

## CONTRACT/AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_ day of \_\_\_\_\_, 2021\_\_\_ by and between, Tyler County a municipal corporation with principal offices located at \_\_\_507 North Pine Street, Woodville, Texas 75979\_\_\_\_\_ (the "COUNTY") and \_\_\_Custom Tree Care, Inc.\_\_\_\_\_, a corporation with principal offices located at \_\_6201 SW 29<sup>th</sup> Street PMB #130, Topeka, KS 66614\_\_\_\_\_ (the "Contractor") to provide for Disaster Debris Removal and Disposal Services.

Now therefore, in consideration of the mutual covenants hereinafter set forth, the County and Contractor agree as follows:

### 1) The Contract Documents

The contract documents shall consist of this Agreement, Request for Proposal Document No. \_\_\_\_\_, titled "Debris Management for Tyler County", and including all conditions therein, (General Terms and Conditions, Special Conditions and/or Special Provisions), drawings, Technical Specifications, all addenda, the Contractor's bid/proposal included herein, and all modifications issued after execution of this Agreement. These contract documents form the Agreement, and all are as fully a part of the Agreement as if attached to this Agreement or repeated therein. In the event that there is a conflict between Request for Proposal No. \_\_\_\_\_, Debris Management for Tyler County, as issued by the County, and the Contractor's Proposal, \_\_\_\_\_ as issued by the County shall take precedence over the Contractor's Proposal. Furthermore, in the event of a conflict between the document and any other contract documents, this Agreement shall prevail.

### 2) Contract Term

The successful contractor shall be awarded a contract for three (3) years with the option to renew the contract for two (2) additional one (1) year periods. Options for renewal will only be exercised upon mutual written agreement. Unit prices will remain firm for the first year and may be adjusted according to the Consumer Price Index (CPI) for each subsequent year.

### 3) The Work

- 3.1. The Contractor shall perform all work for the County required by the contract documents as set forth below:
  - 3.1.1 Contractor shall furnish all labor, materials, and equipment necessary to provide Disaster Debris Removal and Disposal Services as required by the Scope of Work of County's Request for Proposal.

- 3.1.2 Contractor shall adhere to all requirements of the Request for Proposal document.
- 3.1.3 Contractor shall supervise the work force to ensure that all workers conduct themselves and perform their work in a safe and professional manner. Contractor shall comply with all OSHA safety rules and regulations in the operation of equipment and in the performance of the work. Contractor shall have a competent field supervisor on the job site to enforce these policies and procedures at the Contractor's expense.
- 3.1.4 Contractor shall follow all of the requirements of 2 C.F.R. 200.321 in the execution of this Contract, and shall require and enforce similar compliance with all sub-contractors for contracts awarded by non-Federal Entities under Federal Awards which are incorporated herein by reference as if enumerated herein in their entirety.
- 3.1.5 FHWA-ER Program and 2 CFR Part 200 Contract Requirements
  - 3.1.5.1 The County intends to seek reimbursement from FHWA for the eligible debris removal performed on federal aid roads. Consequently, the County mandates compliance from the successful Contractor regarding the following:
    - 3.1.5.2 FHWA Form 1273, titled Standard Federal-aid Provisions. FHWA Form 1273 will be included in the final contract.
    - 3.1.5.3 Buy America Requirements
    - 3.1.5.4 49 CFR Part 26, Disadvantage Business Enterprise Program
    - 3.1.5.5 American with Disabilities Act of 1990 (ADA)
    - 3.1.5.6 Convict Labor Prohibition
    - 3.1.5.7 All invoices must conform to the billing methodology specified in the contract. Failure to properly invoice will result in non-payment of invoices.
      - 3.1.5.7.1 Disaster related purchases (those made with a special "disaster purchase order form" shall never be co-mingled with regular invoices.
      - 3.1.5.7.2 All Disaster invoices shall include the location where delivered or where used, if appropriate.
    - 3.1.5.8 All Contractor's project invoices will be audited prior to payment to ensure compliance with Federal documentation requirements:
      - 3.1.5.8.1 Time Card.
      - 3.1.5.8.2 Daily work reports for every employee, by each separate FEMA category of work.
      - 3.1.5.8.3 Daily equipment use, by each separate FEMA category of work.
      - 3.1.5.8.4 List of all supplies and materials used, by each separate FEMA category of work.
      - 3.1.5.8.5 Includes both prime and sub-contractors.
    - 3.1.5.9 All work must be properly grouped according to FEMA damage categories as specified in the contract.
    - 3.1.5.10 FHWA-ER and 200 C.F.R. Program contract requirements are subject to any changes provided by FEMA or FHWA during the term of the contract. Based on the current guidance, FHWA will only reimburse the County for the initial collection, hauling and tipping fee, if applicable, of eligible debris. Debris

reduction operations are not eligible for reimbursement unless the debris is being reduced as part of a rolling pickup operation. As a result, the FHWA-ER eligible debris that is collected during the first pass shall be hauled to the nearest Final Disposal Site unless otherwise directed by the County.

3.1.6 Contractor shall comply with any and all other Federal, State, and local laws and regulations now in effect, or hereinafter enacted during the term of this Agreement, which are applicable to the Contractor, its employees, agents or subcontractors, if any, with respect to the work and services described herein.

3.1.7 MINORITY / WOMEN'S / LABOR SURPLUS FIRMS PARTICIPATION: The County of \_\_\_\_\_ Tyler \_\_\_\_\_, in accordance with the requirements as stated in C.F.R. 200.32.1 encourages the active participation of minority businesses, women's business enterprises and labor surplus area firms as a part of any subsequent agreement whenever possible. If subcontracts are to be let, through a prime contractor, that contractor is required to take the affirmative steps listed in items (1) through (5) below.

(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;

(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.

3.1.8 Time and Material Contracting (if required):

As may be necessary under this Agreement, whenever separate Time and Materials contracts for any tasks not specified in this document are required, the following requirements shall apply:

3.17.1 Unless otherwise specified in writing, no Time and Materials contract shall exceed seventy (70) hours of work. Any work done beyond seventy (70) hours is at the Contractor's risk.

3.17.2 All Time and Materials contracts must have a not-to-exceed cost cap which the Contractor exceeds at their own risk.

3.17.3 All Time and Materials contracts are subject to ongoing monitoring by either County staff and/or an independent third-party monitoring firm.

3.17.4 All Time and Materials contracts listing equipment shall include FEMA Equipment Rate Sheet four (4) digit codes as reference.

3.19 Bonding: If required, Contractor shall provide the County with a Performance and Payment Bond in the amount of \_\_\_\_\_ within seven (7) calendar days of a written Notice to Proceed by the County. Once activated, the Payment and Performance Bonds shall be in force for a period of not less than the project duration from the date of original execution by the Bond Surety.

4) **Insurance**

4.1 Contractor shall obtain at Contractor's expense all necessary insurance in such form and amount as specified in the original bid or proposal document or as required by the County's Risk and Safety Manager before beginning work under this Agreement including, but not limited to, Worker's Compensation, Commercial General Liability, and all other insurance as required by the County, including Professional Liability when appropriate. Contractor shall maintain such insurance in full force and effect during the life of this Agreement. Contractor shall provide to the County's Risk and Safety Manager certificates of all insurances required under this section prior to beginning any work under this Agreement. The Contractor will ensure that all subcontractors comply with the above guidelines and will retain all necessary insurance in force throughout the term of this agreement.

4.2 Contractor shall indemnify and hold the County harmless for any damages resulting from failure of the Contractor to take out and maintain such insurance. Contractor's Liability Insurance policies shall be endorsed to add the County as an additional insured. Contractor shall be responsible for payment of all deductibles and self-insurance retentions on Contractor's Liability Insurance policies.

5) **Time of Commencement and Substantial Completion**

5.1 The work to be performed under this Agreement shall be commenced after County execution of the Agreement and upon issuance of a Notice to Proceed by the County as the result of an event requiring Contractor's services. The Contractor shall begin preparation for mobilization immediately after receiving the Notice to Proceed and be fully operational within forty-eight (48) hours. If emergency road clearance is needed, Contractor shall have crews working within twenty-four (24) hours.

5.2 The work, including site restoration prior to close-out shall be completed within thirty (30) calendar days after receiving notice from the County that the last load of debris has been delivered.

6) **Contract Sum**

Pricing for this Agreement shall be in accordance with the schedule of unit prices attached hereto as Appendix \_\_\_\_\_A\_\_\_\_\_.

7) **Payment**

7.1 The County, or its authorized representative, will monitor, verify and document with load tickets or unit rate tickets the completion of all work, as defined in the scope of work. The Contractor(s) will be provided with copies of this documentation. These

documents will be used by the Contractor as backup data for invoice submittals. Work not ticketed or not authorized by the County will not be approved for payment. Additionally, any ticket submitted for payment must be legible and properly completed. Tickets missing loading address, truck number, certified capacity, collection monitor signature, disposal site, load call or disposal monitor signature will not be paid, nor will the County be responsible for unpaid incomplete tickets.

- 7.2 If tasked with Private property and FHWA-ER funded roadway debris removal operations, these will be invoiced separately from ROW collection removal operations. The County reserves the right to request additional invoice separation by debris type (C&D, vegetative debris, white goods, or other scope of service items), program (ROW collection, private property debris removal, etc.).
- 7.3 Invoices shall be submitted to the County's authorized representative on a weekly basis unless otherwise directed by the County. All invoices must be submitted with a hard copy of the invoice and an electronic copy (Microsoft Excel format) of the invoice detail. The invoice detail must consist of a tabular report listing all ticket information required by the County. Invoice detail submittals will be checked against County records and shall cover for no more than a 30-day period. County records are the basis of all payment approvals. Only one hundred percent (100%) accurate and complete invoices shall be forwarded by the County authorized representative to the County for Net 10 payment.
- 7.4 If required, a retainage will be withheld from each reconciled invoice until the end of the project, not to exceed 10%. In order to recover the retainage, the Contractor(s) must successfully complete, and receive a letter of completion from the County, for all work zones. Retainage will be held until final reconciliation is complete. Portions of the retainage may be held by the County to repair damages caused by the Contractor(s) to public or private property, pending damages are investigated, verified to be caused by Contractor, and opportunity is given to Contractor to repair damages.
- 7.5 No separate payment will be made for mobilization and demobilization operations. These costs are to be included in the respective unit prices bid for debris removal and will not be adjusted based on the total amount of debris removed in the contract.
- 7.6 The County of \_\_Tyler\_\_ will not pay and/or reimburse any additional costs including, but not limited to, travel, mileage, lodging, meals and other travel and subsistence expenses. Price submittals should be inclusive of all such expenses.
- 7.7 The Contractor is responsible for payment to all subcontractors utilized for the services rendered within this scope of work. The Contractor shall execute release waivers with all subcontractors to release the County from payment to subcontractors directly. The release waivers for all subcontractors shall be provided to the County prior to final retainage release.

- 7.8 Payment for disposal cost incurred by the Contractor(s) at County approved Final Disposal Sites will be made at the cost incurred by the Contractor. The County will either coordinate payment of disposal costs directly with the Final Disposal Site or require the Contractor to pay the disposal fees and then invoice the County. The Contractor(s) shall submit a copy of all invoice(s) received by the County approved Final Disposal Site, an electronic copy tabulating all scale or load tickets issued by the County approved Final Disposal Site, and proof of Contractor payment to the County approved Final Disposal Site. The County will not render payment for disposal costs until the Contractor submits applicable disposal site permits or site information for each authorized Final Disposal Site.
- 7.9 Contractor(s) must submit a final invoice within thirty (30) days of completion of scope of work. Completion of scope of work will be acknowledged, in writing, by the County Debris Manager. The final invoice must be marked "FINAL INVOICE" and no additional payments will be made after the Contractor's final invoice.
- 7.10 In the event any portion of this scope of work is to be funded by State or Federal funds, the Contractor will comply with all requirements of the State or Federal government applicable to the use of the funds. The County will only pay for those items deemed eligible by FEMA or FHWA, unless the County otherwise agrees in writing.
- 7.11 All debris clearance invoices will be audited for compliance with Federal record keeping and documentation requirements prior to payment.
- 7.12 Payment will only be made for debris that FEMA determines to be eligible.

8) **Waiver of Liens**

Prior to final payment of the Contract Sum, a final waiver of lien shall be submitted by all suppliers, subcontractors, and/or Contractors who worked on the project that is the subject of this Agreement. Payment of the invoice and acceptance of such payment by the Contractor shall release the County from all claims of liability by Contractor in connection with the agreement.

9) **Warranty**

Contractor warrants the work against defect for a period of one (1) year from the date of completion of work. In the event that defect occurs during this time, Contractor shall perform such steps as required to remedy the defects. Contractor shall be responsible for any damages caused by defect to affected area or to interior structure. The one (1) year warranty period does not begin until substantial completion of the entire project, and the subsequent release of any Performance or Payment Bonds, which may be required by the original bid document.

10) **Indemnification**

10.1 The Contractor shall indemnify and hold harmless the County, its elected and appointed officials, employees, and agents from any and all claims, suits, actions, damages, liability, and expenses (including attorneys' fees) in connection with loss of life, bodily or

personal injury, or property damage, including loss of use thereof, directly or indirectly caused by, resulting from, arising out of or occurring in connection with the operations of the Contractor or its officers, employees, agents, subcontractors, or independent Contractors, excepting only such loss of life, bodily or personal injury, or property damage solely attributable to the gross negligence or willful misconduct of the County or its elected or appointed officials and employees. The above provisions shall survive the termination of this Agreement and shall pertain to any occurrence during the term of this Agreement, even though the claim may be made after the termination hereof.

10.2 Upon completion of all Services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive indefinitely.

(1) The Contractor shall pay all claims, losses, liens, settlements or judgments of any nature whatsoever in connection with the foregoing indemnifications including, but not limited to, reasonable attorney's fees (including appellate attorney's fees) and costs.

(2) County reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of Contractor under the indemnification agreement.

10.3 Nothing contained herein is intended nor shall be construed to waive the County's rights and immunities under the common law as amended from time to time.

**11) Non-Discrimination & Equal Opportunity Employment**

During the performance of the Contract, the Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, color, sex including pregnancy, religion, age, national origin, marital status, political affiliation, familial status, sexual orientation, gender identity and expression, or disability if qualified. The Contractor will take affirmative action to ensure that employees and those of its subcontractors are treated during employment, without regard to their race, color, sex including pregnancy, religion, age, national origin, marital status, political affiliation, familial status, sexual orientation, gender identity and expression, or disability if qualified. Such actions must include, but not be limited to, the following: employment, promotion; 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 and its subcontractors shall agree to post in conspicuous places, available to its employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. The Contractor further agrees that he/she will ensure that all subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause.

**12) Independent Contractor**

This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that the Contractor is an independent contractor under this Agreement and the County's employee for any 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 Worker's 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 County, State, 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 County, that it had 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 County and the County will not be liable for any obligation incurred by Contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

13) **Assignment and Subcontracting**

Contractor shall not transfer or assign the performance required by this Agreement without the prior consent of the County. The Contractor reserves the right to subcontract portions of this agreement.

14) **Notice**

Whenever either party desires or is required under this Agreement to give notice to any other party, it must be given by written notice either delivered in person, sent by U.S. Certified Mail, U.S. Express Mail, air or ground courier services, or by messenger service, as follows:

COUNTY

County Manager

\_\_\_\_\_

With a copy to County Attorney at the following address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

CONTRACTOR




CORPORATE ACKNOWLEDGEMENT

STATE OF KANSAS

COUNTY OF SHAWNEE

I HEREBY CERTIFY that on this day, before me, an Officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared GREG GATHERS of CUSTOM TREE CARE, INC., a KANSAS Corporation, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged before me that he/she executed the same.

WITNESS my hand and official seal this 17<sup>th</sup> day of December, 2021.

  
Signature of Notary Public  
State of KANSAS

**NOTARY PUBLIC** State of Kansas  
Maura M. Gathers  
My Appt. Exp. 06-18-2025

\_\_\_\_\_  
Print, Type or Stamp  
Name of Notary Public

06-18-2025  
My Appointment Expires

Personally Known to me or

Produced Identification

\_\_\_\_\_  
Type of I.D. Produced

DID take an oath,  
or

DID NOT take an oath

COUNTY OF Tyler

\_\_\_\_\_  
XXXXXXXXXXXX, Mayor

\_\_\_\_\_  
Date

Jaime S. Stanchetta  
XXXXXXXXXXXX, County ~~Manager~~ Judge

12/16 ~~21~~ 21  
Date

ATTEST:  
\_\_\_\_\_  
XXXXXXXXXXXX, County Clerk

\_\_\_\_\_  
Date

Approved as to form and legal sufficiency:

\_\_\_\_\_  
XXXXXXXXXXXX, County Attorney

\_\_\_\_\_  
Date

CUSTOM TREE CARE, INC.  
Company Name

[Signature]  
Signature of President/Owner

GREG GATHERS  
Type/Print Name of President/Owner

12/16/2021  
Date

ATTEST:  
[Signature]  
Corporate Secretary

MAURA GATHERS  
Type/Print Name of Corporate Secretary

12/16/2021  
Date

SCHEDULE D  
44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

The undersigned [Offeror] 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 Offeror, Custom Tree Care, Inc., 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.

Authorized Officer: 

Name: GREG GATHERS

Title: PRESIDENT

Date: 12/16/2007

## EXHIBIT II

### Required Clauses – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards Under 2 CFR Part 200

Any contract or agreement executed arising from the present solicitation will include, at a minimum, the following contract clauses. Additional terms and conditions, specified with 2 CFR Part 200 et seq, will also be required within any contract or agreement executed with Tyler County, TX ["OWNER"].

1. **Equal Employment Opportunity.** During the performance of this Agreement, the CONTRACTOR agrees as follows:
  - a. 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.
  - b. 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.
  - c. 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.
  - d. 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.
  - e. 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.
  - f. 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 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 as 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.

- g. The CONTRACTOR will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) 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 that 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.

2. **Compliance with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. As required by Federal program legislation:**

- a. CONTRACTOR agrees that it shall comply with the *Davis-Bacon Act (40 USC 3141-3144 and 3146-3148)* as supplemented by the Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").
  - i. In accordance with the statute, CONTRACTOR is 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, CONTRACTOR shall pay wages not less than once a week. CONTRACTOR agrees that, for any Task Order to which this requirement applies, the Contract is conditioned upon CONTRACTOR's acceptance of the wage determination.
- b. CONTRACTOR agrees that it shall comply with the *Copeland "Anti-Kickback" Act (40 USC 3145)*, as supplemented by the 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") and are incorporated by reference into this Agreement.
  - i. Contractor. The 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.
  - ii. Subcontracts. The CONTRACTOR or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
  - iii. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a CONTRACTOR and subcontractor as provided in 29 C.F.R. § 5.12.

3. **Compliance with the Contract Work Hours and Safety Standards Act.**

- a. Overtime requirements. The CONTRACTOR or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall not require nor 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 (1) of this section the CONTRACTOR and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the 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 (a) 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 (a) of this section.
  - c. Withholding for unpaid wages and liquidated damages. The OWNER 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) of this section.
  - d. Subcontracts. The CONTRACTOR or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a) through (d) of this section and 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 (a) through (d) of this section.
4. **Rights to Inventions Made Under a Contract or Agreement.** As required by Federal program legislation, CONTRACTOR agrees to comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FEMA.
  5. **Clean Air Act and Federal Water Pollution Control Act.** As required by Federal program legislation: CONTRACTOR agrees to comply with the following federal requirements:
    - a. Clean Air Act.
      - i. 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. (2)
      - ii. The CONTRACTOR agrees to report each violation to the OWNER and understands and agrees that the OWNER will, in turn, report each violation as required to assure notification to the State of Florida, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

iii. 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.

b. Federal Water Pollution Control Act

i. 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.

ii. The CONTRACTOR agrees to report each violation to the OWNER and understands and agrees that the OWNER will, in turn, report each violation as required to assure notification to The State of Texas, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

iii. 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. **Suspension and Debarment.**

a. 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, and will, verify that neither CONTRACTOR, its principals (defined at 2 C.F.R. § 180.995), nor 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).

b. The CONTRACTOR will 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.

c. CONTRACTOR's certification is a material representation of fact relied upon by the OWNER. 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 The State of Florida, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

d. 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 throughout the period this Agreement. The CONTRACTOR further agrees to include a provision requiring such compliance in its lower-tier covered transactions.

7. **Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)**

a. The CONTRACTOR certifies to the OWNER that it has not and will not use 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. *The required Certification is provided as an addendum to this Agreement.*

b. CONTRACTOR will also ensure that each tier of subcontractor(s) shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures will be forwarded from tier-to-tier up to the OWNER.

8. **Procurement of Recovered Materials.** As required by federal program legislation, CONTRACTOR agrees to the following:

a. 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.
  - b. Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
9. **DHS Seals, Logos, 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.
10. **Compliance with Federal Law, Regulations, and Executive Orders.** The CONTRACTOR acknowledges that FEMA financial assistance will be used to fund the contract only. The CONTRACTOR will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
11. **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.
12. **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 actions pertaining to this Agreement.
13. **Access to Records**
  - a. The contractor agrees to provide (insert name of state agency or local or Indian tribal government), (insert name of recipient), 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.
  - b. 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.
  - c. 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."



Tyler TX Bid sheet  
" APPENDIX A "



DEBRIS REMOVAL, PROCESSING, AND DISPOSAL COST SHEET

ITEM	DESCRIPTION OF SERVICE	COST	UNIT
1	Mobilization and Demobilization	0	0
2	Vegetative and C&D Debris Removal from Public Property (Right-of-Way) and Hauling to Temporary Debris Storage and Reduction Site (TDSRS) or other disposal sites	6.96	CY
3	Vegetative and C&D Debris Removal from Private Property (Right-of-Entry Program) and Publicly Owner Property (other than Right-of-Way) and hauled to TDSRS or other disposal sites	7.80	CY
4	Vegetative and C&D Debris Removal from Public Property (Right-of-Way) and Hauling Directly to Final Disposal Site	7.96	CY
5	Vegetative and C&D Debris Removal from Temporary Debris Storage and Reduction Site (TDSRS) and Hauling to Final Disposal Site	3.95	CY
6	Management of TDSRS - Temporary Debris Storage and Reduction Site	1.00	CY
7	Processing (Grinding/Chipping) of Vegetative Debris at TDSRS or Final	2.40	CY
8	Grinding or consolidation of C&D debris at TDSRS	1.25	CY
9	Processing (Open Burning) of Vegetative Debris at TDSRS or Final Disposal	1.25	CY
10	Processing Burning of Vegetative debris using air curtain incinerators at TDSRS or final disposal	1.80	CY
11	Pick Up and Haul of White Goods to Site within County	35	UNIT
12	Pick Up and Disposal of Hazardous Material	5	LB
13	Freon Management and Recycling	35	UNIT
14	Dead Animal Collection, Transportation and Disposal	2	LB
Extraction of hazardous stumps (50% of root ball exposed) resulting from trees growing on the right of way and Hauling to Final Disposal Site			
15	6 inch diameter to 11 inch diameter (Based on Stump Conversion Table)	6.96	CY
16	12 inch diameter to 24 inch diameter (Based on Stump Conversion Table)	6.96	CY
17	25 inch diameter to 47 inch diameter	225	STUMP
18	25 inch diameter to 47 inch diameter	225	STUMP
Debris from leaners and hangers will be piled on right of ways and will be hauled and disposed of under items 2-9			
19	Removal of hazardous hanging limbs greater than 2 inches	78	PER TREE
20	Removal of hazardous standing trees 6" - 12" in diameter	48	EACH
21	Removal of hazardous standing trees 13" - 24" in diameter	138	EACH
22	Removal of hazardous standing trees 25" - 36" in diameter	238	EACH
23	Removal of hazardous standing trees 37" - 48" in diameter	348	EACH
24	Removal of hazardous standing trees greater than 48" in diameter	348	EACH
Marine Debris Removal			
25	Canals, bayous and ditches	12	PER LF
26	Bays and other open waters	2500	PER ACRE
27	Boat removal	29	PER LF
The following items shall be billed on a time and material basis according to the attached schedules:			
28	Emergency Road Clearance	See Equipment & Labor Rates	
29	Demolition of Structures (Debris will be hauled and disposed of under items 2-9)	2.00	SQ/FT
30	Disaster event Generated Hazardous Wastes Abatement; Biohazardous Wastes Abatement		N/A
31	Generators, light plants, water pumps, portable toilets and other required equipment or materials	10%	COST PLUS

Notes:

1. This price assumes that TDSRS's, final disposal site other approved disposal sites are within 30 miles. For all distances over 30 miles add 0.15 per cubic yard per mile.
2. This price assumes final disposal is within 30 miles of TDSRS. For all distances over 30 miles add 0.15 per cubic yard per mile.
3. Includes management of site remediation.
4. All stumps placed on the right of way by citizens over 24" will be converted to cubic yards per the attached FEMA Stump Conversion Chart and charged as regular debris under Items 2 - 7.
5. Invoices to be based on incoming load tickets.
6. Invoices to be based on outgoing load tickets.

*The amount under this contract to be paid to the debris removal services contractor shall not exceed \$1,000,000 in total unless approved by Commissioner's Court, any services rendered whose costs cause the total cost of this contract to exceed the \$1,000,000 cap are performed at the sole risk and cost of the contractor, if not approved by Commissioner's Court.*

LABOR AND MATERIAL RATES COST SHEET

Personnel Description	Unit	Unit Price
Operations Manager	Hour	75
Superintendent with truck, phone & radio	Hour	55
Foreman with truck, phone & radio	Hour	55
Safety/Quality Control Inspector with vehicle, phone & radio	Hour	55
Inspector with vehicle, phone & radio	Hour	55
Climber with gear	Hour	75
Saw Hand with chainsaw	Hour	45
Laborers & Flagmen	Hour	40
Public Assistance Manager	Hour	45
Documentation Clerk	Hour	30
Timekeeper	Hour	30
HazMat Professional	Hour	70
Household HazMat Inspection & Removal Crew	Hour	130
Materials Description	Unit	Unit Price
Fill Dirt for Stump Holes – Purchased, Placed, and Shaped	CY	18

Notes:

1. The Equipment, labor and material rates shown above are for tasks requested by the County which are not covered in the rates (per cubic yard) for normal debris removal and reduction.
2. Pricing includes operator, fuel, and maintenance. Depending on the severity of the disaster, some or all of the above equipment will be required. Contractor will ensure sufficient numbers or each type of listed equipment are available to meet the needs for a particular disaster.
3. The listed equipment should cover all possible equipment needs following disaster. Contractor has access and contacts for any other equipment that might be required and will negotiate a rate with the County if need arises for equipment not on list.

*The amount under this contract to be paid to the debris removal services contractor shall not exceed \$1,000,000 in total unless approved by Commissioner's Court, any services rendered whose costs cause the total cost of this contract to exceed the \$1,000,000 cap are performed at the sole risk and cost of the contractor, if not approved by Commissioner's Court.*

## EQUIPMENT RATES COST SHEET

Equipment Description	Unit	Unit Price
JD 544 Wheel Loader with debris grapple	Hour	135
JD 644 Wheel Loader with debris grapple	Hour	135
Extendaboom Forklift with debris grapple	Hour	100
753 Bobcat Skid Steer Loader with debris grapple	Hour	85
753 Bobcat Skid Steer Loader with bucket	Hour	85
753 Bobcat Skid Steer Loader with street Sweeper	Hour	85
30-50 HP Farm Tractor with box blade or rake	Hour	70
2-2 1/2 Cu.Yd. Articulated Loader with bucket	Hour	130
3-4 Cu.Yd. Articulated Loader with bucket	Hour	130
JD 648E Log Skidder or equivalent	Hour	120
CAT D4 Dozer	Hour	125
CAT D6 Dozer	Hour	150
CAT D8 Dozer	Hour	180
CAT 125 - 140 HP Motor Grader	Hour	125
JD 690 Trackhoe with debris grapple	Hour	135
JD 690 Trackhoe with bucket & thumb	Hour	135
Rubber Tired Trackhoe with debris grapple	Hour	130
JD 310 Rubber Tired Backhoe with bucket and hoe	Hour	100
Rubber Tired Excavator with debris grapple	Hour	130
210 Prentiss Knuckleboom with debris grapple	Hour	165
Self-Loader Scraper Cat 623 or equivalent	Hour	130
Hand Fed Debris Chipper	Hour	70
300 - 400 Tub Grinder	Hour	350
800 - 1,000 HP Diamond Z Tub Grinder	Hour	475
30 Ton Crane	Hour	175
50 Tone Crane	Hour	295
100 Ton Crane (8 hour minimum)	Hour	495
40-60' Bucket Truck	Hour	165
Service Truck	Hour	70
Water Truck	Hour	70
Portable Light Plant	Hour	25
Equipment Transports	Hour	120
Pickup Truck, Unmanned	Hour	25
Self-loading Dump Truck with Knuckleboom and debris grapple	Hour	185
Single Axle Dump Truck, 5 - 12 Cu.Yd.	Hour	90
Tandem Dump Truck, 16 - 20 Cu.Yd.	Hour	100
Trailer Dump, 24 - 40 Cu.Yd.	Hour	110
Trailer Dump Truck, 61 - 80 Cu.Yd.	Hour	120
Power Screen	Hour	275
Stacking Conveyor	Hour	30
Off Road Trucks	Hour	130

**Stump Conversion Table  
Diameter to Volume Capacity**

The qualification of the cubic yards of debris for each size of stump is the following table was derived from FEMA field studies conducted throughout the State of Florida during the debris removal operations following Hurricane Charley, Frances, Ivan and Jeanne. The following formula is used to derive cubic yards.

$$\frac{[(\text{Stump Diameter}^2 \times 0.7854) \times \text{Stump Length}] + [(\text{Root ball Diameter}^2 \times 0.7854) \times \text{Root Ball Height}]}{46656}$$

0.7854 is one-fourth Pi and is a constant.

46656 is used to convert inches to Cubic Yards and is a constant.

The formula used to calculate the cubic yardage used the following factors, based upon findings in the field:

- Stump diameter measured two feet up from ground
- Stump diameter to root ball diameter ratio of 1:3:6
- Root ball height of 31"

Stump Diameter (Inches)	Cubic Yards
6	0.3
7	0.4
8	0.5
9	0.6
10	0.7
11	0.9
12	1
13	1.2
14	1.4
15	1.6
16	1.8
17	2.1
18	2.3
19	2.6
20	2.9
21	3.2
22	3.5
23	3.8
24	4.1
25	4.5
26	4.8
27	5.2
28	5.6
29	6
30	6.5
31	6.9
32	7.3
33	7.8
34	8.3
35	8.8
36	9.3
37	9.8
38	10.3
39	1.9
40	11.5
41	12
42	12.6
43	13.3
44	13.9
45	14.5
46	15.2

Stump Diameter (Inches)	Cubic Yards
47	15.8
48	16.5
49	17.2
50	17.9
51	18.6
52	19.4
53	20.1
54	20.9
55	21.7
56	22.5
57	23.3
58	24.1
59	24.9
60	25.8
61	26.7
62	27.6
63	28.4
64	29.4
65	30.3
66	31.2
67	32.2
68	33.1
69	34.1
70	35.1
71	36.1
72	37.2
73	38.2
74	39.2
75	40.3
76	41.4
77	42.5
78	43.6
79	44.7
80	45.9
81	47
82	48.2
83	49.4
84	50.6

## BID SPECIFICATIONS AND GENERAL REQUIREMENTS

### FOR HURRICANE \_\_\_\_\_ DEBRIS REMOVAL

1. The scope of work shall consist of the clean-up and removal of debris as defined herein within the boundaries of the County of Tyler, which was caused by a natural disaster during the period of \_\_\_\_\_, 20\_\_\_\_\_. This debris removal will be limited to the public rights-of-way and other public properties within the County. The award of a bid will be based on any appropriate factor, including but not limited to, bidder's qualifications, experience directly relating to debris clean-up and removal, equipment inventory, as well as unit price. In addition, the County may make such investigations as it deems necessary to determine the ability of the bidder to perform the work, and the bidder shall furnish to the County all such information and data for this purpose as the County may request. Bidder must provide the County with a confidential listing of any pending or prior judgments against bidder relating to similar work performed by bidder. Contractor shall explicitly identify to the County any prohibitions, limitations, or parameters that will affect Contractor's ability to perform the work described herein at the time of bid submittal. In addition to its other rights, the County reserves the right to reject any bid if the evidence submitted by, or investigation of, such bidder fails to satisfy the County that such bidder is properly qualified to carry out the obligations of the Contract and to complete the work contemplated therein within the time period set forth in the bid proposal. A conditional or qualified bid will not be accepted. The County has the right to reject any and all bids.
2. The primary purpose of this scope of work is to maintain the public health, safety, and well-being of the community during the response to an emergency situation, as well as to restore the public areas of the county to a normal condition in the shortest time period possible. Each bidder must understand and agree that debris removal in the most expeditious manner possible is of the utmost importance and the successful bidder will make every effort to complete all requirements of the awarded contract in the shortest time possible.
3. The successful bidder shall be fully responsible for debris pick-up, transportation of debris, and final debris disposal. For the purposes of this bid, debris that is within the scope of work is classified as Burnable and Non-Burnable. Burnable debris includes all biodegradable matter except that included in the following definitions of other categories of debris. It includes, but is not limited to, damaged and disturbed trees; bushes and shrubs; broken, partially broken, and severed tree limbs; untreated structural timber; untreated wood products; and brush.

4. Tree stumps located on public rights-of-way or other public property shall be removed. Tree stumps with base cut diameter measurements less than or equal to 24 inches (measured 24 inches up from where the tree originally exited the ground) shall be considered to be burnable debris and removed and paid for by the same methods used for other burnable debris. Tree stumps larger than 24 inches in diameter shall be removed as burnable and paid for in accordance with approved Federal Emergency Management Agency (FEMA) rates, or as may be approved by any FEMA representative.
5. Debris that is classified as Non-Burnable is also included in the scope of work. Non-Burnable Debris includes, but is not limited to, treated timber; plastic; glass; rubber products; metal products; sheet rock; cloth items; non-wood building materials; metal products (i.e., Mobile Trailer parts, Household appliances (White Metal), and similar items), or uncontaminated soil; roofing materials; and carpeting.
6. Debris that is classified Hazardous or Toxic is not included in the scope of work. Hazardous or toxic materials or waste includes, but is not limited to, petroleum products, paint products, asbestos, electrical transformers, and known or suspected hazardous materials.
7. Contractor shall not be paid to handle, process, or dispose of debris that is unrelated to storm damage.
8. Measurement for burnable and non-burnable debris removed will be by the cubic yard as predetermined through truck or trailer bed measurement. Actual measurement shall be documented by trip tickets.
9. Bids shall be based on a price per cubic yard of eligible debris. All bid prices shall be shown in words and figures. In the case of discrepancy the amount in words shall govern.
10. Contractor shall furnish and pay the cost, including sales tax and all other applicable taxes and fees, of all the necessary materials and shall furnish and pay for all the superintendents, labor, tools, equipment, transportation and disposal site, and perform all other work required for the removal of all Hurricane and Disaster debris, as defined herein, in strict accordance with the Contract, and any amendments thereto and such supplemental plans and specifications which may hereafter be approved.
11. All equipment and vehicles utilized shall meet all requirements of Federal, State and local regulations including, without limitation, all DOT, TxDOT and safety regulations, and are subject to the approval of the County.

12. Contractor is responsible for determining and complying with applicable requirements for securing loads while in transit. At a minimum, Contractor shall assure that all loads are transported without threat of harm to the general public, private property and public infrastructure.
13. Any personnel and equipment designated by Contractor to be utilized in the performance of the Contract shall not be utilized elsewhere or released in any way, fashion or form for the duration of the Contract unless approved in writing by the County.
14. All vehicles and equipment shall have a fully functional and certified fire extinguisher of Class A type.
15. Contractor, within seventy-two (72) hours of award of bid, shall provide proof of worker's compensation insurance for all employees, including those of any subcontractor, utilized in the performance of the Contract.
16. Contractor, within seventy-two (72) hours of award of bid, shall submit proof of general liability insurance which shall remain in full force and effect throughout the term of the Contract in an amount of not less than \$3,000,000.00. Such insurance shall cover all operations under the Contract, whether such operations be by Contractor, or by any sub-contractor, or by anyone directly or indirectly employed by any of them or for whose acts any of them may be legally liable.
17. Contractor shall be responsible for all damages and all liability to both public and private property in the performance of his duties under the Contract, and shall report such damages to the Emergency Management Coordinator.
18. At all times and under all conditions Contractor shall continue to be an independent Contractor and shall not represent himself in any way as an agent of the County.
19. Further, Contractor must work with the County to establish the disposal site and assume all responsibility for its operation. Disposal site shall have only one (1) entrance/exit.
20. All insurance or bonds required under the terms of the Contract shall be issued by a company licensed to do business in the State of Texas.
21. Contractor shall provide with the bid a bid bond, or cashier's check, or Certificate of Deposit issued by a FDIC Insured financial institution payable to and acceptable to the County in the amount of not less than \$100,000.00.



22. Contractor represents that he is familiar with all Federal, State, and local ordinances, laws, rules and regulations and that he will fully comply therewith during pick-up, transportation and disposal.
23. Contractor must operate seven days a week during all daylight hours or as otherwise directed by the Emergency Management Coordinator and/or Commissioner's Court. Removal shall be restricted to between the hours from dawn to dusk.
24. Contractor will make every effort to utilize and employ local sub-contractors, equipment rental, supplies and other locally available resources.
25. Contractor will comply with all Federal, State, and local laws, rules, ordinance and regulations regarding non-discriminatory hiring with regard to race, creed, color, national origin or handicap.
26. Contractor understands that the County will be unable to pay the cost of the Contract absent FEMA and TDEM approval. Contractor therefore represents that he will perform all work under the provisions of the contract in such a manner, time, and place so as to insure such reimbursement to County.
27. There will be no dump sites, debris staging areas, or debris transfers within the City limits, nor will debris be permanently or temporarily stored or placed within the City.
28. No vehicles or equipment shall be located on public property or public rights-of-way within the County unless actively engaged in debris removal.
29. Contractor shall be responsible for the conduct and action of all his employees and his sub-contractors. Contractor's employees and sub-contractors shall not exhibit any pattern of discourteous behavior to the public.
30. Contractor shall be responsible for establishing and scheduling collection routes in consultation Emergency Management Coordinator and/or Commissioner's Court and for coordinating deliveries with the designated disposal facilities.
31. Contractor shall make a minimum of 3 (three) passes along all public rights-of-way and public property in the County, or as directed by the County.
32. Contractor shall not make any attempts to charge any resident, business or institution for work performed under this Scope of Work, nor shall Contractor or anyone employed or subcontracted by Contractor accept any additional monies from any resident, business or institution for work performed under this Scope of Work.

33. Bidder shall furnish with the bid complete and updated list identifying truck numbers and trailer numbers to County that will be used throughout the Contract. The listing shall include the following information:

- A. Each truck and trailer license number
- B. Year, make and color of the truck
- C. Cubic yardage of the truck and/or trailer.

34. Each vehicle and trailer transporting debris shall bear two (2) emblems (one of each side) that shows the following:

- A. The assigned Truck/Trailer number
- B. Cubic Yardage Capacity (for applicable trucks and trailers)

35. All trucks and other equipment must be in compliance with all applicable federal, state, and local rules and regulations. Any truck used to haul debris must be capable of rapidly dumping its load without the assistance of other equipment; be equipped with a tailgate that will effectively contain the debris during transport and permit the truck to be filled to capacity; and measured and marked for its load capacity. Sideboards or other extensions to the bed are allowable provided they meet all applicable rules and regulations, cover the front and both sides, and are to be constructed in a manner to withstand severe operating conditions. The sideboards are to be constructed of 2" by 6" boards or greater and not to extend more than two feet above the metal bed sides. All extensions are subject to acceptance or rejection by the County. All equipment will be inspected by the Contractor prior to use by using any applicable County forms. The forms, if any, will be provided to the County after completion.

36. Prior to commencing debris removal operations, the Contractor shall present to the County's representative all trucks or trailers that will be used for hauling debris, for the purpose of determining hauling capacity. The hauling capacity will be based on the interior dimensions of the truck's metal dump bed. Hauling capacity, in cubic yards, will be recorded and marked on each truck or trailer with permanent markings. Each truck or trailer will also be numbered for identification with a permanent marking.

37. Contractor shall operate in accordance with all Texas Department of Transportation standards including all pertinent traffic control techniques and procedures, as well as transportation of debris over roadways. Contractor shall be responsible for the control of pedestrian and vehicular traffic in the work area. Contractor shall provide all flag persons, signs, equipment and other devices necessary to meet federal, state and local requirements. The traffic control

personnel and equipment shall be additional to the personnel and equipment required to perform the essential work described in this Scope of Services. At a minimum, one flag person shall be posted at each end of each active loading site and one flag person shall be posted at each loading operation.

38. When a load is delivered, Contractor's driver shall provide the disposal facility operator the street name or location that each load of debris originated.

39. Contractor shall be responsible for the compliance of any subcontracting parties with the agreed upon contract conditions, and with any applicable Local, State or Federal regulations.

40. Contractor should prepare for potentially adverse working conditions including, but not limited to, limited fuel supplies, limited housing availability, limited food and water supplies, and wet and muddy conditions.

41. Contractor shall be prepared to initiate contracted services no later than seventy-two (72) hours after bid award.

42. The Contract shall be initiated upon and terminated upon notice given by the County.

43. County shall provide monitoring and inspections as necessary to determine contract performance, which may include, but is not limited to, on-site inspections and metering of operations, and inspections of operating records during Contractor's operating hours.

44. Contractor shall designate to the County key personnel having responsibilities for coordinating work activities with the County, and shall inform the County of any changes in such personnel

45. Any environmental samples, analyses or remediation actions required as a result of Contractor's equipment, operations or, activities shall be the full responsibility of the Contractor.

46. Contractor shall be reimbursed based solely on the trip tickets issued and verified by the County at the Designated Disposal Facility.

47. Bid specifications and the contract are subject to FEMA and TDEM approval, and are subject to modifications as FEMA and/or TDEM may require.

48. The County does not guarantee the successful bidder to any amount of work or compensation.

49. All specifications and requirements of FEMA and TDEM govern and control this bid except when specifically addressed by the provisions of these specifications, or the Final Contract issued hereunder.

50. County reserves the right to amend these specifications. A 14 day written notice will be given detailing the amendment and must be agreed to by both parties. If both parties cannot agree, the county reserves the right to terminate the contract.

51. County may award other contracts.

Publish two times  
\_\_\_\_ Newspaper  
\_\_\_\_ Court Agenda  
\_\_\_\_ County Clerk

## NOTICE TO BIDDERS

Tyler County is currently seeking Bid Proposals for the following:

ID# 06142021DM  
Debris Management for Tyler County

Sealed bids will be received in the office of the County Auditor, 507 N. Pine St., Woodville, Texas 75979, until 11:00 a.m. June 14, 2021, at which time and place all bids received will be publicly opened during the regularly-scheduled Commissioner's Court meeting at 11:00 a.m. **If you mail your bid in and it's not received by the deadline, your bid will not be accepted.** Bids will be awarded on June 14, 2021 at 11:00 a.m. in Commissioner's Court. **All bidders must be registered with the System Award Management (SAM) at [www.sam.gov](http://www.sam.gov). Proof must be enclosed with the bid.**

### **FACSIMILES SHALL NOT BE ACCEPTED.**

Product specifications may be obtained by contacting the Tyler County Auditor's Office at 409-283-3652 between the hours of 8:00 a.m. and 4:30 p.m. Monday – Friday.

**PLEASE MAKE REFERENCE ON THE FACE OF THE ENVELOPE AS TO ITEM(S) FOR WHICH YOU ARE BIDDING. PLEASE COMPLETE THE BID SHEET WITH SIX COPIES ALONG WITH ORIGINAL BID. PLEASE DO NOT ATTACH SEPARATE BID SHEET AND SAY SEE ATTACHED! BID SHEET CAN BE OBTAINED IN THE AUDITOR'S OFFICE.**

The County reserves the right to award by unit cost or lump sum discounted.

Tyler County reserves the right to reject any or all bids and to waive formalities and technicalities to negotiate sale.

**JACKIE SKINNER  
COUNTY AUDITOR  
TYLER COUNTY, TEXAS**

CUSTOM TREE CARE, INC.  
6021 SW 29th St. PMB #130  
Topeka, KS 66614

15) **Termination**

- 15.1 Termination for Convenience: This Agreement may be terminated by the County for convenience, upon fourteen (14) days of written notice by the County to the Contractor for such termination in which event the Contractor shall be paid its compensation for services performed to termination date, including services reasonably related to termination. In the event that the Contractor abandons this Agreement or causes it to be terminated, Contractor shall indemnify the County against loss pertaining to this termination.
- 15.2 Default by Contractor: In addition to all other remedies available to the County, this Agreement shall be subject to cancellation by the County for cause, should the Contractor neglect or fail to perform or observe any of the terms, provisions, conditions, or requirements herein contained, if such neglect or failure shall continue for a period of thirty (30) days after receipt by Contractor of written notice of such neglect or failure.

16) **Liquidated Damages**

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

- 16.1 The Contractor shall pay the County, as liquidated damages, \$100.00 per calendar day of delay to mobilize in the County with the resources required to begin debris removal operations, within seventy-two (72) hours of being issued Notice to Proceed.

The amounts specified above are mutually agreed upon as reasonable and proper amount of damage the County should suffer by failure of the Contractor to complete requirements set forth in the scope of work.

17) **Change Orders**

- 17.1 The County, without invalidating this Agreement, may order additions, deletions or revisions to the Work. A written Amendment, Change Order or Work Change Directive shall authorize such additions, deletions or revisions.
- 17.2 All Change Orders which, individually or when cumulatively added to amounts authorized pursuant to prior Change Orders for this Project, increase the cost of the Work to the County or which extend the time for completion, must be formally authorized and approved by the appropriate County authority prior to their issuance and before Work may begin.

- 1) No claim against the County for extra Work in furtherance of a Change Order shall be allowed unless prior written County approval pursuant to this section has been obtained.
- 2) The Contract Price and Contract Time shall be changed only by Change Order or written Amendment.
- 3) The Project Manager shall prepare Proposed Change Orders on forms provided by the County. When submitted for approval, they shall carry the signature of the Authorized Representative for the County, The County Manager and the Contractor.
- 4) If the County and the Contractor are unable to agree as to the extent, if any, of an adjustment in the Contract Price or an adjustment of the Contract times that should be allowed as a result of a Work Change Directive, a claim may be made therefore.
- 5) The Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract times with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented.
- 6) If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents is required by the provisions of any bond to be given to a surety, the giving of any such notice will be the Contractor's responsibility and the amount of each applicable bond shall be adjusted accordingly.
- 7) Any claim for adjustment in the Contract Price or time shall be based upon written notice delivered by the party making the claim to the other parties and to the Engineer/Project Manager not later than fifteen (15) calendar days after the occurrence or event giving rise to the claims and stating the general nature of the claim. No claim for an adjustment in the Contract Price or an extension of the contract time will be valid if not submitted in accordance with this Paragraph.
- 8) The cost or credit to the County from a change in the Work shall be determined by one or more of the following ways:
  - a) By a Cost Analysis process to be performed on all change orders. The cost analysis for all change orders will include a separate determination of profit for each change order requested.
  - b) When only nominal quantities are the be changed, change order may be determined by existing unit prices stated in the Contract Documents or subsequently agreed upon. For substantive changes in quantities, Contractor shall be required to perform a cost analysis as required in the previous paragraph.

18) Uncontrollable Forces

18.1 Notwithstanding the specific events for which services are to be provided under this Agreement, neither the County nor Contractor shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightening, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

18.2 Neither party shall, however, be excused from performance if nonperformance is due to forces, which are preventable, removable or remediable, and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming party shall, with a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

19) **Venue**

This Agreement shall be governed by the laws of the State of Texas as now and hereafter in force. The venue for actions arising out of this Agreement is fixed in Tyler County, Texas.

20) **Signatory Authority**

The Contractor, if requested, shall provide the County with copies of requisite documentation evidencing that the signatory for Contractor has the authority to enter into this Agreement.

21) **Severability; Waiver of Provisions**

Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

22) **Merger; Amendment**

This Agreement constitutes the entire Agreement between the Contractor and the County, and negotiations and oral understandings between the parties are merged herein. This Agreement can be supplemented and/or amended only by a written document executed by both the Contractor and the County.

23) **No Construction Against Drafting Party**

Each party to this Agreement expressly recognizes that this Agreement results from the negotiation process in which each party was represented by counsel and contributed to the drafting of this Agreement. Given this fact, no legal or other presumptions against the party



drafting this Agreement concerning its construction, interpretation or otherwise accrue to the benefit of any party to the Agreement, and each party expressly waives the right to assert such a presumption in any proceedings or disputes connected with, arising out of, or involving this Agreement.

Remainder of Page Intentionally Blank

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature, County of \_\_\_Tyler\_\_\_, signing by and through its Mayor and County Manager, and CONTRACTOR, signing by and through its \_\_\_\_\_, duly authorized to execute same.