations and procedures from starting the project through completion.                                      | \$68.00 |
| Operations Manager                  | The Operations Manager's main purpose is to handle daily project operations from the start of the project thru the completion.                                            | \$57.00 |
| Field Supervisor                    | The Field Supervisor's main purpose is to handle coordination between upper management and no more than 10 monitors from the start of the project through the completion. | \$47.00 |
| Field Monitor                       | The Field Monitor's main purpose is to identify eligible debris and operate the DebrisTech device in the field.                                                           | \$34.00 |
| Fixed Site Monitor                  | The Fixed Site Monitor's main purpose is to score loads entering into the debris management site and operate the DebrisTech device in the field.                          | \$34.00 |
| Grant Management Clerical           | general clerical activities                                                                                                                                               | \$40.00 |
| Grant Management Consultant         | Responsible for overall management and oversight of the clients reimbursement process                                                                                     | \$95.00 |
| Grant Management Project Specialist | Responsible for compiling project worksheet                                                                                                                               | \$75.00 |

\*DebrisTech Devices Rates are factored into provided rates. This will be the price with or without the Automated Debris Tracking and Reporting System.

**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 or 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 bona 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 April 27, 2023.

DebrisTech, LLC

DocuSigned by:

*Brooks Wallace*

2B0DEB504487459...

Brooks Wallace, President

DocuSigned by:

*Debra McCormick*

764631C08716486...

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.

DocuSigned by:

*Brooks Wallace*

2B0DEBF64487459

Brooks Wallace, President

4/27/2023

Date

## **FIRST AMENDMENT TO INDEPENDENT CONTRACTOR AGREEMENT**

THIS FIRST AMENDMENT TO INDEPENDENT CONTRACTOR AGREEMENT (this “Amendment”) is entered into by DEBRISTECH, LLC (“Contractor”) and the CITY OF SHAWNEE, OKLAHOMA (the “City” or “applicant”), effective as of the 9<sup>th</sup> day of June, 2023 (the “Effective Date”).

WHEREAS, on April 27, 2023, Contractor and the City entered into that certain Independent Contractor Agreement (the “Agreement”) for DebrisTech to perform debris monitoring services as described therein; and

WHEREAS, Contractor and the City hereby desire to amend the Agreement as provided herein.

For and in consideration of the covenants herein contained and contained in the Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Section 4 of the Agreement states that this contract will last approximately **30 days** and can be extended in 30 day increments pursuant to mutually agreeable written terms. The parties have already agreed to extend the term of the Agreement for an additional 30 days, which shall be from the extension effective date to June 19, 2023.

2. Section 6 of the Agreement states that \$500,000 (the “Cap”) is the maximum amount payable to DebrisTech by the City for services performed under the Independent Contractor Agreement. The parties desire to increase the amount of the Cap as provided herein and is amended by deleting Section 6 in its entirety and by substituting in the place and stead thereof the following:

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. In addition, the City shall reimburse Contractor for all vehicle mileage and per diem expenses (including lodging and meals) incurred by the Contractor’s personnel. 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 **\$1,000,000.00** (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.

3. The Agreement, as herein amended, remains in full force and effect in accordance with its terms.

4. This Agreement shall be governed by the laws of the State of Oklahoma

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the Effective Date.

DEBRISTECH, LLC

By: \_\_\_\_\_  
Brooks Wallace, President

CITY OF SHAWNEE, OKLAHOMA

By: \_\_\_\_\_  
Andrea Weckmueller-Behringer, City Manager



City Manager Department  
16 W. 9th St.  
Shawnee, OK 74801  
ShawneeOK.org

**Date:** June 9, 2023  
**To:** Board of City Commissioners  
**From:** Danny Vise, Assistant City Manager  
**Subject:** Consideration of a Contract with DRC Emergency Services, LLC to provide disaster debris removal services.

**Background:** The City of Shawnee has requested proposals from qualified firms for services related to disaster debris removal and management with the intent of establishing a contract to be utilized for the continued response to the April 19, 2023, tornado and also, as required and needed, for a future event that would necessitate disaster response and recovery. Proposals were due to the City on June 5, 2023.

Staff received six (6) qualified responses, which were then evaluated based on the evaluation criteria included in the Request for Proposals (RFP). Based on the criteria, the following evaluation scores were tabulated, and the proposals ranked as follows:

1. DRC Emergency Services, LLC- 87.8
2. CTC Disaster Response, Inc.- 78
3. TFR Enterprises, Inc.- 65.8
4. Aftermath Disaster Recovery, Inc.- 63.2
5. AshBritt, Inc.- 56
6. NBI, LLC- 52.6

Based upon these evaluation scores, staff recommends approval of a contract with DRC Emergency Services to provide disaster debris removal services for the City of Shawnee.

**Financial Impact:** None at this time

**Attachments:** New DRC Contract 5\_2023

**Staff Recommendation:** Approval of the item

## CONTRACT FOR DISASTER DEBRIS REMOVAL SERVICES

This Contract for Disaster Debris Removal Services entered into on this 9 day of June, 2023 (hereafter “Contract” or Agreement”), by and between the City of Shawnee (hereafter “Government”), represented herein by authorized representative below, and DRC Emergency Services, LLC (hereafter “DRC” or “Contractor”), represented herein by authorized representative below.

**WITNESSETH** that Contractor and Government, in consideration of the mutual covenants, promises and agreements set forth herein agree as follows:

**SCOPE OF CONTRACT:** The Contractor shall perform and provide all those services and work for the benefit of the Government in accordance with and as set forth in the Contract Documents defined below.

**CONTRACT TERM:** The initial term of this Contract shall be from June 9, 2023 through June 30, 2024, with additional renewal options of one year terms for up to two additional terms.

**CONTRACT DOCUMENTS:** The Contract Documents shall consist of the:

- (a) The Government Request for Proposal or other solicitation and all documents referenced therein;
- (b) The FEMA Contract Clauses attached hereto as Exhibit “A”;
- (c) Contractor Certification Regarding Lobbying attached hereto as Exhibit “B”;
- and,
- (d) Contractor’s Proposal submitted in response to the Government’s Request for Proposal or other solicitation.

All of the above-described Contract Documents are expressly adopted and incorporated herein by reference and form part of this Contract.

THUS DONE AND SIGNED, the parties have caused this Contract to be duly executed intending to be bound thereby.

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(Signature)

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(Print Name)

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(Title)

**DRC EMERGENCY SERVICES, LLC**

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(Signature)

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(Print Name)

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(Title)

#### **EXHIBIT "A"**

The following provisions are adopted by reference and form part of the parties' Agreement (hereinafter the "AGREEMENT"). For purposes of the provisions below, the City of Shawnee shall be referenced as "GOVERNMENT" and DRC Emergency Services, LLC shall be referenced as "CONTRACTOR."

#### **(A) LIQUIDATED DAMAGES (2 CFR §200.326 Appendix II to Part 200 (A))**

(1) All work to be performed under this AGREEMENT shall be timely commenced. As a breach of this AGREEMENT would cause substantial delay in the completion of the required services affecting the safety and welfare of the public, the parties adopt the following liquidated damages clause.

(2) Liquidated damages are hereby fixed and agreed upon between the parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by the GOVERNMENT as a consequence of such delay in performance. CONTRACTOR acknowledges and agrees that damages to GOVERNMENT from untimely performance are extremely difficult to determine, and accordingly, the CONTRACTOR agrees that the amount of liquidated damages provided for herein is the nearest and most exact measure of damages for such delays.

(a) Failure of the CONTRACTOR to meet the mobilization requirements under this AGREEMENT: \$100.00 per calendar day.

(3) The GOVERNMENT is authorized to deduct liquidated damage amounts from the monies due to CONTRACTOR for the work under this AGREEMENT, or as much thereof as the GOVERNMENT may, at its own option, deem just and reasonable.

#### **(B) TERMINATION RIGHTS (2 CFR §200.326 Appendix II to Part 200 (B))**

(1) Termination for Cause: GOVERNMENT may terminate this AGREEMENT for cause if the CONTRACTOR fails to take corrective action within thirty (30) days after written notice from the GOVERNMENT identifying the breach. Cause for termination shall include, but not be limited to, failure to suitably perform the work, failure to suitably deliver goods in accordance with the specifications and instructions in the AGREEMENT, failure to continuously perform the work in a manner calculated to meet or accomplish the objectives of the GOVERNMENT as set forth in the AGREEMENT, or multiple breaches of the provisions of the AGREEMENT notwithstanding whether any such breach was previously waived or cured.

(2) Termination for Convenience: GOVERNMENT may terminate this AGREEMENT for convenience upon no less than thirty (30) days written notice. In the event this AGREEMENT is terminated for convenience, CONTRACTOR be paid for any goods properly delivered and services properly performed to the date the AGREEMENT is deemed terminated; however, upon being notified of GOVERNMENT's election to terminate, CONTRACTOR shall cease any deliveries, shipment or carriage

of goods, and refrain from performing further services or incurring additional expenses under the terms of this AGREEMENT. CONTRACTOR acknowledges and agrees that it has received good, valuable and sufficient consideration from GOVERNMENT, the receipt and adequacy of which are hereby acknowledged for GOVERNMENT's right to terminate this AGREEMENT for convenience.

**(C) EQUAL EMPLOYMENT OPPORTUNITY CLAUSE (2 CFR §200.326 Appendix II to Part 200 (C))**

If applicable to the work and services performed by CONTRACTOR under the AGREEMENT, during the performance of the AGREEMENT, CONTRACTOR shall comply with the Equal Employment Opportunity Clause (41 CFR 60-1.4(b)):

(1) CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, 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, 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.

(2) CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

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

(4) 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.

(5) 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 for purpose of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the CONTRACTOR'S noncompliance with the nondiscrimination clauses of this AGREEMENT or with any of the said rules, regulations or orders, this AGREEMENT may be canceled, terminated, or suspended in whole or in part and the 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.

(7) CONTRACTOR will include the portion of the sentence immediately preceding paragraph (1) and the provisions of subparagraphs 1 through 7 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 contractor. 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 CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or contractor as a result of such direction by the administering agency the CONTRACTOR may request the United States to enter into such litigation to protect the interest of the United States.

**D. DAVIS-BACON ACT AND COPELAND "ANTI-KICKBACK" ACT (2 CFR §200.326 Appendix II to Part 200 (D))**

If applicable to the work and services performed by CONTRACTOR under the parties' AGREEMENT:

(1) Bacon-Davis Act: Applicable to construction or repair of public buildings or public works. see FEMA Public Assistance Program and Policy Guide, Ch.2(V)(G)(2), page 32 and Ch. (FP 104-009-2/January 2016);

(2) Copeland "Anti-Kickback" Act: In contracts subject to the Davis-Bacon Act, CONTRACTOR shall comply with the Copeland "Anti-Kickback" Act (40 U.S.C. §3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that the contractor and subcontractor must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The GOVERNMENT must report all suspected or reported violations to the appropriate Federal agency.

If applicable to the work and services under the parties' AGREEMENT:

(a) CONTRACTOR shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this AGREEMENT.

(b) CONTRACTOR or subcontractor shall insert in any subcontract the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The

CONTRACTOR shall be responsible for the compliance by any subcontractor or lower tier subcontract with all of these contract clauses.

(c) A breach of the AGREEMENT clause above may be grounds for termination of the AGREEMENT, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. §5.12.

**E. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (2 CFR §200.326 Appendix II to Part 200 (E))**  
**(40 U.S.C. 3701-3708)**

Contracts in excess of \$100,000 that involve the employment of mechanics or laborers shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor and its subcontractors shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

(1) 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.

(2) Violation: liability for unpaid wages: liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor 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 (1) of this section, in the sum of \$10 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 (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The GOVERNMENT 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 (2) of this section.

(4) The contractor and subcontractor shall insert in any subcontract the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts.

**F. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT (2 CFR §200.326 Appendix II to Part 200 (F))**

If applicable to the work and services performed by CONTRACTOR under the parties' AGREEMENT and if the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the GOVERNMENT wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the GOVERNMENT must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business."

**G. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (2 CFR §200.326 Appendix II to Part 200 (G))**

CONTRACTOR shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

CONTRACTOR shall include the foregoing requirements in each subcontract exceeding \$100,000.

#### **H. ENERGY EFFICIENCY AND CONSERVATION (2 CFR §200.326 Appendix II to Part 200 (H))**

If applicable to the work and services performed by CONTRACTOR under the parties' AGREEMENT, CONTRACTOR shall comply with the mandatory standards and policies of the state regulation promulgated in accordance with the Energy Policy and Conservation Act (42 U.S.C. § 6201).

#### **I. DEBARMENT AND SUSPENSION (2 CFR §200.326 Appendix II to Part 200 (I))**

(1) This AGREEMENT is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the CONTRACTOR is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The CONTRACTOR must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by GOVERNMENT. If it is later determined that the CONTRACTOR did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to GOVERNMENT, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The CONTRACTOR agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C AGREEMENT is valid and throughout the period of performance. The CONTRACTOR further agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### **J. BYRD ANTI-LOBBYING AMENDMENT (2 CFR §200.326 Appendix II to Part 200 (J))**

CONTRACTOR must file with the GOVERNMENT the required certification. Each tier certifies to the tier above that it will not and has not used Federal 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 must 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 non-Federal award. If not provided with the bid response, CONTRACTOR must complete and submit the Certification Regarding Lobbying Form.

**K. PROCUREMENT OF RECOVERED MATERIALS (2 CFR §200.326 Appendix II to Part 200 (K) and 2 CFR §200.322)**

(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired-

- (a) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (b) Meeting contract performance requirements; or
- (c) At a reasonable price.

(2) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designate items is available at <http://www.epa.gov/cpg/products/htm>.

**L. AGREEMENTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS (2 CFR §200.321)**

Should the CONTRACTOR subcontract any of the work under this AGREEMENT, CONTRACTOR shall take the following affirmative steps: place qualified small and minority businesses and women's business enterprises on solicitation lists; assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

**M. ACCESS TO RECORDS**

(1) CONTRACTOR agrees to provide GOVERNMENT, 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 AGREEMENT for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) 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.

**N. SEAL, LOGO AND FLAGS**

CONTRACTOR shall not use the U.S. Department of Homeland Security's seal(s), logos, crests, or reproductions of flags or likenesses of the U.S. Department of Homeland Security's agency officials without specific FEMA preapproval.

**O. COMPLIANCE WITH FEDERAL LAW, REGULATIONS AND EXECUTIVE ORDERS**

This is an acknowledgement that FEMA financial assistance will be used to fund the AGREEMENT only. If applicable to the work and services performed by CONTRACTOR under the AGREEMENT, the CONTRACTOR will comply with all federal law, regulations, executive orders, FEMA policies, procedures, and directives.

**P. NO OBLIGATION BY FEDERAL GOVERNMENT**

The Federal Government is not a party to this AGREEMENT and is not subject to any obligations or liabilities to GOVERNMENT, CONTRACTOR, or any other party pertaining to any matter resulting from the contract.

**Q. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

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.

GOVERNMENT:

CONTRACTOR:  
DRC EMERGENCY SERVICES, LLC

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**EXHIBIT "B"**

**CERTIFICATION REGARDING LOBBYING**

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

(1) 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.

(2) 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.

(3) 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 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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 undersigned Contractor 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. § 3801 et seq., apply to this certification and disclosure, if any.

DRC EMERGENCY SERVICES, LLC

\_\_\_\_\_  
KRISTY FUENTES, VICE-PRESIDENT

Date: \_\_\_\_\_, \_\_\_\_\_



City Manager Department  
16 W. 9th St.  
Shawnee, OK 74801  
ShawneeOK.org

**Date:** June 9, 2023  
**To:** Board of City Commissioners  
**From:** Danny Vise, Assistant City Manager  
**Subject:** Consideration of a Task Order in accordance with the agreement between the City of Shawnee and DRC Emergency Services, LLC for disaster debris removal related to the April 19, 2023 storm event.

**Background:** At the April 27, 2023, Special Call Board of Commissioners Meeting, City Commissioners approved an emergency agreement with DRC Emergency Services, LLC for debris removal services for the City of Shawnee. This emergency contract was intended to provide debris removal services during the procurement process for a competitively bid debris removal contract. With a competitively bid contract in place, a task order is needed to provide authorization for DRC to complete the debris removal process related to the April 19, 2023 storm event.

The scope of this task order is for \$2,000,000 and includes all tasks associated with the completion of debris removal and close out of the disaster management site (DMS) as it relates to the April 19, 2023 storm event.

**Financial Impact:** \$2,000,000; funded from Grant Fund, Emergency Management, Other Contractual Services; 010-5-0740-53390

**Attachments:** DRC 2023-503 Task Order 1 6\_2023

**Staff Recommendation:** Approval of the item

**TASK ORDER NO. 1**  
**Contract 2023-503 DRC Emergency Services**

DRC Emergency Services ("CONTRACTOR") agrees to perform for City of Shawnee ("CITY") the contracted Services described below for the Project identified below. The contracted Services shall be performed in accordance with the provisions of the Disaster Debris Removal Services Contract ("AGREEMENT") dated June 9, 2023, between the CONTRACTOR and the CITY.

1. Project:

City of Shawnee Disaster Recovery

2. Contracted Services (reference and attach scope of work, if applicable):

Scope of Services as defined in the AGREEMENT

3. Compensation:

Compensation for the proper performance of the contracted Services under this Task Order shall not exceed \$2,000,000 and can only be spent once a Notice to Proceed is issued. Rates shall be at those listed on the Rate Sheet form submitted by the CONTRACTOR in the AGREEMENT.

4. Start Date:

June 9, 2023

5. Time of Performance (attach schedule if applicable):

Services shall be performed as necessary.

6. Special Terms and Conditions:

N/A

7. Key Personnel:

N/A

CONSULTANT and CLIENT have executed this Task Order and CONSULTANT is directed to proceed with the contracted Services set out in this Task Order.

CITY

CONTRACTOR

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Signature

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Signature

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Name (Printed or Typed)

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Name (Printed or Typed)

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Title

---

Title

---

Date

---

Date



City Manager Department  
16 W. 9th St.  
Shawnee, OK 74801  
ShawneeOK.org

**Date:** June 9, 2023  
**To:** Board of City Commissioners  
**From:** Danny Vise, Assistant City Manager  
**Subject:** Consideration of a Contract with Del Sol Consulting, Inc. to provide disaster recovery consultant services.

**Background:** The City of Shawnee has requested proposals from qualified firms for consultant services related to disaster recovery with the intent of establishing a contract to be utilized for the continued response to the April 19, 2023, tornado and also, as required and needed, for a future event that would necessitate disaster response and recovery. Proposals were due to the City on June 5, 2023.

Staff received two (2) qualified responses, which were then evaluated based on the evaluation criteria included in the Request for Proposals (RFP). Based on the criteria, the following evaluation scores were tabulated, and the proposals ranked as follows:

1. Del Sol Consulting, Inc.- 82.4
2. FORVIS, LLP- 40

Based upon these evaluation scores, staff recommends approval of a contract with Del Sol Consulting to provide disaster recovery consulting services for the City of Shawnee.

**Financial Impact:** None at this time

**Attachments:** Del Sol Consulting Services Agreement -Shawnee.060623, FEMA provision language

**Staff Recommendation:** Approval of the contract



## **CONSULTING SERVICES AGREEMENT**

This Contract (“Contract”), with an Effective Date of June 9, 2023, is by and between Del Sol Consulting, Inc (“CONSULTANT”), an incorporated company organized under the laws of Louisiana with its principal place of business at 101 Brookside Drive, Mandeville, LA 70471, and the City of Shawnee (“CLIENT”), a public municipality with its principal place of business at 16 W. 9<sup>th</sup> St., Shawnee, OK 74801.

In consideration of the mutual covenants and promises contained herein, the parties agree as follows:

### **1 SCOPE OF SERVICES**

1.1 The overall scope of services to be performed by CONSULTANT under this agreement is described in Exhibit A (“Scope of Services”).

### **2 TASK ORDER PROCESS**

2.1 The task specific scope of services to be performed by CONSULTANT under this agreement shall be set forth in individual task orders using the general format set forth in Attachment B (“Task Order”), attached hereto and incorporated herein by reference. All Task Orders shall contain an identification of the project (“Project”), description of the Contracted Services, compensation to be paid to CONSULTANT for the performance of the Contracted Services (“Compensation”), and a proposed schedule for the performance (“Project Schedule”) for the Contracted Services.

2.2 Upon mutual agreement of the parties, the Task Order shall be finalized and executed by the parties. The effective date will be as set forth in the individual Task Order.

2.3 Any change to the Task Order shall be made in writing and must be signed by both parties prior to the change taking effect. Any execution of changes to the Task Order prior to approval may result in termination and damages paid by the offending party.

### **3 TERM OF AGREEMENT**

3.1 This Contract shall commence on the Effective Date stated above, and CONSULTANT is authorized to commence performance of the Contracted Services as of that date. This Contract terminates June 30, 2024, unless terminated earlier pursuant to the terms and conditions of this Contract. CONSULTANT shall complete the Contracted Services in accordance with the time schedule (“Project Schedule”) set forth in each Task Order, including any intermediate milestones and phase submittals.

3.2 TIME IS OF THE ESSENCE with regard to the performance of the Contracted Services, specifically including but not limited to any intermediate milestones and phase submittals.

### **4 COMPENSATION AND PAYMENT**

4.1 As compensation for the performance of the Contracted Services (“Compensation”), CLIENT will pay undisputed amounts to the CONSULTANT as detailed in each Task Order. CLIENT shall not have any liability for any other expenses or costs incurred by CONSULTANT other than as expressly set forth in the compensation section of each Task Order.

## **5 INVOICING INSTRUCTIONS**

5.1 CONSULTANT shall submit monthly invoices to CLIENT for Contracted Services properly performed in the preceding month, along with such supporting documentation as CLIENT may require. CLIENT may prescribe the format of such invoice. Invoices shall be sent to the address and person named below:

City of Shawnee  
16 W. 9<sup>th</sup> St.  
Shawnee, OK 74801  
Attn: City Clerk

5.2 Invoices submitted to CLIENT will:

- 5.2.1 Show the name of the Project and CLIENT's Job Number and task order number;
- 5.2.2 Total Compensation authorized under this agreement and task order number;
- 5.2.3 Amount of Compensation paid to date on job number and task order number;
- 5.2.4 Amount of the current invoice on task order; and
- 5.2.5 Description and summary of activities and tasks completed in the preceding month.

5.3 A specific monthly submittal date will be established (By the 10<sup>th</sup> of the following month).

5.4 Failure of CONSULTANT to comply with the prescribed format or failure to provide adequate supporting documentation may result in rejection of the invoice. In the event that CLIENT disputes any amount as being due or lacking sufficient supporting data, CONSULTANT will include all amounts not in dispute in the invoice which CONSULTANT submits monthly to its CLIENT. When the amounts in dispute are resolved to the reasonable satisfaction of CLIENT, those amounts shall be submitted to the CLIENT for payment in the next monthly invoice.

5.5 CONSULTANT recognizes that the CLIENT may reject any portion of the CONSULTANT's invoice. In the event of CLIENT rejection of CONSULTANT invoice item(s), the CONSULTANT waives all rights of payment against the CLIENT. CONSULTANT shall exert reasonable and diligent efforts to collect prompt payment from CLIENT.

## **6 PAYMENT OF INVOICES**

6.1 CLIENT will pay all undisputed portions of CONSULTANT's monthly invoices within 30 days of CLIENT's receipt of CONSULTANT's monthly invoice.

6.2 CLIENT shall promptly pay for all services, labor, material and equipment used or employed by it in the performance of the contracted Services, and will maintain all materials, equipment, structures, buildings, premises and property provided under the Subcontracted Services free and clear of mechanic or other liens. At CLIENT's request, CONSULTANT shall furnish to CLIENT reasonable proof that all services, labor, materials and equipment have been paid in full.

6.3 No payment made by CLIENT to CONSULTANT under this contract shall be construed as evidence of acceptance of the Contracted Services or a waiver of CLIENT's right to demand the correction of any defect or deficiency in the Contracted Services.

## **7 FINAL PAYMENT**

7.1 The receipt of the following deliverables, when applicable, is a prerequisite for final payment:

7.1.1 All plans, sketches, drawings, documents, reports, memoranda, deliverables and reproducibles related to the Contracted Services and as required by CLIENT;

7.1.2 All non-expendable personal property purchased and paid for under this contract; and

7.1.3 A formal written release of all claims for Compensation and waiver of all liens relating to the Contracted Services.

## **8 LIEN WAIVER**

8.1 CONSULTANT shall promptly pay for all services, labor, materials and equipment used or employed by CONSULTANT in the performance of the Contracted Services and shall maintain all materials, equipment, structures, buildings, premises and property of CONSULTANT's Landlord ("LANDLORD") and CONSULTANT'S Client ("CLIENT") and keep all free and clear of mechanic's or other liens. CONSULTANT shall, if requested, provide CLIENT with reasonable evidence that all services, labor, materials and equipment have been paid in full.

## **9 CONSULTANT'S REPRESENTATIVE**

9.1 CONSULTANT'S REPRESENTATIVE is \_\_\_\_\_ and is authorized to act on behalf of CONSULTANT in all matters concerning the Contracted Services and shall have a thorough knowledge of the Contracted Services and shall be made available to CLIENT at all reasonable times.

## **10 CLIENT'S REPRESENTATIVE**

10.1 CLIENT'S REPRESENTATIVE is \_\_\_\_\_ and is authorized to act on behalf of CLIENT in all matters concerning the Contracted Services and has thorough knowledge of the Contracted Services and shall be made available to CONSULTANT at all reasonable times.

## **11 COMPLIANCE WITH THE LAW**

11.1 CONSULTANT warrants that they will comply with all applicable statutes, ordinances, codes, regulations, consent decrees, orders, judgments, rules, and all other requirements of any and all governmental or judicial entities that have jurisdiction over the Contracted Services ("Law"). For any services performed on premises owned or controlled by CLIENT. CONSULTANT warrants and agrees that CONSULTANT will perform the Services in compliance with all CLIENT Rules, including but not limited to, prohibitions related to tobacco use, alcohol, and other drugs.

## **12 CONFLICT OF INTEREST**

12.1 CONSULTANT warrants, represents, and agrees that CONSULTANT presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with CONSULTANT'S performance of the Services hereunder. CONSULTANT further warrants and affirms that no relationship or affiliation exists between CONSULTANT and CLIENT that could be construed as a conflict of interest with regard to this Agreement or the Prime Contract.

## **13 PERMITS AND LICENSES**

13.1 CONSULTANT will obtain and pay for all qualification-related permits and licenses, registrations, qualifications, and other governmental authorizations required by law that are associated with CONSULTANT's performance of the Contracted Services

## **14 STANDARD OF PERFORMANCE**

14.1 CONSULTANT warrants that they will perform the Contracted Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances in the region where the Project is located.

14.2 CONSULTANT shall provide additional services as needed to correct any defects or deficiencies in the Contracted Services and shall bear all costs related to the correction of CONSULTANT's defective or deficient performance at no additional cost to CLIENT.

## **15 ACCESS**

15.1 CLIENT shall be responsible for providing CONSULTANT with access to the Project site ("Project Site") to the extent necessary to properly perform the Contracted Services.

15.2 CONSULTANT shall use only such points of ingress and egress at the Project Site as are authorized by CLIENT and shall restrict its access to those areas specifically authorized by CLIENT. CONSULTANT shall strictly comply with applicable security requirements.

## **16 HEALTH & SAFETY**

16.1 CONSULTANT acknowledges that there may be construction, environmental or other hazards at the Project Site or otherwise associated with the Contracted Services and CONSULTANT warrants that they will take appropriate precautions to protect its employees, lower-tier subcontractors, suppliers and others who may be associated with the performance of the Contracted Services.

16.2 CONSULTANT's employees and the employees of its lower tier subcontractors who perform the Contracted Services shall be experienced and properly trained to perform the Contracted Services and shall take adequate precautions to protect human health and the environment in the performance of the Contracted Services.

16.3 In the event that CLIENT observes a potentially hazardous condition relating to the Contracted Services, CLIENT may bring such condition to the attention of CONSULTANT. If CONSULTANT fails to immediately respond and correct such potential or actual hazardous condition, CONSULTANT has the right to suspend the Contracted Services until such time as CLIENT remedies the potential or actual hazardous condition. CONSULTANT shall be solely responsible for any cost, expense or schedule disruption resulting from such suspension of the Contracted Services.

16.4 CONSULTANT shall be solely and continuously responsible for the health, safety and welfare associated with the Contracted Services at all times and is not limited to normal working hours. The CONSULTANT's failure to thoroughly familiarize itself with and account for the aforementioned health and safety provisions and those additional requirements provided by CLIENT, if any, will not relieve CONSULTANT from the obligations set forth in this Subcontract.

## **17 CONTACT WITH CLIENT, LANDLORD AND REGULATORY AGENCIES**

17.1 Except to the extent expressly set forth in this Contract, CONSULTANT shall not communicate directly with CLIENT, LANDLORD or applicable governmental regulatory agencies with regard to the

Contracted Services without prior express authorization from CLIENT.

## **18 QUALITY CONTROL PLANS**

18.1 When required by the Contracted Services, CONSULTANT shall execute a quality control plan acceptable to CLIENT that ensures the quality of the Contracted Services and conforms to any corresponding requirements in the Prime Contract.

18.2 Prior to starting the performance of the Contracted Services, CONSULTANT shall submit its quality control plan for the work products and activities identified in the Contracted Services to CLIENT'S REPRESENTATIVE.

18.3 CONSULTANT shall provide periodic updates on its progress toward quality plan implementation as directed by CLIENT.

## **19 INSPECTIONS**

19.1 CONSULTANT shall maintain at a place acceptable to CLIENT complete, current and accurate working files, including but not limited to calculations, interpretations, assumptions, estimates, field logs, drawings, equipment calibration records, quality control inspections results, CAD files, schematics, redlines and other records applicable to the Contracted Services ("Records"). CONSULTANT shall provide CLIENT with reasonable and prompt access to such Records, including but not limited to the right to make copies thereof.

19.2 CLIENT, or their designees may inspect and otherwise evaluate the Contracted Services, Project Site, and Records at any reasonable time and place, but such inspection or evaluation shall be for the sole benefit of CLIENT and shall not relieve CONSULTANT from its obligations under this Contract.

19.3 Inspections performed by CLIENT shall be at the inspector's own expense. In the event that such inspection discloses a material defect, deficiency, error or omission in the Contracted Services, the cost of re-inspection as well as the cost associated with remedying a defect or deficiency shall be borne solely by CONSULTANT.

## **20 CHANGE ORDERS**

20.1 CONSULTANT may, from time to time, order modifications or changes in the scope of the Contracted Services ("Changes") by written change order in the form of Attachment C ("Change Order"), incorporated herein by reference. In addition, Change Orders may be requested by CONSULTANT based upon material changes to the Contracted Services. Change Orders shall consist of additions to, deletions from or other revisions to the Contracted Services, including those required by modifications or change orders to the related Prime Contract. Within 10 days after the date of such Change Order or material change, and in any event prior to the commencement of such revised Contracted Services, CONSULTANT shall notify CLIENT in writing if CONSULTANT requests a change in the Compensation and/or Project Schedule and shall clearly state CONSULTANT's justification for the Change Order. If approved by CLIENT, an equitable adjustment will be made as appropriate.

20.2 FAILURE OF CONSULTANT TO COMPLY WITH THE REQUIREMENTS OF THIS ARTICLE SHALL CONSTITUTE A WAIVER OF SUCH CLAIM BY CONSULTANT.

20.3 Failure of the parties to agree on whether the Change Order constitutes a compensable change to the Compensation and/or should result in a change in the Project Schedule shall be subject to the Disputes provisions of this Contract. CONSULTANT shall diligently proceed with the Contracted Services as directed by CLIENT, including any directed changes or potential changes in the Contracted Services, pending resolution of such Dispute.

## **21 SUSPENSION OF SERVICES**

21.1 CLIENT may, at any time, with or without cause, suspend all or any portion of the Contracted Services for a period of up to 90 days ("Suspended Services"). CONSULTANT shall immediately stop the performance of the Suspended Services until such time as CLIENT issues direction to CONSULTANT to resume the Suspended Services. CONSULTANT shall take such action as is reasonably necessary to protect the Suspended Services and take such additional action as directed by CLIENT. An equitable adjustment may be made in accordance with the Change Order procedures of this Contract.

## **22 TERMINATION FOR CONVENIENCE**

22.1 CLIENT may terminate all or part of this Contract for its convenience at any time with 10 day written notice. In such event, CONSULTANT will be entitled to Compensation for Contracted Services performed up through the date of termination. CONSULTANT shall not be entitled to compensation or profit for Contracted Services not performed.

## **23 TERMINATION FOR DEFAULT**

23.1 CLIENT may at any time, by written notice, terminate the whole or any part of this Contract for default ("Termination for Default") upon failure of CONSULTANT to promptly cure such default within 15 days of written notice. For the purposes of this Contract, default includes but is not limited to: (i) failure to strictly adhere to the terms and conditions of this contract; (ii) failure to maintain progress so as to endanger proper performance of the Contracted Services; or (iii) failure to maintain adequate financial or legal capacity to properly complete the Contracted Services.

23.2 In the event of Termination for Default, CONSULTANT will be compensated for the Contracted Services properly performed prior to such termination for default. CLIENT may withhold any outstanding Compensation otherwise due to CONSULTANT pending final completion and acceptance of the Contracted Services and an accounting of related costs. In the event that the withheld amount exceeds the damages associated with CONSULTANT's default, CLIENT shall promptly pay such excess funds to CONSULTANT. In the event of a shortfall between such costs and any amounts due to CONSULTANT, CONSULTANT shall promptly pay CONSULTANT for such shortfall within 3 days of CLIENT's written demand for such payment.

23.3 If, after notice of Termination for Default, it is determined for any reason that CONSULTANT was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Termination for Convenience.

## **24 INSURANCE**

24.1 CONSULTANT shall maintain at least the following insurance coverage, unless otherwise agreed by CONTRACTOR in writing:

24.2 Comprehensive General Liability insurance coverage of \$1,000,000.00 per occurrence. If, during the Term, CONSULTANT will enter CLIENT property, CONSULTANT shall also maintain the following insurance: (i) Worker's Compensation coverage with statutory limits for the State of Oklahoma including Employers Liability coverage of \$500,000 per accident; (ii) Commercial Automobile Liability coverage of \$1,000,000 Combined Single Limit; (iii) for engineers and architects only: Professional Liability coverage of \$5,000,000 per occurrence; and (iv) for builders only: Builder's Risk coverage in the amount of the construction cost, including protection against named windstorm and flood. All policies must contain a waiver of subrogation against CLIENT. Comprehensive General Liability and Commercial Automobile

Liability policies must name CLIENT as Additional Insured. CONSULTANT shall pay all insurance deductibles and deductibles must not exceed \$75,000 unless approved in advance by CLIENT. CONSULTANT shall provide CLIENT Certificates of Insurance evidencing these insurance requirements prior to the state of work.

## **25 INDEMNITY**

25.1 CONSULTANT shall defend, indemnify and hold harmless CLIENT, and their respective directors, officers, agents, and employees, from and against any and all liability, claims, suits, loss, fines, penalties, damages, costs, and expenses, including but not limited to, attorneys' fees and court costs, inclusive of appeals, ("Loss"), including all costs of appeals, in connection with or related to the performance of the contracted Services or CONSULTANT's duties and obligations under this contract. , but only to the extent caused by any negligent act or omission of CONSULTANT or any lower-tier subcontractor or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. This indemnification obligation will not be limited in any way by any limitation on the amount or type of insurance carried by CONSULTANT or by the amount or type of damages, compensation, or benefits payable by or for CONSULTANT or any lower-tier subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts

25.2 CONSULTANT shall not be liable under this Article for Loss caused by the negligence of CLIENT.

## **26 DISPUTES**

26.1 Any dispute related to this Agreement shall be submitted to a panel consisting of at least one representative of each party who shall have the authority to enter into an agreement to resolve the dispute. The panel may meet or may conduct its discussions by telephone or other electronic means. In the event that the panel is unable to reach a mutual resolution of the dispute or has failed to convene within two weeks of the request of either party, either party may refer the matter to a court identified in this Agreement.

26.2 All communications between the parties or their representatives in connection with the attempted resolution of any dispute shall be confidential and deemed to have been delivered in furtherance of dispute settlement, shall be exempt from discovery and production, and shall not be admissible in evidence whether as an admission or otherwise, in any arbitration, judicial or other proceeding for the resolution of the dispute.

26.3 Pending any final judicial decision or settlement, CONSULTANT shall proceed diligently with the contracted Services.

## **27 NOTICE**

27.1 Any notice or communication required or permitted by this Contract shall be deemed sufficiently given if in writing and when delivered personally or upon receipt of registered or certified mail, postage prepaid with the U.S. Postal Service, and addressed as follows:

CONSULTANT:  
Del Sol Consulting, Inc.  
101 Brookside Drive  
Mandeville, LA 70471  
Attn: Blythe Dorris

CLIENT:  
City of Shawnee  
16 W. 9<sup>th</sup> St.  
Shawnee, OK 74801  
Attn: City Clerk

or to such other address as the party to whom notice is to be given has furnished by the receiving party in writing.

## **28 CONFIDENTIAL INFORMATION**

28.1 All information and data disclosed by CLIENT or otherwise developed or obtained under this Agreement shall be deemed to be proprietary and confidential information (“Confidential Information”).

28.2 CONSULTANT shall not disclose Confidential Information without CLIENT’s written consent. Those persons under CONSULTANT’s control shall not use Confidential Information for any purpose other than for the proper performance of the Contracted Services.

28.3 CONSULTANT’s obligations under this Article shall not apply to Confidential Information that is: (i) in the public domain without breach of this Contract; (ii) received by CONSULTANT on a non-confidential basis from others who had a right to disclosure such Confidential Information; or (iii) is required to be disclosed by law or applicable court order, but only after actual prior written notice has been received by CONSULTANT has had a reasonable opportunity to protect disclosure of such Confidential Information.

28.4 CONSULTANT shall ensure that the foregoing obligations of confidentiality and restricted use also extend and bind the employees and agents of CONSULTANT and its lower-tier SUBCONSULTANT’s and subcontractors who have been provided access to the Confidential Information under this subcontract.

28.5 CONSULTANT shall further comply with all CLIENT information security policies that may apply and shall not make any press releases, public statements, social media or marketing posts, or advertisements referring to the services provided under this Agreement or the Prime Contract or the engagement of the CONSULTANT by the CLIENT without the prior written approval of the CLIENT.

## **29 RIGHTS IN DATA**

29.1 CONSULTANT agrees that all data and information in hard copy, electronic, or any other format, disclosed, developed or obtained under this Agreement, other than CONSULTANT’s Confidential Information, (“Data”), shall be and remains the sole property of CLIENT. Delivery of the data to CLIENT shall be a precondition for Final Payment.

29.2 CONSULTANT shall promptly deliver all Data to CLIENT upon CLIENT's request. CONSULTANT shall be fully responsible for the care and protection of the Data until such delivery. CONSULTANT may retain one copy of the Data for CONSULTANT’s archives subject to CONSULTANT’s continued compliance with the provisions of this Article.

29.3 CONSULTANT agrees not to assert, or to allow persons performing under CONSULTANT’s control, to assert any rights to Data and not to establish any claim under design, patent or copyright laws. It is expressly agreed that all copyrightable or patentable Data produced under the Contracted Services has been specifically commissioned by CLIENT and shall be considered “work for hire” and that all copyrightable and other proprietary rights therein shall vest solely in the CLIENT.

## **30 SURVIVAL OF TERMS**

30.1 Articles on Indemnity, Confidential Information and Rights in Data shall survive termination of this Contract.

## **31 ASSIGNMENT AND SUBCONTRACTING**

31.1 CONSULTANT shall not assign or contract this contract nor any rights or obligations herein without

the prior consent of CLIENT. In the event this contract is assigned or subcontracted by CONSULTANT, CONSULTANT shall remain responsible to CLIENT for the proper performance of CONSULTANT's obligations under this contract.

31.2 The terms and conditions of CONSULTANT's subcontracts or assignments under this contract shall, at a minimum, require the subcontractor or assignee to fully comply with this contract unless otherwise authorized in writing by CONSULTANT.

## **32 AMENDMENT AND WAIVER**

32.1 Only a writing executed by each of the parties may amend this Agreement. Either party may waive any provision of this Agreement to the extent such provision is for the benefit of such waiving party. No action taken pursuant to this Agreement shall be deemed to constitute a waiver by that party of its or the other party's compliance with any representations or warranties or with any other provision of this Agreement. No waiver by either party of a breach of any provision of this contract shall be construed as a waiver of any subsequent or different breach, and no forbearance by a party to seek a remedy for noncompliance or breach by the other party shall be construed as a waiver of any right or remedy with respect to such noncompliance or breach.

## **33 SEVERABILITY**

33.1 If any term or provision of this agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable or invalid provisions or part thereof shall be stricken from this agreement, and such provision shall not affect the legality, enforceability, or validity of the remainder of this agreement.

## **34 GOVERNING LAW**

34.1 This agreement, and any dispute arising from the relationship between the parties to this agreement, shall be governed by Oklahoma law, excluding any laws that direct the application or another jurisdiction's law.

## **35 VENUE, JURISDICTION AND SERVICE OF PROCESS**

35.1 The parties agree that any suit, action or proceeding arising out of or related to this Subcontract shall be instituted in the appropriate state or federal court in Pottawatomie County, Oklahoma, and each party irrevocably submits to the jurisdiction of those courts and waives any and all objections to jurisdiction or venue that it may have under the laws of such state or otherwise in those courts in any such suit, action, or proceeding.

35.2 To the extent that the dispute or claim relates to the Prime Contract, CONSULTANT hereby consents to the venue and jurisdiction as may be set forth in the Prime Contract.

## **36 HAZARDOUS MATERIALS**

36.1 CONSULTANT shall not bring any toxic, nuclear, or hazardous substances, wastes or materials ("Hazardous Materials") onto the Project Site without the prior written consent of CLIENT and shall strictly comply with all Laws related to such Hazardous Materials.

## **37 REMEDIES**

37.1 No remedies or rights conferred upon CONSULTANT by this Contract are intended to be exclusive of any remedy or right provided by law or equity, but each shall be cumulative and shall be in addition to every other remedy or right given herein or now or hereafter existing at law or in equity.

### 38 FORCE MAJEURE

38.1 CONSULTANT shall not be responsible for delay in the performance of its obligations under this contract caused by a force majeure event. To the extent that contracted Services are delayed by a force majeure event, CONSULTANT will be entitled to an equitable adjustment but only to the extent that CLIENT grants an equitable adjustment to CONSULTANT with regard to the contracted Services. For purposes of this contract, a “force majeure event” is an occurrence or circumstance beyond the control of the claiming party and may include, but is not limited to extraordinary weather conditions, or other natural catastrophes, war, riots, strikes, lockouts, or other industrial disturbances or acts of any governmental agencies.

### 39 ENTIRE AGREEMENT

39.1 This contract embodies the entire agreement and understanding between the parties pertaining to the subject matter of this contract, and supersedes all prior agreements, understandings, negotiations, representations and discussions, whether verbal or written, of the parties, pertaining to that subject matter.

### 40 ATTACHMENTS

40.1 The following attachments are hereby made a part of this Agreement:

|              |                                  |
|--------------|----------------------------------|
| Attachment A | Rate Sheet from Submittal        |
| Attachment B | Task Order No. 1                 |
| Attachment C | Change Order Form                |
| Exhibit A    | Scope of Services                |
| Exhibit D    | Certification Regarding Lobbying |
|              | FEMA Required Language           |

#### CONSULTANT

#### CLIENT

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Signature

Blythe D. Dorris – President  
Name (Printed or Typed)

---

Date

---

Signature

---

Name (Printed or Typed)

---

Date



Below are the provisions that are to be included in all FEMA-funded project agreements:

## **COMPLIANCE WITH FEMA PROCUREMENT AND MISCELLANEOUS**

### **Section 1. EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The 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. The 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.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the 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.
- (3) The 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 the contractor's legal duty to furnish information.
- (4) The 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 the contractor's commitments under

this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (5) The 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.
- (6) The 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.
- (7) In the event of the 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 the 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.
- (8) The 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. The 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, the 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.

## **Section 2. Extension to Successors and Assigns.**

Each and all of the covenants and agreements contained in the Agreement affected by the acceptance of the Proposal shall extend to and be binding upon the successors and assigns of the parties thereto. Rights under this Agreement may not be assigned without mutual written consent of the parties.

## **Section 3. Binding Agreement.**

This Agreement shall be construed in a neutral manner. This Agreement reflects the complete and full terms of agreement that is binding between the parties. The pages may be signed on separate pages, in counterparts and together are deemed to be one document. A true electronic copy is deemed an original.

## **Section 4. Governing Law.**

All disputes relating to the execution, interpretation, construction, performance, or enforcement of the Agreement and the rights and obligations of the parties hereto shall be governed by the laws of the State of Oklahoma and resolved in a District Court of Oklahoma or applicable Federal Court of Oklahoma. Contractor hereby consents to and waives any objection to venue and jurisdiction in such courts.

## **Section 5. Severability.**

If any term of this Agreement is to any extent illegal, otherwise invalid, or incapable of being enforced, such term shall be excluded to the extent of such invalidity or unenforceability; all other terms hereof shall remain in full force and effect; and, to the extent permitted and possible, the invalid or unenforceable term shall be deemed replaced by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term.

## **Section 6. Clean Air Act and Federal Water Pollution Control Act.**

- (1) 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.*
- (2) The Contractor agrees to report each violation to City of Shawnee and understands and agrees that City of Shawnee will, in turn, report each violation as required to assure notification to FEMA, and the appropriate Environmental Protection Agency Regional Office.
- (3) 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.
- (4) 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. § 7401 *et seq.*
- (5) The Contractor agrees to report each violation to City of Shawnee and understands and agrees that City of Shawnee will, in turn, report each violation as required to assure notification to the FEMA, and the appropriate Environmental Protection Agency Regional Office.
- (6) 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.

## **Section 7. Debarment and Suspension.**

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by City of Shawnee. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to City of Shawnee, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## **Section 8. Byrd Anti-Lobbying Amendment and Certification.**

The Contractor will be expected to comply with Federal statutes required in the Anti-Lobbying Act.

Contractors who apply or bid for an award of more than \$100,000 shall file the required certification. 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.

– **Exhibit D.**

## **Section 9. Procurement of Recovered Materials.**

In the performance of this Contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- i. Competitively within a timeframe providing for compliance with the Contract performance schedule;
- ii. Meeting Contract performance requirements; or
- iii. At a reasonable price.

Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines website, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

## **Section 10. Contract Work Hours and Safety Standards Act.**

- (1) *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.
- (2) *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 therefor 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 (write in the name of the Federal agency or the loan or grant recipient) 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.

#### **Section 11. 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.

#### **Section 12. 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.

#### **Section 13. Program Fraud and False or Fraudulent Statements or Related Acts.**

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.

#### **Section 14. Access to Records.**

The following access to records requirements applies to this contract:

- (1) The Contractor agrees to provide ODEMHS, City of Shawnee, 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.
- (2) 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.
- (3) 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.

#### **Section 15. Changes.**

To be eligible for FEMA assistance under the non-Federal entity's FEMA grant or Client agreement and/or this Agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or Agreement, and reasonable for the completion of project scope. All changes will be approved in writing by Client prior to occurring or Contractor may not be paid for work performed.

#### **Section 16. Compliance with Federal Law, Regulations, and Executive Orders.**

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the Agreement. Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

#### **Section 17. Termination For Cause.**

The Client shall submit a written notice to the Contractor and surety (if applicable) which justifies placement of the Contractor in default if:

- (a) The work, duties, and services related to the Project and/or contemplated by the Agreement do not begin within the time specified in this Agreement.
- (b) The work, duties, and services, contemplated by the Agreement and/or Project is performed with insufficient workmen or employees; inadequate facilities; inadequate completion of services (including but not limited to reefer trucks, ice); and/or inadequate equipment or materials to assure satisfactory completion of the scope of Contractor's services. Any and all determinations of the sufficiency in this provision are at the Client's sole determination.
- (c) The Contractor provides unsuitable, neglected or rejected work, and/or refuses to remove materials (determined at the Client's sole determination).
- (d) The work and duties contemplated by the Agreement is discontinued by Contractor.
- (e) The work, duties, and services contemplated by the Agreement and/or Project are not completed within the specified amount of time in the Agreement, or as otherwise agreed to amongst the parties.
- (f) The work, duties, and services contemplated by the Agreement and/or Project is not resumed within a reasonable time after receiving a notice to continue by the Client.
- (g) Contractor becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency.
- (h) Contractor allows any final judgment to stand unsatisfied for a period for a period of ten (10) days.
- (i) Contractor makes an assignment for the benefit of creditors.
- (j) The work contemplated by the Agreement is not performed in an acceptable manner (as determined solely by Client).

If problems or issues are discovered by Client, the Client may provide written notice to Contractor. In the event such written notice is provided and Contractor or surety (if applicable) does not remedy all conditions cited in the written notice by Client of a problem or issue within ten (10) days after receiving such a notice, the Contractor is placed into default. The Client may obtain the necessary labor, services, materials, and equipment (if necessary) from a third party. If the Client enters into a new contract or agreement in order to complete the work, duties, and services that are the subject of this Agreement on behalf of Client, any and all costs incurred by the Client will be deducted from the payment due to the Contractor by Client. If such expense exceeds the sum payable under the new contract/agreement, the Contractor and surety (if applicable) shall be completely liable to pay the Client the difference. For avoidance of doubt, Contractor will be liable to make Client whole for

any costs incurred by Client in the event Client enters into a contract/agreement for the services (including new lodging accommodations) covered by the Agreement due to termination of this Agreement.

#### **Section 18. Termination For Convenience.**

Client may, at any time, terminate this Agreement or any portion thereof, for Client's convenience, upon providing twenty-four (24) hour advance written notice to the Contractor. In such case, Contractor shall be paid for all work completed through the date notice was provided (less payments already received). In no event shall the Contractor be entitled to payment of overhead and profit on work not performed.

#### **Section 19. Exhibits.**

The exhibits to this Agreement are hereby incorporated and made a part hereof and are an integral part of this Agreement. If there is a disagreement between the Exhibits and this Agreement, this Agreement prevails.

#### **Section 20. Titles and Headings.**

Titles and headings of sections of this Agreement are for convenience only and shall not affect the construction of any provision of this Agreement. For the "Description of Services and Products" are incorporated into this Agreement and made apart hereof.

#### **Section 21. Conflict or Inconsistency.**

In the event of any conflict or inconsistency between the terms and provisions of an Addendum and the terms and provisions of the Agreement, contract, instrument, or other agreement between Contractor and Client, the terms and provisions of the Addendum control.

#### **Section 22. Dispute Resolution.**

In the event that any dispute, claim or controversy arising out of this Agreement remains unresolved, any party may request non-binding mediation upon written notice to the other party, and such matter will be submitted to a third-party mediator mutually agreeable to the defaulting party and the non-defaulting party within thirty (30) days after such written notice. Such mediation proceedings shall be conducted in Pottawatomie County, Oklahoma. Each party shall be responsible for any fees, costs, and expenses incurred by it in the mediation; provided, however, the mediator's fee shall be borne equally by the parties. In addition to, and not in limitation of, any other confidentiality provisions of this Agreement, all aspects of the mediation shall be treated as confidential. Neither the parties nor the mediators may disclose the existence or results of the mediation, except as necessary to comply with legal or regulatory requirements. Before making any such disclosure, a party shall give written notice to all other parties in order to afford such other parties a reasonable opportunity to protect their interests. Neither party may commence

proceedings before a court of competent jurisdiction or in relation to any dispute arising out of this Agreement unless and until it has pursued mediation in good faith and either (x) the mediation has terminated; or (y) the other party has failed to participate in the mediation (or agree to a mediator); providing always that a party's right to commence proceedings are not prejudiced by a delay. Each party hereby irrevocably and unconditionally consents to submit to the sole and exclusive jurisdiction of any state court of competent jurisdiction sitting in Pottawatomie County, Oklahoma, or the United States District Court for the State of Oklahoma, for any litigation arising out of or relating to this Agreement, or the negotiation, validity or performance of this Agreement, waives any objection to the laying of venue of any such litigation in such courts and agrees not to plead or claim in any such court that such litigation brought therein has been brought in any inconvenient forum. The prevailing party in any such litigation shall be entitled to its attorneys' fees and expenses from the other party. Notwithstanding the mediation provisions herein, any party may seek a preliminary injunction or other preliminary judicial relief if in its judgment such action is necessary to avoid irreparable damage.

#### **ANTI-KICKBACK CLAUSE**

The Contractor hereby agrees to adhere to the mandate dictated by the Copeland "Anti- Kickback" Act which provides that each Contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the completion of work, to give up any part of the compensation to which he is otherwise entitled.

#### **PROCUREMENT OF RECOVERED MATERIALS**

In the performance of this Contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- i. Competitively within a timeframe providing for compliance with the Contract performance schedule;
- ii. Meeting Contract performance requirements; or
- iii. At a reasonable price.

Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines website, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

## **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 City of Shawnee identifier (if known); supplier Commercial and Government City of Shawnee (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.

## **NO OBLIGATION BY THE 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.

## **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.

## **CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS.**

- (a) Any party to this contract must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. These steps are also required for the hiring of any subcontractors under this contract.
- (b) Affirmative steps must include:
  - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

## DOMESTIC PREFERENCES 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.

## Attached Exhibits

Exhibit D – Byrd Anti-Lobbying Amendment Certification

**THIS DONE AND EXECUTED** by the following duly authorized representatives of the parties:

### Client

**CITY OF SHAWNEE**

Signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

### Contractor

**DEL SOL CONSULTING, INC.**

Signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT D, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

### Certification for Contracts, Grants, Loans, and Client Agreements

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

1. 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 U. S. Department of Homeland Security Headquarters 500 C St SW Washington, D.C. 20042.

Federal grant, the making of any Federal loan, the entering into of any Client agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or Client agreement.

2. 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 Client agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. 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 Client 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. Code. 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.

Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, 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.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date



City Manager Department  
16 W. 9th St.  
Shawnee, OK 74801  
ShawneeOK.org

**Date:** June 9, 2023  
**To:** Board of City Commissioners  
**From:** Danny Vise, Assistant City Manager  
**Subject:** Consideration of a Contract with DebrisTech, LLC to provide disaster debris monitoring.

**Background:** The City of Shawnee has requested proposals from qualified firms for services related to disaster debris monitoring with the intent of establishing a contract to be utilized for the continued response to the April 19, 2023, tornado and also, as required and needed, for a future event that would necessitate disaster response and recovery. The proposals were due to the City on June 5, 2023.

Staff received two (2) qualified responses, which were then evaluated based on the evaluation criteria included in the Request for Proposals (RFP). Based on the evaluation criteria, the following evaluation scores were tabulated, and the proposals ranked as follows:

1. DebrisTech, LLC- 80
2. Witt O'Briens, LLC- 66.8

Based upon these evaluation scores, staff recommends approval of a contract with DebrisTech, LLC to provide disaster debris monitoring services for the City of Shawnee.

**Financial Impact:** None at this time

**Attachments:** Independent Contractor Agreement Rev(DebrisTech\_Shawnee, OK Procured 2023)

**Staff Recommendation:** Approval of the item

## INDEPENDENT CONTRACTOR AGREEMENT

THIS INDEPENDENT CONTRACTOR AGREEMENT (the “Agreement”) is made and entered into effective as of the 9<sup>th</sup> day of June, 2023 (the “Effective Date”), by and between SHAWNEE, OKLAHOMA (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 June 6, 2024 subject to the provisions of Paragraphs 5 and 6 (the “Initial Term”). Upon expiration of the Initial Term, this Agreement shall continue for two (2) one-year terms 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: Rachelle Erickson, EM Director at rachelle.erickson@shawneeok.org

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. In addition, the City shall reimburse Contractor for all vehicle mileage and per diem expenses (including lodging and meals) incurred by the Contractor's personnel. 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 **\$500,000.00** (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 for a period of no less than sixty (60) days (or such longer period as may be mutually agreed by the parties) (the “Mediation Period”). The mediation shall be conducted in Shawnee, Oklahoma 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 following the Mediation Period, either party may seek any remedy at law or in

equity that may be available. Any disputes shall be brought in the Circuit Court of Pottawatomie County, Oklahoma.

11. Relationship with Debris Removal Contractor. The City acknowledges and understands that the Contractor's relationship with the debris removal contractor is limited to documenting the work that is performed by the debris removal contractor. The City further acknowledges that the Contractor does not direct the operations of the debris removal contractor nor does the Contractor have any control over the acts or operations of the debris removal contractor.

12. 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.

13. 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.

14. 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.).

15. 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 therefor 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 (write in the name of the Federal agency or the loan or grant recipient) 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.

16. 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.

17. 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 City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the State of Oklahoma, 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. 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.

19. 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.).

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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 Oklahoma, 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 Shawnee, Oklahoma  
Attn: Andrea Weckmueller-Behringer, City Manager  
16 West 9<sup>th</sup> Street  
Shawnee, Oklahoma 74801

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) From and after the date this Agreement is signed by both City and Contractor, this Agreement 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

CITY OF SHAWNEE, OKLAHOMA

By: \_\_\_\_\_  
Brooks R. Wallace, Manager

By: \_\_\_\_\_  
Andrea Weckmueller-Behringer, City Manager

## **EXHIBIT A**

### **SCOPE OF SERVICES**

#### **1. BACKGROUND**

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

#### **2. SCOPE FOR 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, and other areas designated as eligible by the City. Specific services may include:

- a. 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.
- b. Coordinating daily briefings, work progress, staffing, and other key items with the City.
- c. Providing support with the selection and permitting of Temporary Debris Storage and Reduction Site (TDSRS) locations and other permitting/regulatory issues as requested.
- d. Scheduling work for team members and contractors daily.
- e. Hiring, scheduling, and managing field staff.
- f. Monitoring recovery contractor operations and making/implementing recommendations to improve efficiency and speed up recovery work.
- g. Assisting the City with responding to public concerns and comments.
- h. Certifying contractor vehicles for debris removal using methodology and documentation practices appropriate for contract monitoring.
- i. Utilizing an Electronic Ticketing System – 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 at no additional cost if requested by the City. 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.
- j. Developing daily operational reports to keep the City informed of work progress.

- k. Development of maps, GIS applications, etc. as necessary.
- l. Comprehensive review, reconciliation, and validation of debris removal contractor(s) invoices prior to submission to the City for processing.
- m. 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.
- n. Final report and appeal preparation and assistance.
- o. Debris monitor's roles include:
  - x. Measure and certify truck capacities (recertify on a regular basis)
  - xi. Complete and physically control load tickets.
  - xii. Validate hazardous trees, including hangers, leaners, and stumps.
  - xiii. Ensure that trucks are accurately credited for their load.
  - xiv. Ensure that trucks are not artificially loaded to maximize reimbursement.
  - xv. Ensure that hazardous waste is not mixed in with hands.
  - xvi. Ensure that all debris is removed from trucks at the debris management site.
  - xvii. Report to project manager if improper equipment is mobilized and used.
  - xviii. Report to project manager if contractor personnel safety standards are not followed.
  - xix. Report to project manager if general public safety standards are not followed.
  - xx. Report to project manager if completion schedules are not on target.
  - xxi. Ensure that only debris specified in the scope of work is collected and identify work as potentially eligible or ineligible.
  - xxii. Monitor site development and restoration of the debris management site.
  - xxiii. Ensure daily loads meet permit requirements.
  - xxiv. Report to project manager if debris removal work does not comply with all local ordinances as well as state and federal regulations.

## **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 exceeding the GSA Per Diem Allowance for the project area. The rates listed below shall be straight time rates. All hours in excess of 40 per week shall be billed at 1.5 times the straight time rate. Cost proposal may be provided on an additional sheet provided each position is accounted for.

### **Disaster Debris Monitoring Services**

| <b><u>Positions</u></b>                    | <b><u>Hourly Rates</u></b> |
|--------------------------------------------|----------------------------|
| Principal                                  | \$ <u>68.00</u>            |
| Project Manager                            | \$ <u>68.00</u>            |
| Operations Manager                         | \$ <u>57.00</u>            |
| Field Supervisors                          | \$ <u>47.00</u>            |
| Load Site Monitors                         | \$ <u>34.00</u>            |
| Debris Site/Tower Monitors                 | \$ <u>34.00</u>            |
| <b>Grant Management Clerical</b>           | <b>\$40.00</b>             |
| <b>Grant Management Consultant</b>         | <b>\$95.00</b>             |
| <b>Grant Management Project Specialist</b> | <b>\$75.00</b>             |

DebrisTech device rates are included int the provided rates.

**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 bona 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.

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Brooks Wallace, President

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Date



**Finance Department**  
16 W. 9th St.  
Shawnee, OK 74801  
ShawneeOK.org

**Date:** June 9, 2023  
**To:** Board of City Commissioners  
**From:** Lindsey McNabb-Fox, Finance Director  
**Subject:** Consideration of the following budget amendments for Fiscal Year 2022 – 2023: 001 - General Fund - \$2,000,000, 302 - Street Improvement Fund - \$3,000,000, and 010 - Grant Fund - \$8,000,000.

**Background:** In response to the April 19, 2023 tornado event, this budget amendment is to fund disaster related emergency services contracts from the Grant Fund, totaling \$8,000,000. The Grant Fund will be funded by transfers of available fund balance from the General Fund of \$2,000,000, the Street Improvement Fund of \$3,000,000 and the Shawnee Municipal Authority Fund of \$3,000,000.

These transfers are temporary until the City of Shawnee is reimbursed by the Federal Emergency Management Agency (FEMA).

**Financial Impact:** See budget amendment

**Attachments:** 001 - Transfer for emergency contracts, 302 - Transfer for emergency contracts, 010 - Emergency contracts

**Staff Recommendation:** Approval of the amendment

**City of Shawnee**  
**2022-2023 Budget Amendment**  
**General Fund**

**Estimated Revenue, Fund Balance, or Transfers IN**

| Fund<br>Number | Account<br>Number | Project<br>Code | Line<br>Item | Description | Balance<br>Before<br>Amendment | Amount of<br>Amendment<br>Increase<br>(Decrease) | Balance<br>After<br>Amendment |
|----------------|-------------------|-----------------|--------------|-------------|--------------------------------|--------------------------------------------------|-------------------------------|
|                |                   |                 |              |             |                                |                                                  | -                             |
|                |                   |                 |              |             |                                |                                                  | -                             |
|                |                   |                 |              |             |                                |                                                  |                               |
|                |                   |                 |              | Total       | -                              | -                                                | -                             |

**Appropriations**

| Fund<br>Number | Account<br>Number | Project<br>Code | Line<br>Item | Description            | Balance<br>Before<br>Amendment | Amount of<br>Amendment<br>Increase<br>(Decrease) | Balance<br>After<br>Amendment |
|----------------|-------------------|-----------------|--------------|------------------------|--------------------------------|--------------------------------------------------|-------------------------------|
|                |                   |                 |              |                        |                                |                                                  |                               |
| 001            | 5-5030-56200      |                 |              | Transfer to Grant Fund | -                              | 2,000,000.00                                     | 2,000,000.00                  |
|                |                   |                 |              |                        |                                |                                                  | -                             |
|                |                   |                 |              |                        |                                |                                                  | -                             |
|                |                   |                 |              |                        |                                |                                                  | -                             |
|                |                   |                 |              |                        |                                |                                                  | -                             |
|                |                   |                 |              |                        |                                |                                                  | -                             |
|                |                   |                 |              |                        | -                              | -                                                | -                             |
|                |                   |                 |              |                        | -                              | 2,000,000.00                                     | 2,000,000.00                  |

Approved by the City Commission this

Explanation of Budget Amendment:  
To fund a transfer from fund balance in the General  
Fund to the Grant fund for the temporary funding of  
emergency contracts due to the tornado event.

Approved:

Mayor \_\_\_\_\_

Attest: \_\_\_\_\_

City Clerk \_\_\_\_\_

On Date \_\_\_\_\_

Posted By \_\_\_\_\_ Date \_\_\_\_\_ BA# \_\_\_\_\_ Pkt.# \_\_\_\_\_

**City of Shawnee**  
**2022-2023 Budget Amendment**  
**Street Improvement Fund**

**Estimated Revenue, Fund Balance, or Transfers IN**

| Fund Number | Account Number | Project Code | Line Item | Description | Balance Before Amendment | Amount of Amendment Increase (Decrease) | Balance After Amendment |
|-------------|----------------|--------------|-----------|-------------|--------------------------|-----------------------------------------|-------------------------|
|             |                |              |           |             |                          |                                         | -                       |
|             |                |              |           |             |                          |                                         | -                       |
|             |                |              |           |             |                          |                                         |                         |
|             |                |              |           | Total       | -                        | -                                       | -                       |

**Appropriations**

| Fund Number | Account Number | Project Code | Line Item | Description            | Balance Before Amendment | Amount of Amendment Increase (Decrease) | Balance After Amendment |
|-------------|----------------|--------------|-----------|------------------------|--------------------------|-----------------------------------------|-------------------------|
|             |                |              |           |                        |                          |                                         |                         |
| 302         | 5-5030-56200   |              |           | Transfer to Grant Fund | -                        | 3,000,000.00                            | 3,000,000.00            |
|             |                |              |           |                        |                          |                                         | -                       |
|             |                |              |           |                        |                          |                                         | -                       |
|             |                |              |           |                        |                          |                                         | -                       |
|             |                |              |           |                        |                          |                                         | -                       |
|             |                |              |           |                        |                          |                                         | -                       |
|             |                |              |           |                        | -                        | -                                       | -                       |
|             |                |              |           |                        | -                        | 3,000,000.00                            | 3,000,000.00            |

Approved by the City Commission this

Explanation of Budget Amendment:  
To fund a transfer from fund balance in the Street Improvement Fund to the Grant fund for the temporary funding of emergency contracts due to the tornado event.

Approved:

Mayor \_\_\_\_\_

Attest: \_\_\_\_\_

City Clerk \_\_\_\_\_

On Date \_\_\_\_\_

Posted By \_\_\_\_\_ Date \_\_\_\_\_ BA# \_\_\_\_\_ Pkt.# \_\_\_\_\_

**City of Shawnee**  
**2022-2023 Budget Amendment**  
**Grant Fund**

**Estimated Revenue, Fund Balance, or Transfers IN**

| Fund Number | Account Number | Project Code | Line Item | Description                               | Balance Before Amendment | Amount of Amendment Increase (Decrease) | Balance After Amendment |
|-------------|----------------|--------------|-----------|-------------------------------------------|--------------------------|-----------------------------------------|-------------------------|
| 010         | 49100          |              |           | Transfer from Shawnee Municipal Authority | -                        | 3,000,000.00                            | 3,000,000.00            |
| 010         | 49040          |              |           | Transfer from Street Improvement Fund     | -                        | 3,000,000.00                            | 3,000,000.00            |
| 010         | 49010          |              |           | Transfer from General Fund                | -                        | 2,000,000.00                            | 2,000,000.00            |
|             |                |              |           |                                           |                          |                                         |                         |
|             |                |              |           | Total                                     | -                        | 8,000,000.00                            | 8,000,000.00            |

**Appropriations**

| Fund Number | Account Number | Project Code | Line Item | Description                | Balance Before Amendment | Amount of Amendment Increase (Decrease) | Balance After Amendment |
|-------------|----------------|--------------|-----------|----------------------------|--------------------------|-----------------------------------------|-------------------------|
|             |                |              |           |                            |                          |                                         |                         |
|             |                |              |           |                            |                          |                                         |                         |
| 010         | 5-0740-53390   |              |           | Other Contractual Services | -                        | 8,000,000.00                            | 8,000,000.00            |
|             |                |              |           |                            |                          |                                         | -                       |
|             |                |              |           |                            |                          |                                         | -                       |
|             |                |              |           |                            |                          |                                         | -                       |
|             |                |              |           |                            |                          |                                         | -                       |
|             |                |              |           |                            |                          |                                         | -                       |
|             |                |              |           |                            | -                        | -                                       | -                       |
|             |                |              |           |                            | -                        | 8,000,000.00                            | 8,000,000.00            |

Approved by the City Commission this

Explanation of Budget Amendment:  
To fund emergency contracts due to the tornado event with transfers with transfers from the General Fund, Street Improvement Fund and the Shawnee Municipal Authority Fund.

Approved:

Mayor \_\_\_\_\_

Attest: \_\_\_\_\_

City Clerk \_\_\_\_\_

On Date \_\_\_\_\_

Posted By \_\_\_\_\_ Date \_\_\_\_\_ BA# \_\_\_\_\_ Pkt.# \_\_\_\_\_



**Engineering Department**  
222 N. Broadway Ave.  
Shawnee, OK 74801  
ShawneeOK.org

**Date:** June 9, 2023  
**To:** Board of City Commissioners  
**From:** Seth Barkhimer, Director of Engineering  
**Subject:** Consideration of an ordinance for a temporary amendment of Chapter 7, Section 7-32, Section 109.2 regarding the requirement to pay permit fees to the City for work done on structures as a result of the April 19, 2023, severe weather event in the City of Shawnee.

**Background:** On April 19, 2023, a severe weather event caused extensive damage to the Shawnee community. In an effort to promote rebuilding and recovery, staff is requesting the ability to waive permit fees for residential and institutional facilities affected by the storm.

The applicant will need to request a fee waiver, and application must be made prior to June 30, 2024. Also, the Oklahoma Uniform Building Code Commission (OUBCC) fee included within the City's permit fee cannot be waived. The OUBCC fee is \$4.50 and will be required with every IBCC permit.

**Financial Impact:** N/A

**Attachments:** Permit Fee Waiver Ordinance

**Staff Recommendation:** Approval of the item

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE FOR A TEMPORARY AMENDMENT OF CHAPTER 7, SECTION 7-32, SECTION 109.2 REGARDING THE REQUIREMENT TO PAY PERMIT FEES TO THE CITY FOR WORK DONE ON STRUCTURES AS A RESULT OF THE APRIL 19, 2023, SEVERE WEATHER EVENT IN THE CITY OF SHAWNEE; AND PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL; AND DECLARING AN EMERGENCY.

WHEREAS, structures located within the City of Shawnee suffered extensive damage as a result of the tornado, hail, and damaging winds that occurred on April 19, 2023 (“Severe Weather Event”); and,

WHEREAS, a speedy and efficient recovery from the Severe Weather Event will benefit the City and allow for the reopening of businesses to full function; and

WHEREAS, the City of Shawnee desires to help in the recovery of affected properties as property owners work to rebuild and restore what was damaged during this Severe Weather Event.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF SHAWNEE, OKLAHOMA:**

**Section 1: AMENDATORY.** Pursuant to the provisions of applicable law, Chapter 7, Article 2, Section 7-32, shall be temporarily amended as follows:

(b) Notwithstanding the foregoing provisions, residential and institutional property owners who have been impacted by the Severe Weather Event of April 19, 2023, seeking a building permit for the following construction types may request a permit fee waiver:

- a. New Construction
- b. Remodel or alteration of structure
- c. Accessory structure construction
- d. Plan check fee
- e. Demolition
- f. Re-Inspection

(c) The aforementioned permit fee waiver shall be requested by application created by the City Manager and/or their designee(s) and will be available to the public through the Engineering Department upon passage of this ordinance.

g. Applicants for the permit fee waiver must provide reasonable evidence that the permitted work is a direct result of damage from the Severe Weather Event on April 19, 2023.

i. Applicants for a new construction permit fee waiver must have obtained a demolition permit from the City.

h. The City Manager and/or their designee(s) shall approve or deny applications for permit fee waiver in their sole discretion.

(d) The aforementioned permit fee waiver is not applicable to any fees required by the Oklahoma Uniform Building Code Commission (OUBCC) or other agencies of the State of Oklahoma.

**Section 2: EFFECTIVE DATE.** The provisions of this ordinance shall be effective immediately.

**Section 3: TERMINATION DATE.** The provisions of this ordinance, and the specific amendments herein, shall be effective until June 30, 2024. At which time, the specific amendments set forth herein shall automatically repeal, but all other provisions of the Chapter 7, Article 2, Section 7-32, Section 109.2 shall remain effective going forward.

**Section 4: SEVERABILITY.** The provisions of this ordinance are severable, and if any sentence, provision, or other part of this Ordinance shall be held invalid, the decision of the courts so holding shall not affect or impair any of the remaining parts or provisions of this ordinance.

**Section 5:     CODIFICATION.** This Ordinance shall be codified in the Shawnee Municipal Code, and the codifier is authorized to set out the ordinance as appropriate.

**Section 6:     REPEALER.** All sections, subsections, clauses, and sentences of existing law in conflict with this ordinance, are repealed.

**Section 7:     EMERGENCY.** Because it is necessary for the protection of the public’s health, safety, and welfare, an emergency is declared to exist. This ordinance shall be effective immediately upon its passage and publication.

PASSED AND APPROVED this \_\_\_\_ day of June, 2023.

\_\_\_\_\_  
ED BOLT, MAYOR

ATTEST:  
(SEAL)

\_\_\_\_\_  
LISA LASYONE, CMC, CITY CLERK

Emergency clause separately passed and approved on this \_\_\_\_ day of June, 2023.

\_\_\_\_\_  
ED BOLT, MAYOR

ATTEST:  
(SEAL)

\_\_\_\_\_  
LISA LASYONE, CMC, CITY CLERK

Approved as to form and legality this \_\_\_\_ day of June, 2023.

\_\_\_\_\_  
JOSEPH M. VORNDRAN  
CITY ATTORNEY