

AGREEMENT FOR DISASTER AND DEBRIS MANAGEMENT SERVICES

THIS AGREEMENT made and entered into on this ____ day of _____, 2018 by and between:

CITY OF PEMBROKE PINES, FLORIDA, a municipal corporation, of the State of Florida, with a business address of 601 City Center Way, Pembroke Pines, FL 33025, hereinafter referred to as “CITY”,

And

CUSTOM TREE CARE INC., a Kansas corporation with a business address of 6021 SW 29th Street, PMB 130, Topeka, KS 66614, hereinafter referred to as “CONTRACTOR”,

Recitals

WHEREAS, the CITY may experience massive destruction wrought by the impact of a hurricane landfall, violent storms, spawning tornadoes as well as other natural and/or man- made disasters (hereinafter “Catastrophic Events”); and

WHEREAS, the CITY finds it necessary to contract with Debris Recovery Contractors in order to remove disaster generated debris from public property and public rights of way so as to protect the public health and safety, minimize economic and environmental impacts and facilitate the restoration of normal public services following a Catastrophic Event; and

WHEREAS, the City finds it necessary to contract with Debris Recovery Contractors in order to remove disaster generated debris from private property, subject to compliance with any and all local, state and federal regulations, including FEMA requirements so as to protect the public health and safety, minimize economic and environmental impacts and facilitate the restoration of normal public services following a Catastrophic Event; and

WHEREAS, the CITY previously issued a Request for Proposal No. **AD-18-03 “Disaster and Debris Management Services”** (hereinafter “RFP”), for Disaster and Debris Management Services on an as needed basis, a copy of which is attached hereto as **Exhibit “A”** and incorporated herein by reference; and

WHEREAS, the prices set forth in this Agreement, a copy of which is attached hereto as **Exhibit “B”** and incorporated herein by reference; and being charged by the CONTRACTOR are consistent with the market value and rates currently being charged to local governments throughout South Florida for the same or similar work by other debris removal vendors; and

WHEREAS, the services to be provided by the CONTRACTOR will include emergency push and storm debris collection and disposal in the CITY following a Catastrophic Event. Also, the CONTRACTOR will provide a range of related services including damage assessment, training, emergency planning and other services as needed and requested by the CITY; and

WHEREAS, other services of the CONTRACTOR may include facilitating communication with the Federal Emergency Management Agency (hereinafter "FEMA"), the Federal Highway Administration (hereinafter "FHWA"), Broward County, the State of Florida and other federal, state or local agencies, and coordination with state insurance representatives; and

WHEREAS, the CONTRACTOR desires to perform such services subject to the terms of this Agreement; and

WHEREAS, FEMA's regulations require that the CITY has a written contract with its CONTRACTORS to be used following Catastrophic Events, as described above; and

WHEREAS, the CITY and the CONTRACTOR has reached a mutual agreement as to the terms and conditions of such services; and

WHEREAS, this Agreement does not preclude the CITY's from using other vendors which provide the same or similar services as provided by the CONTRACTOR on an as needed basis; and

WHEREAS, this Agreement would potentially be invoked for City, County, State and Federally declared emergency disaster events and where the services will only be required when an emergency situation exists which threatens the life, safety or welfare of the citizens of Pembroke Pines; and

WHEREAS, the City Commission of the City of Pembroke Pines, Florida deems it in the best interest of the citizens and residents of the CITY to enter into an agreement with CONTRACTOR for Disaster and Debris Management Services.

NOW, THEREFORE, IN CONSIDERATION of the mutual terms, understandings, conditions, premises, covenants, and payment hereinafter set forth, and intending to be legally bound, the parties hereby agree as follows:

Article 1 – Recitals

- 1.1** The foregoing recitals are true and correct and incorporated herein by reference.

Article 2 - Scope of Professional Services

- 2.1 Debris Removal:** It is the intent of this Agreement for the CONTRACTOR to remove as quickly as possible all disaster generated debris from public property and public rights-of-way, and private property as authorized by the CITY, so as to protect the public health and safety, minimize economic and environmental impacts and facilitate the restoration of normal public services. Clean up, demolition and removal will be limited to: (1) that which is determined to eliminate immediate threats to life, public health, and safety; (2) that which has been determined to eliminate immediate threats of significant damage to improved public property (or private property when specifically authorized by the CITY),

and; (3) that which is considered essential to ensure economic recovery of the affected community to the benefit of the community-at-large. The Services shall consist of clean up, demolition, removal, reduction, and disposal of debris from CITY streets, roads, and right-of-ways, public property and facilities and any other facility or site as directed by the designated representative of the CITY.

Specifically, the Scope of Services will encompass the Disaster and Debris Management Services as set forth in the RFP, attached hereto as **Exhibit "A"** and the debris removal rate sheet, attached hereto and made a part hereof, as **Exhibit "B."**

2.1.1 Ownership and Disposal of Debris: The CONTRACTOR shall be responsible for removal of debris up to the point where debris can only be described as light litter and additional collection can be facilitated only by sweeping and raking. All debris handled by the CONTRACTOR shall become the property of the CONTRACTOR upon collection. The CONTRACTOR shall be responsible for the lawful disposal of all debris handled or transported. The CONTRACTOR shall not use any disposal site not designated by the CITY without written consent.

2.1.2 Technical Disaster Recovery Assistance: It is the intent of this agreement for the CONTRACTOR to provide disaster recovery technical assistance to appointed and elected officials of the CITY. This service shall include Program Management Assistance.

2.1.3 Permits and Regulations: All necessary permits, licenses and certificates required for the execution of this Agreement as set forth in **Exhibit "A"** shall be secured and paid for by the CONTRACTOR.

2.1.3 Event Closure: CONTRACTOR will assist the CITY in preparing final reports necessary for reimbursement by FEMA, FHWA and any other applicable agencies for disaster recovery efforts by CITY staff and designated Debris Removal Contractors.

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

2.1.5 Measurement of Quantities: Work specified herein shall be measured by the City according to U.S. Standard Measure and information provided by the CONTRACTOR. The method of measurement and computation to be used to determine quantities of debris managed will be those generally recognized as conforming to good engineering practice. The principle method of measurement will be debris volume in cubic yards. Material measured in vehicles will be allowed at the full measured volume of the vehicle unless the inspector determines that a lesser volume has been loaded.

2.1.6 Scheduled Passes: The CONTRACTOR shall make multiple scheduled passes of each site, location or area impacted by the Catastrophic Event. The number and schedule of passes shall be determined through CITY-CONTRACTOR consultation. It is the CITY'S intent that the CONTRACTOR shall make as many passes as the CITY may direct to complete the removal and lawful disposal of all natural disaster generated debris.

2.2 Supervision by CONTRACTOR: The CONTRACTOR will supervise and direct all Services. The CONTRACTOR is solely responsible for the means, methods, techniques, sequences, safety program and procedures. The CONTRACTOR will employ and maintain on the worksite a qualified supervisor(s) who shall have full authority to act on behalf of the CONTRACTOR and all communications given to the supervisor(s) by the CITY's Authorized Representative shall be as binding as if given to the CONTRACTOR. The name(s) of the supervisor(s) will be supplied to the CITY for each issuance of a Notice to Proceed through an attachment to this Agreement in the form of a Memorandum for the Record.

2.3 Changes in the Scope of Services: The CITY and CONTRACTOR may at any time order changes within the scope of services without invalidating this Agreement. All changes affecting the project's costs or modifications of the terms, conditions, and the scopes of services of this Agreement shall be authorized by means of an official written Contract Change Order that is mutually agreed upon and signed by the CITY and the CONTRACTOR. All changes must be recorded on a written Contract Change Order before CONTRACTOR may proceed with the changes to the services provided. CITY's Signatory Authority for such changes shall be as set for in the CITY's Code of Ordinances.

Article 3- Term of Agreement

3.1 Term: This Agreement shall be effective for an initial three year period commencing on September 1, 2018 and shall terminate on October 30, 2021, provided that the post closure obligations shall survive the expiration of this Agreement.

3.2 Renewal: The Agreement may be renewed for two additional three-year renewal terms upon mutual consent of the parties, evidenced by a written amendment to this Agreement.

3.3 Contract Pricing: The pricing negotiated with the CONTRACTOR shall remain firm during the term of the Agreement period as evidenced in **Exhibit "B"** attached hereto and incorporated herein by reference.

Article 4- Payment

4.1 Pricing for all services shall be done in accordance with **Exhibit "B"** attached hereto and incorporated herein by reference.

4.2 The CONTRACTOR expressly agrees that it will not be compensated for disposing of any material not defined as eligible debris except as noted in Section **4.2.1**. The term "eligible debris" shall have that meaning as given under 44 C.F.R. 206.224 and as further defined in the FEMA Debris Management Assistance Policy Guidebook. The CONTRACTOR and CITY will inspect each load to verify that the contents are in accordance with the accepted definition of

eligible debris. If any load is determined to contain material that does not conform to the definition of eligible debris, the load will be ordered to be deposited at another landfill or receiving facility. No payment will be allowed for that load and the CONTRACTOR will not invoice the CITY for such loads. For each suitable load picked up, hauled, and processed, a record of the cubic yards will be recorded by the CONTRACTOR and numbered tickets shall be supplied to the CITY by the CONTRACTOR and the CITY'S designee on site. Each invoice shall contain verification for each cubic yardage load ticket and also contain a summary sheet indicating, by day, the individual verified load receipt and invoice amounts. The CITY may temporarily remove any disputed amount line items in the bill from the invoice for review. Disposal tickets disputed will be returned to the CONTRACTOR within five (5) working days of invoice date for additional clarification prior to payment of those tickets.

4.2.1 Ineligible Debris- Contractor will only collect, haul, dump, and otherwise handle ineligible debris as directly ordered by the City's Debris Manager to do so. In such cases the City will be billed separately and apart as to not comingle invoices that will be submitted to FEMA for re-imbursement.

4.3 Invoices shall be submitted in duplicate to the Director of Public Services (or designee), City of Pembroke Pines, 8300 S. Palm Drive, Pembroke Pines, Florida 33025, no more than once every fifteen (15) days. Each invoice shall contain a detailed description of services and fees.

4.4 The CITY shall make payment on all invoices in accordance with the Florida Prompt Payment Act, Sections 218.70 through 218.79, Florida Statutes, inclusive.

4.5 Other than the fees set forth herein, the CONTRACTOR shall not be entitled to payment for expenses, fees, or other costs it may incur at any time and in any connection with its performance hereunder.

Article 5- City Obligations

5.1 The CITY shall furnish all information and documents necessary for the commencement of work to include valid written Notices to Proceed. A representative will be designated by the CITY to be the primary contact person for inspecting the work and answering any on-site questions prior to and after activation of this Agreement via a Notice to Proceed. Providing inspectors for the monitoring of debris operations shall be the responsibility of the CITY, as required by Federal law and policy governing those specific operations.

5.2 The CITY shall pre-designate necessary Temporary Debris Storage and Reduction (TDSR) sites either within the CITY, or as designated by Broward County, for the sole purpose of the temporary storage and reduction of clean woody debris and construction and demolition materials. If requested by the CITY, the CONTRACTOR shall operate the TDSR sites and only CONTRACTOR vehicles and others specifically authorized by the CITY will be allowed to use these sites. The CONTRACTOR shall have a General Operation Plan, which describes the operations CONTRACTOR expects to carry out at each site, i.e., materials handling, reduction, storage, recycling operations, equipment maintenance, etc. The CONTRACTOR shall include

provisions for rodent control, noise abatement, etc. If any facilities are utilized for air curtain burning, they must be approved by the CITY and Broward County.

5.3 The CITY may also establish homeowner drop-off sites for debris. If requested by the CITY, the CONTRACTOR shall be responsible for removing all debris from these sites.

5.4 The CITY shall timely pay CONTRACTOR in accordance with Part VII, Chapter 218, Florida Statutes.

Article 6- FEMA Reimbursements and Requirements

6.1 CONTRACTOR shall assist CITY in completing any and all forms necessary for reimbursements from state or federal agencies, including but not limited to FEMA, relating to costs arising out of Disaster and Debris Management Services. This may include, but is not limited to, the timely completion and submittal of reimbursement requests, preparation and submittal of any and all necessary cost substantiation and preparing replies to any and all agency denial or inquiries. CONTRACTOR responsibilities in this regard are set forth in **Exhibit "A"**.

6.2 If reimbursement is denied to CITY due to CONTRACTOR's negligence collecting or removing debris, completing project worksheets and load tickets, or documenting work performed, CONTRACTOR upon notification from FEMA or the Florida Division of Emergency Management of such denial and upon written demand by the CITY, shall reimburse CITY for amounts denied due to CONTRACTOR's negligence. This obligation shall survive the term or termination of this Agreement.

6.3 Notwithstanding anything to the contrary set forth herein, CONTRACTOR shall comply with the following federally required standard provisions, as set forth in 2 C.F.R. Sec.300.326. In the event of any conflicts, the provisions of this section shall prevail.

6.3.1 Equal Employment Opportunity: During the performance of this contract, CONTRACTOR agrees as follows:

(1) 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 by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) 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.

(3) 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.

(4) CONTRACTOR will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of CONTRACTOR's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

(7) In the event of CONTRACTOR's non-compliance with the nondiscrimination clauses of this contract or with any of such 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 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) CONTRACTOR will include 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 may be directed by the Secretary of Labor 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 vendor as a result of such direction, CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

6.3.2 Davis-Bacon Act: CONTRACTOR shall comply with the Davis-Bacon Act, (40 U.S.C. 3141- 3144) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.

6.3.3 Copeland "Anti-Kickback" 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"). CONTRACTOR 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. CITY must report all suspected or reported violations to the Federal awarding agency.

6.3.4 Contract Work Hours and Safety Standards Act. (40 U.S.C. 3701- 3708). Where applicable, pursuant to 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5) CONTRACTOR must be required to 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. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.

- (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. CITY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (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 (1) through (4) of this section.”

6.3.5 Clean Air Act: Pursuant to 42 U.S.C. 7401- 7671q. and the Federal Water Pollution Control Act (33 U.S.C. 1251- 1387), as amended CONTRACTOR agrees to 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). CITY will report violations to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Clean Air 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 and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the State, Federal Emergency Management Agency, 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.

Federal Water Pollution Control Act

- (1) 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.
- (2) 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, Federal Emergency Management Agency, 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.”

6.3.6 Compliance with State Energy Policy and Conservation Act. CONTRACTOR shall comply with all mandatory standards and policies relating to energy efficiency contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163, 89 Stat. 871).

6.3.7. Suspension and Debarment. 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, 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)

- (1) 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. This certification is a material representation of fact relied upon by CITY. 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 State and CITY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (2) 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.”

6.3.7. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file 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 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.”

Article 7- Termination

7.1 Termination. This Agreement may be terminated by the CITY upon thirty (30) days advance written notice to the other party; but if any work or service/task hereunder is in progress but not completed as of the date of termination, then this Agreement may be extended upon written approval of the CITY until said work or service(s)/task(s) is completed and accepted.

- A.** Termination for Convenience. In the event this Agreement is terminated or cancelled upon the request and for the convenience of CITY with the required 30-day advance written notice, CITY shall reimburse CONTRACTOR for actual work satisfactorily completed.
- B.** Termination for Cause. Termination by CITY for cause, default, or negligence on part of the CONTRACTOR shall be excluded from the foregoing provision. Termination costs, if any shall not apply. The 30-day advance notice requirement is waived in the event of termination for cause.
- C.** Termination Due to Unavailability of Funds in Succeeding Fiscal Years. When funds are not appropriated or otherwise made available to support continuation or performance in the subsequent fiscal year, this Agreement shall be canceled and the CONTRACTOR shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of supplies or services/tasks delivered under this Agreement.

Article 8- Insurance and Bonds

8.1 CONTRACTOR shall not commence performance under this Agreement until has obtained all insurance required under this Article and such insurance has been approved by the Risk Manager of the CITY.

8.2 CERTIFICATES OF INSURANCE reflecting evidence of the required insurance, shall be filed with the CITY’s Risk Manager prior to the commencement of this Agreement. Policies shall be endorsed to provide the CITY thirty (30) days’ notice of cancellation or the CONTRACTOR shall obtain written agreement from its Agent to provide the CITY thirty (30) days’ notice of cancellation. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. Financial Ratings must not be less than “A” as to management, and Class VI as to financial strength in the latest edition of “Best’s Insurance Guide”, published by A.M. Best Guide.

8.3 Insurance shall be in force until the obligations required to be fulfilled under the terms of the Contract are satisfied. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this contract, then in that event, the CONTRACTOR shall furnish, at least fifteen (15) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the contract and extension thereunder is in effect. The CONTRACTOR shall not commence nor continue to provide any services pursuant to this Agreement unless all required insurance remains in full force and effect. CONTRACTOR shall be responsible for subcontractors and their insurance. CONTRACTOR shall be liable to CITY for any lapse in service resulting from a gap in insurance coverage.

8.4 Required Insurance:

8.4.1 Commercial General Liability insurance to cover liability, bodily injury, and property damage. Exposures to be covered are: premises, operations, product, completed operations, and certain contracts. Coverage must be written on an occurrence basis, with the following limits of liability:

Each occurrence Limit -- \$1,000,000
Fire Damage Limit (Damage to rented premises) \$100,000
Personal & Advertising Injury Limit \$1,000,000
General Aggregate Limit \$2,000,000
Products/Completed Operations Aggregate Limit \$2,000,000

Products & Completed Operations Coverage shall be maintained for two (2) years after the final payment.

The City of Pembroke Pines shall be named as an additional insured with respect to coverage.

8.4.2 Workers Compensation and Employers Liability insurance shall be maintained during the life of this contract to comply with statutory limits for all employees, and in the case any work is sublet, the CONTRACTOR shall require the Subcontractors similarly to provide Workers Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. The CONTRACTOR and his subcontractors shall maintain during the life of this policy Employers Liability Insurance. The following limits must be maintained:

A.	Workers Compensation	Statutory
B.	Employer's Liability	\$500,000 per occurrence
		\$500,000 Disease-policy limit
		\$500,000 Disease-each employee

If CONTRACTOR claims to be exempt from this requirement, CONTRACTOR shall provide CITY proof of such exemption along with written request for CITY to exempt CONTRACTOR, written on CONTRACTOR letterhead.

8.4.3 Comprehensive Auto Liability Insurance shall be maintained during the life of this contract to cover all owned, non-owned and hired vehicles used in connection with the performance of work under this Agreement, with a combined single limit of liability for bodily injury and property damage no less than:

- A. Any Auto (Symbol 1)
Combined Single Limit (Each Accident) \$1,000,000
- B. Hired Autos (Symbol 8)
Combined Single Limit (Each Accident) \$1,000,000
- C. Non-Owned Autos (Symbol 9)
Combined Single Limit (Each Accident) \$1,000,000

Including Endorsement CA99480306 (or its equivalent) –Pollution Liability—Broadened Coverage for Covered Autos

8.4.4 Environmental / Pollution Liability shall be maintained with a liability limit no less \$1,000,000 each incident. This coverage shall be maintained for a period of no less than two (2) years after final payment of the contract.

8.4.5 Umbrella/Excess Liability insurance with a limit of no less than \$5,000,000 per occurrence.

8.4.6 Sexual Abuse may not be excluded from any policy.

8.4.7 Required Endorsements.

1. The City of Pembroke Pines shall be named as an Additional Insured on each of the General Liability policies required herein.
2. Waiver of all Rights of Subrogation against the CITY.
3. 30 Day Notice of Cancellation to the CITY.
4. CONTRACTOR's policies shall be Primary and Non-Contributory.
5. All policies shall contain a "severability of interest" or "cross liability" liability clause without obligation for premium payment of the CITY.

8.5 CONTRACTOR shall have its insurer name the City of Pembroke Pines as an additional insured on its General Liability policy and shall hold the CITY, its agents, officers and employees harmless on account of claims for damages to persons, property or premises arising out of the services provided hereunder.

8.6 Any insurance required of CONTRACTOR pursuant to this Agreement must also be required by any sub-contractor in the same limits and with all requirements as provided herein, including naming the CITY as an additional insured, in any work is subcontracted unless such

subcontractor is covered by the protection afforded by the CONTRACTOR and provided proof of such coverage is provided to CITY. The CONTRACTOR and any subcontractors shall maintain such policies during the term of this Agreement.

8.7 The CITY reserves the right to require any other insurance coverage it deems necessary depending upon the exposures.

8.8 Payment and Performance Bonds. At the CITY's written request, the CONTRACTOR shall furnish to the CITY, prior to the commencement of operations, a Performance and Payment Bond in an amount equal to the value established within an issued Task Order or work authorization, which bond shall be conditioned upon the successful completion of all work, labor, services, materials to be provided and furnished, and the payment of all subcontractors, materials and laborers. If the value of the contracted work increases, the CONTRACTOR shall be required to provide an updated Performance and Payment Bond in an amount equal to the new value.

The CONTRACTOR shall execute and furnish to CITY a performance bond and a payment bond, each written by a corporate surety, having a resident agent in the State of Florida and having been in business with a record of successful continuous operation for at least five (5) years. The surety shall hold a current certificate of authority from the Secretary of Treasury of the United States as an acceptable surety on federal bonds in accordance with United States Department of Treasury Circular No. 570. If the amount of the Bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the surety company shall not exceed the underwriting limitation in the circular and the excess risks must be protected by coinsurance, reinsurance, or other methods, in accordance with Treasury Circular 297, revised September 1, 1978 (31DFR, Section 223.10, Section 223.11).

Further, the surety company shall provide CITY with evidence satisfactory to CITY, that such excess risk has been protected in an acceptable manner. The surety company shall have at least the following minimum qualification in accordance with the latest edition of A.M. Best's Insurance Guide, published by Alfred M. Best Company, Inc., Ambest Road, Oldwick, New Jersey 08858:

B+ to A+

Two (2) separate bonds are required and both must be approved by the CITY. The performance bond shall be conditioned that the CONTRACTOR perform the contract in the time and manner prescribed in the contract. The payment bond shall be conditioned that the CONTRACTOR promptly make payments to all persons who supply the CONTRACTOR with labor, materials and supplies used directly or indirectly by the CONTRACTOR in the prosecution of the work provided for in the Contract and shall provide that the surety shall pay the same in the amount not exceeding the sum provided in such bonds, together with interest at the maximum rate allowed by law; and that they shall indemnify and save harmless the CITY to the extent of any and all payments in connection with the carrying out of said Contract which the CITY may be required to make under the law.

Pursuant to the requirements of Section 255.05(1)(a), Florida Statutes, it shall be the duty of the CONTRACTOR to record the aforesaid payment and performance bonds in the public records of Broward County, with the CONTRACTOR to pay all recording costs.

Article 9-Indemnity and Liens

9.1 Indemnity. CONTRACTOR shall indemnify and hold CITY and its Agents, officers, commissioners or employees harmless for any damages resulting from failure of CONTRACTOR to take out and maintain the above insurance. Additionally, CONTRACTOR agrees for good and valuable consideration in the amount of ten dollars (\$10.00) to protect, defend, indemnify, and hold the City of Pembroke Pines and its officers, commissions, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses, liabilities of every kind and character resulting from the error, omission or negligent act of CONTRACTOR, its agents, employees or representative, in the performance of CONTRACTOR's duties set forth in this Agreement. CONTRACTOR further agrees to investigate, handle, respond to, provide defenses for and defend any such claims, etc., even if such claim is groundless, false or fraudulent.

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

Article 10- Subcontractors

10.1 Local Resources The CONTRACTOR shall, to the extent practicable, give priority to utilizing resources in CITY and surrounding areas, including but not limited to procuring supplies and equipment, awarding subcontracts, and employing workers.

10.2 Subcontractors

10.2.1 The CONTRACTOR shall be fully responsible to the CITY for the acts and omissions of its subcontractors and of persons directly or indirectly employed by them, as the CONTRACTOR is for the acts and omissions of persons employed by it. The CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts, which reflect the termination provisions that the CITY may exercise over the CONTRACTOR under this Agreement.

10.2.2 Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and the CITY or subject the CITY to liability of any kind to any subcontractor. The CONTRACTOR shall supply the names and addresses of subcontractors and materials suppliers when requested to do so by the CITY upon

activation of the Agreement and updated by the CONTRACTOR to the CITY on a biweekly basis during said activation.

10.2.3 CONTRACTOR represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the RFP, to provide and perform such services to CITY'S satisfaction for the agreed compensation, and meets all other requirements of the RFP, including without limitation insurance requirements. CONTRACTOR shall be solely responsible for payment of subcontractors, and its failure to pay subcontractors shall be grounds for withholding future payments to CONTRACTOR, or termination of this Agreement.

10.2.4 The CONTRACTOR shall not use a subcontractor or material supplier against whom the CITY has a reasonable objection to, and shall to the extent practicable subcontract with local firms currently doing business with the CITY. All subcontractors will operate in strict accord with all local, state, and federal laws governing this type of work.

10.2.5 No subcontract shall, under any circumstances, relieve the CONTRACTOR of its liability and obligations under this Agreement and all transactions with the CITY must be through the CONTRACTOR.

Article 11 - Special Conditions

11.1 Participating Offices: The City of Pembroke Pines Public Service Department will participate in this Agreement. The CITY reserves the sole right to add additional CITY offices to the Agreement.

11.2 Independent CONTRACTOR: All employees of the CONTRACTOR shall be, at all times, the sole employees of the CONTRACTOR under its sole discretion and not an employee or agent of the CITY. The CONTRACTOR shall supply competent and physically capable employees who shall have and wear proper identification. The CITY reserves the right to require the CONTRACTOR to remove an employee the CITY deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on CITY property is not in the best interest of the CITY. The CITY also reserves the right to dismiss any of the CONTRACTOR's drivers who fail to follow proper safety and traffic rules and regulations.

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

11.3.1 The Contractor shall pay the City, as liquidated damages, \$1,000.00 per calendar day of delay for any failure to mobilize the equipment and manpower resources required to perform First Push debris removal operations at the City's designated staging area within forty-eight (48) hours of being issued a Notice to Proceed.

11.3.2 The Contractor shall pay the City, as liquidated damages, \$250.00 per calendar day, per debris truck up to 10, for any failure to mobilize debris removal trucks at the City's designated staging area within one-hundred-twenty (120) hours of the City issuing a Notice to Proceed. Debris removal trucks shall be defined for this section as:

- 1) 35 yard or larger self-loader with an operator and chainsaw, or
- 2) 35 yard or larger debris truck with operator and chainsaw accompanied by a loader and operator. (10 minus [# of trucks responding]) times \$250 per calendar day)

11.3.3 The Contractor shall pay the City, as liquidated damages, \$500.00 per load of disaster debris collected in the City that is not disposed of at a City approved TDMS or City approved Final Disposal Site and/or any associated fines levied by a third party. Application of liquidated damages does not release the Contractor of all liability associated with hauling and depositing material to an unauthorized location.

11.3.4 The Contractor shall pay the City, as liquidated damages, \$500.00 per incident where the Contractor fails to repair damages that are caused by the Contractor or subcontractor(s). Application of liquidated damages does not release the Contractor from the responsibility of resolving or repairing damages.

11.4 Pre-event Condition: The CONTRACTOR shall return all staging and process areas to their pre-event condition or better.

11.5 No Solicitation: The CONTRACTOR shall not solicit work from private citizens or others to be performed in the designated work areas during the term of this Agreement.

11.6 Work Hours: The Debris Recovery Contractors will/may conduct its operations seven (7) days per week during the hours of 7 a.m. to 10 p.m. Monday through Friday and 8 a.m. to 10 p.m. on weekends and holidays unless otherwise directed by CITY's Director of Public Service or his designee. However, unless directed otherwise, volumetric reduction operations at temporary debris storage and reduction sites may be conducted on a twenty-four (24) hour, seven (7) day basis. CONTRACTOR will conduct its services at the times and dates necessary appropriate to perform its duties as provided for in this Agreement.

11.7 Protection of Property: The CONTRACTOR shall not enter upon private property for any reason without obtaining permission, and the CONTRACTOR shall be responsible for the preservation of all public and private property, along and adjacent to the work site(s) and shall use every precaution necessary to prevent damage and injury thereto. When or where any direct or indirect damage or injury is done to public or private property by or on account of the work, or in consequence of the non-execution thereof on the part of the CONTRACTOR, the CONTRACTOR shall restore, at its own expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing or rebuilding or otherwise restoring, as may be directed by the Public Service Director, or he shall make good such damage or injury in an acceptable manner.

11.8 Equipment: All of the CONTRACTOR'S equipment utilized for this Agreement shall be:

- A. In good operating condition and provided with all needed maintenance to sustain this condition for the duration of the Agreement, subject to inspection and approval by the CITY.
- B. Properly registered and insured in accordance with the Motor Vehicle Laws of Florida and in compliance with all federal, state, and local safety regulations.
- C. All loading equipment shall be operated from the road, street, or right-of-way using buckets and/or boom and grapple devices to collect and load debris. No equipment shall be allowed behind the curb or outside of the defined roadway/shoulder section unless directed by the CITY. If operation of the equipment shall be required outside of the ride-away, the CITY will provide Right-of-Entry agreements executed with the property owner prior to the CONTRACTOR work being authorized. No tracked equipment shall be operated on any paved or improved roadway surface.
- D. Prior to commencing operations, the CONTRACTOR shall affix to each piece of equipment, signs or markings indicating the Owner/Operator's name and unique identification number. One sign shall be placed on each side of the equipment. For trucks, trailers and other equipment intended to haul debris, the maximum volume of cubic yards of the load bed shall be shown. Signs shall be maintained in an easily readable fashion for the duration of the work hereunder. Minimum letter size shall be three (3) inches in height.
- E. All trucks and trailers utilized in hauling debris shall be provided with a tailgate that will permit the vehicle to be loaded to capacity and effectively contain the debris on the vehicle while hauling. Sideboards or other extensions to the bed are allowable provided they meet all applicable rules and regulations, cover the front and/or sides, and are constructed in a manner to withstand severe operating conditions. The sideboards must be constructed of 2"x 6" boards or greater and may not extend more than two (2) feet above the medal bed sides. Once installed, all sideboards and extensions must remain in place throughout the operation, or the vehicle shall be re-measured and re-marked. All extensions to the bed are subject to acceptance or rejection by the CITY inspector.
- F. The CONTRACTOR shall use trucks, trailers, and/or equipment approved for use under this Agreement for this Agreement only, and such equipment shall not be used for any other work during the term of this Agreement. A list of approved equipment shall be submitted to the CITY.

11.9 Securing Debris: The CONTRACTOR shall be responsible for properly and adequately securing debris within each piece of equipment utilized to haul debris. Prior to leaving the loading site, the CONTRACTOR shall ensure that each load is secure and trimmed

so that no debris extends horizontally beyond the bed of the equipment in any direction. All loose debris shall be reasonably compacted during loading and secured during transport. Tarps or other coverings shall be provided and used by the CONTRACTOR to prevent materials from falling or being blown from the bed.

11.10 Traffic Control: The CONTRACTOR shall mitigate the impact of operations on local traffic to the fullest extent practicable. The CONTRACTOR is responsible for establishing and maintaining appropriate traffic controls in all work areas. The CONTRACTOR shall provide sufficient signing, flagging and barricading to ensure the safety of vehicular and pedestrian traffic in all work areas. All work shall be done in conformity with all applicable federal, state and local laws, regulations and ordinances governing personnel, equipment and work place.

11.11 Inspection Stations:

- A. Upon request by the CITY, the CONTRACTOR shall construct and maintain inspection stations and towers at the entry point for each TDSR site and disposal area. These stations will be the points of load volume verification by the CITY.
- B. The trip tickets for debris hauling will be completed upon arrival of debris trucks at the inspection station. Upon request by the CITY, the CONTRACTOR shall make all necessary arrangements with private disposal operators to facilitate the posting of a CITY inspector/monitor onsite for the duration of debris disposal operations. Minimum required standards for the inspection station shall include an inspection tower with desks and chairs for at least two (2) persons, one of whom will be a representative of the CITY.
- C. The inspection towers shall be of sturdy construction using pressure treated wood and of sufficient height as to allow a complete view of the load bed of each piece of equipment being used to haul debris. The floor area shall be a minimum of 8'x 8' constructed of 2" x 8" joints, 16" on center with ¾" plywood supported by 6" x 6" posts. The perimeter of the floor area shall be protected by a 4' high wall constructed of 2" x 4" studs and ½" plywood. The floor area shall be covered with a roof to protect the occupants from the elements. The roof shall provide a minimum of 6'6" head room below the support beams. Access shall be by wooden steps with a handrail. At the conclusion of the debris removal process, the CONTRACTOR shall remove the structure.

11.12 Hazardous Materials:

- A. The CONTRACTOR shall set aside and reasonably protect any hazardous materials encountered during debris removal operations. The CONTRACTOR shall notify the CITY of the nature and location of any such debris encountered.
- B. The CONTRACTOR must not transport hazardous materials to the TDSR sites or landfills that are not specifically authorized to accept such materials. However, the CONTRACTOR will be responsible for proper handling and storage of any

hazardous materials brought to the TDSR site and if requested to manage the site by the CITY, the CONTRACTOR shall provide a suitable area at each TDSR site to accommodate such hazardous materials. The area shall be lined with impervious material and surrounded with berms or other containment structures to contain potential leakage.

- C. The CITY recognizes that construction and demolition debris might contain small amounts of asbestos, lead based paints, or similar materials. These materials may be handled in the same manner as other debris when they constitute less than twenty percent (20%) of a load of debris destined for a TDSR site. Any load containing more than twenty percent (20%) shall be taken directly to a properly permitted Class I landfill authorized to receive such hazardous waste.

11.13 Inoperable Private Vehicles and Equipment: The CONTRACTOR shall not move abandoned vehicles that interfere with debris removal operations. The CONTRACTOR shall instead report the location of such vehicles to the City of Pembroke Pines Police Department.

11.14 Reports: The CONTRACTOR shall make daily reports to the CITY to detail the progress of the debris removal and disposal program. Such reports shall include a description of all areas where work was done, detailing the street names and address blocks where debris removal was completed. The reports must also include the types and volumes of debris transported, reduced and disposed of.

11.15 Affiliation: CONTRACTOR and its employees, agents, and subcontractors shall not be employed by or affiliated with the Debris Monitoring Contractors. For purposes of this Agreement, Debris Monitoring Contractors are those contractors that were awarded a contract pursuant to RFP AD-14-03.

Article 12- General Conditions

12.1 Interpretation and Venue: This Agreement is made under, and in all respects shall be interpreted, construed, and governed by and in accordance with, the laws of the State of Florida. Venue for any legal action resulting from this Agreement shall lie in the Broward County, Florida.

12.2 Captions: The captions utilized in this Agreement are for purposes of identification only and do not control or affect the meaning or interpretation of any of the provisions hereof.

12.3 Amendment: This Agreement may not be amended, released, discharged, rescinded or abandoned, except by a written instrument duly executed by each of the parties hereto.

12.4 Waiver: The failure of either party hereto at any time to enforce any of the provisions of this Agreement will in no way constitute or be construed as a waiver or relinquishment of such provision or of any other provision hereof, nor in any way affect the validity of, or the right thereafter to enforce, each and every provision of this Agreement.

12.5 Civil Rights: During the term of this Agreement CONTRACTOR assures CITY that it is in compliance with Title VII of the 1964 Civil Rights Act, as amended, and the Florida Civil Rights Act of 1992, in that CONTRACTOR does not on the grounds of race, color, national origin, religion, sex, age, disability or marital status, discriminate in any form or manner against CONTRACTOR's employees or applicants for employment. CONTRACTOR understands and agrees that this Agreement is conditioned upon the veracity of this statement of assurance.

12.6 Other Laws: CONTRACTOR shall at all times comply with all federal, state and local laws, rules and regulations.

12.7 Severability: The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

12.8 Records: CONTRACTOR shall keep such records and accounts of all services provided under this Agreement and require any and all contractors and subcontractors to keep records and accounts of all services provided as may be necessary in order to record complete and correct entries as to fees and expenses charged for services under this Agreement. Such books and records will be available at all reasonable times for examination and audit by CITY and shall be kept for a period of three (3) years after the completion of all work to be performed pursuant to this Agreement. Incomplete or incorrect entries in such books and records will be grounds for disallowance by CITY of any fees or expenses based upon such entries. All records developed subject to this Agreement shall be deemed public records and subject to inspection in accordance with Chapter 119, Florida Statutes.

12.9 Independent Contractor: This Agreement does not create an employee/employer relationship between both Parties. It is the intent of both Parties that the CONTRACTOR is an independent contractor under this Agreement and not the CITY's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers Compensation Act, and the State unemployment insurance law. The CONTRACTOR shall retain sole and absolute discretion in the judgment of the manner and means of carrying out CONTRACTOR's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of CONTRACTOR, which policies of CONTRACTOR shall not conflict with CITY, or United States policies, rules or regulations relating to the use of CONTRACTOR's funds provided for herein. The CONTRACTOR agrees that it is a separate and independent enterprise from the CITY, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the CONTRACTOR and the CITY and the CITY will not be liable for any obligation incurred by CONTRACTOR, including but not limited to unpaid minimum wages and/or overtime premiums.

12.10 No Contingent Fees: Vendor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Vendor to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Vendor any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or Infraction of this provision, the City shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

12.11 Dispute Resolution: Upon the occurrence of any dispute or disagreement between the parties hereto arising out of or in connection with any term or provision of this Agreement, the subject matter hereof, or the interpretation or enforcement hereof (the "Dispute"), both Parties shall engage in informal, good faith discussions and attempt to resolve the Dispute. In connection therewith, upon written notice of either party, each of the parties will appoint a designated officer whose task it shall be to meet for the purpose of attempting to resolve such Dispute. The designated officers shall meet as often as the parties shall deem to be reasonably necessary. Such officers will discuss the Dispute. If the parties are unable to resolve the Dispute in accordance with this Section, and in the event that either of the parties concludes in good faith that amicable resolution through continued negotiation with respect to the Dispute is not reasonably likely, then the parties may mutually agree to submit to binding or nonbinding arbitration or mediation.

12.12 Binding Authority: Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

12.13 Exhibits: Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits if not physically attached should be treated as part of this Agreement and are incorporated herein by reference.

12.14 Legal Representation: It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement and, accordingly, the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both parties.

12.15 Notices: Wherever provision is made in this Agreement for the giving, service or delivery of any notice, statement or other instrument, such notice shall be in writing and shall be deemed to have been duly given, served and delivered, if delivered by hand, mailed by United States registered or certified mail, sent by facsimile addressed as follows:

As to CONTRACTOR: Custom Tree Care, Inc.
 6021 SW 29th Street, PMB 130,
 Topeka, KS 66614
 (785) 478-9805 (phone)
 (785) 478-4195 (facsimile)

As to CITY: Charles F. Dodge, City Manager
City of Pembroke Pines
601 City Center Way
Pembroke Pines, FL 33025
(954) 450-1040 (phone)
(954) 437-1149 (facsimile)

With a Copy to: Director of Public Services
City of Pembroke Pines
8300 South Palm Drive
Pembroke Pines, FL 33025
(954) 518-9060 (phone)
(954) 435-6755 (facsimile)

With a Copy to: Samuel S. Goren, Esq., City Attorney
Goren, Cherof, Doody & Ezrol P.A.
3099 East Commercial Boulevard, Suite 200
Fort Lauderdale, Florida 33308
(954) 771-4500 (phone)
(954) 771-4923 (facsimile)

Each party hereto may change its mailing address by giving to the other party notice of such change.

12.16 Entire Agreement: This Agreement is intended by both parties hereto to be final expression of this Agreement, and it constitutes the full and entire understanding between the parties with respect to the subject hereof, notwithstanding any prior representations, statements, or agreements to the contrary heretofore made.

12.17 Assignment of Rights/Subletting of Contract: Neither this Agreement nor any interest herein shall be assigned, subcontracted, transferred, or encumbered by CONTRACTOR, except with the prior approval of the City Manager or designee, which shall be in his sole and absolute discretion. CONTRACTOR may subcontract any portion of the work required by this Agreement pursuant to a Subcontractor Plan. The Subcontractor Plan shall specify the anticipated work to be completed by subcontractors, and include a list of all such subcontractors. If additional subcontractors are to be used during the term of this Agreement, other than those submitted in the Proposal, a list of such subcontractors shall be provided to the City Manager or designee, subject to his approval, prior to use.

12.18 Attorney's Fees: In the event that either party brings suit for enforcement of this Agreement, the prevailing party shall be entitled to attorney's fees and court costs in addition to any other remedy afforded by law.

12.19 Compliance with Federally Required Contract Provisions: CONTRACTOR shall comply with all, local, state, and federally required contract provisions, as amended from time to time.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the date first written above.

THE REST OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.

CITY OF PEMBROKE PINES

ATTEST:

MARLENE GRAHAM, CITY CLERK

BY: MAYOR FRANK C. ORTIS

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

CONTRACTOR

WITNESSES:

Print Name: MAURA GATHERS

BY: GREG GATHERS
Print Name: GREG GATHERS

Title: PRESIDENT

Print Name:

STATE OF Kansas)

COUNTY OF Shawnee)

BEFORE ME, an officer duly authorized by law, to administer oaths and take acknowledgments, personally appeared Greg Gathers as President of CustomTreeCare, Inc., an organization authorized to do business in the State of Florida, who is personally known to me or who has produced as identification and acknowledged (s)he executed the foregoing Agreement as the proper official of CustomTreeCare, Inc. for the use and purposes mentioned in it and deed of _____.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this 27th day of August, 2018.

My Commission Expires: 1-18-2021

Dawn R. Stratmann
NOTARY PUBLIC

