## **RESOLUTION NO.** <u>2003-25326</u>

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, WAIVING BY 5/7ths VOTE, THE FORMAL COMPETITIVE BIDDING REQUIREMENTS AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN AGREEMENT WITH ASHBRITT, INC. FOR DISASTER PLANNING AND RECOVERY SERVICES, FINDING SUCH WAIVER TO BE IN THE BEST INTEREST OF THE CITY.

WHEREAS, in the event of a major disaster, such as a hurricane, the City would lack sufficient resources to undertake recovery operations; and

WHEREAS, while assistance is available from Miami-Dade County, State and Federal governments, it is not sufficient to restore a community that has suffered a catastrophic disaster; and

WHEREAS, the City currently has an agreement for disaster recovery services with Grubbs Emergency Services, Inc., ("Grubbs"), and adding a second company would provide the City additional primary or back-up capability and flexibility in the event of a major disaster; and

WHEREAS, the firm of AshBritt, Inc. ("AshBritt") has provided the City with pricing that is more competitive than Grubbs, and is a premier national company with an outstanding record of performance in disaster recovery operations; and

WHEREAS, the benefits of contracting with AshBritt for disaster planning and recovery services are as follows:

- 1. The City of South Miami and the Town of Palmetto Bay are the only AshBritt clients, therefore, AshBritt is not overly saturated in the Miami-Dade County area;
- 2. AshBritt's pricing is 20% less than that of the current Miami Beach disaster response contractor, Grubbs;
- 3. AshBritt has agreed to add language to the City's contract that allows for a potential reduction in contract price for a minor storm, if market conditions warrant the action. This clause, as recommended by FEMA, protects the City from over pricing in a minor storm;
- 4. AshBritt maintains a fleet of company owned grapple trucks designed specifically for debris collection equipment to lessen the dependence on subcontractor equipment and personnel;
- 5. AshBritt will provide annual disaster recovery preparedness training for the City and its staff to ensure that City employees are aware of the current disaster recovery rules and regulations;
- 6. AshBritt has three additional divisions within the corporate structure (Engineering, Environmental Services, and Waste Services) that support the Disaster Response Division;
- 7. AshBritt is domiciled in South Florida (Pompano Beach);

8. AshBritt maintains a full time technical assistance staff to assist the City with State and Federal grant issues related to disaster recovery programs;

9. AshBritt is financially stable and is diversified in several profitable businesses (engineering, environmental services, commercial solid waste collection) that are complimentary to the disaster response division; and

WHEREAS, in the event of a declared emergency, and the emergency is of sufficient magnitude that the City needs to utilize disaster related services, those services are generally subject to reimbursement by the County, State and Federal governments; and

WHEREAS, the Administration would recommend to the Mayor and City Commission that it is in the best interest of the City to waive the competitive bidding requirement, by 5/7ths vote, providing such waiver to be in the best interest of the City.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission waive, by 5/7ths vote, the formal competitive bidding requirements and authorize the Mayor and City Clerk to execute an agreement with AshBritt, Inc. for disaster planning and recovery services, finding such waiver to be in the best interest of the City.

PASSED AND ADOPTED this 10th	a_ day of	September	, 2003.
		Watti	4. Bowes
ATTEST:	VICE-MA	YOR:	1. Property
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CITY CLERK			

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APPROVED AS TO FORM & LANGUAGE A FOR EXECUTION

Date

## CITY OF MIAMI BEACH COMMISSION ITEM SUMMARY



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Waive by 5/7ths vote, formal competitive bidding requirements and authorize the Mayor and City Clerk to execute an agreement with AshBritt, Inc., for disaster planning and recovery services.

#### Issue:

N/A

Shall the Mayor and the City Commission waive competitive bidding requirements and authorize the Mayor and City Clerk to enter into an agreement with AshBritt, Inc.?

Item Summary/Recommendation:

In the event of an emergency, such as a hurricane, the City would lack sufficient resources to undertake recovery operations. The City currently has an agreement for disaster recovery services with Grubbs Emergency Services, Inc., and adding a second company would provide the City additional primary or back-up capability and flexibility in the event of a major disaster. AshBritt, Inc., (AshBritt) has provided the City pricing that is more competitive than Grubbs and is a premier national company with an outstanding record of performance in disaster recovery operations.

Under the terms of the attached agreement AshBritt will remove as quickly as possible all hazards to life and property resulting in the City of Miami Beach. 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 or private property, and; (3) that which is considered essential to ensure economic recovery of the affected community to the benefit of the community-at-large. The service provided by AshBritt shall consist of clean up, demolition, removal, reduction and disposal of debris as directed by the designated representative of the City. AshBritt will also provide, under the terms of the attached agreement, disaster recovery technical assistance to appointed and elected officials within the City. This service shall include program Management Assistance.

The Administration recommends approval of the Resolution.

**Advisory Board Recommendation:** 

nancial Inform	ation:	
Source of	Amount Account	Approved
Funds:		
]	<b>建筑实施</b>	
Finance Dept.	Total	

City Clerk's Office Legislative Tracking:
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Sig	n-Offs:			Maria i
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AGENDA ITEM \_\_\_\_\_ DATE 9-10-0

# CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139

www.miamibeachfl.gov



Date: September 10, 2003

## **COMMISSION MEMORANDUM**

To:

Mayor David Dermer and

Members of the City Commission

From:

Jorge M. Gonzalez

City Manager

Subject:

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, WAIVING BY 5/7ths VOTE, THE FORMAL COMPETITIVE BIDDING REQUIREMENTS AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN AGREEMENT WITH ASHBRITT, INC. FOR DISASTER PLANNING AND RECOVERY SERVICES, FINDING SUCH WAIVER TO BE IN THE BEST INTEREST OF THE CITY.

## ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

## <u>ANALYSIS</u>

In the event of an emergency, such as a hurricane, the City would lack sufficient resources to undertake recovery operations. While assistance is available from the County, State and Federal governments, it is not sufficient to restore a community that has suffered a catastrophic disaster. Also, the resources of the various governments are spread thin over the affected areas, necessitating contracted private sector assistance.

The City currently has an agreement for disaster recovery services with Grubbs Emergency Services, Inc., (Grubbs) and adding a second company would provide the City additional primary or back-up capability and flexibility in the event of a major disaster. AshBritt, Inc., (AshBritt) has provided the City pricing that is more competitive than Grubbs and is a premier national company with an outstanding record of performance in disaster recovery operations. The benefits of contracting with AshBritt for disaster planning and recovery services are as follows:

 AshBritt is not overly saturated in the Miami-Dade County area. The City of South Miami and the Town of Palmetto Bay are the only AshBritt clients. These two municipalities are piggybacked from the Broward County contract which was awarded through a competitive request for proposal process.

2. AshBritt's pricing is 20% less than that of the current Miami Beach disaster response contractor (Grubbs).

3. AshBritt has agreed to add language to the City's contract that allows for a potential reduction in contract price for a minor storm if market conditions warrant the action. This clause, as recommended by FEMA, protects the City from over pricing in a minor storm.

4. AshBritt maintains a fleet of company owned grapple trucks designed specifically for debris collection equipment to lessen the dependence on subcontractor equipment and personnel.

5. AshBritt will provide annual disaster recovery preparedness training for the City and

their staff to ensure that City employees are aware of the current disaster recovery rules and regulations

6. AshBritt has three additional divisions within the corporate structure (Engineering, Environmental Services, and Waste Services) that support the Disaster Response Division.

7. AshBritt is domiciled in South Florida (Pompano Beach).

8. AshBritt maintains a full time Technical Assistance staff to assist the City with State and Federal grant issues related to disaster recovery programs.

9. AshBritt is financially stable and is diversified in several profitable businesses (engineering, environmental services, commercial solid waste collection) that are complimentary to the disaster response division.

In the event of a declared emergency and the emergency is of sufficient magnitude that the City needs to utilize disaster related services, those services are generally subject to reimbursement by the County, State and Federal governments. FEMA as the principal federal agency dealing with disaster recovery prefers that agreements for disaster services be put in place prior to an emergency and where possible, the services be obtained by the bidding process. Therefore, it is the Administration's recommendation that the City Commission adopt the attached resolution which authorizes the Mayor and City Clerk to execute an agreement with AshBritt, Inc. for disaster planning and recovery services.

JMG:RCM:FB:GL

Attachment: AshBritt Agreement

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#### **AGREEMENT**

#### BETWEEN

#### CITY OF MIAMI BEACH

#### AND

#### ASHBRITT, INC.

#### FOR

#### DISASTER RECOVERY SERVICES

This Agreement is made and entered into this 6<sup>th</sup> day of April 2004 by and between the City of Miami Beach, a political subdivision of the State of Florida, herein after referred to as "City",

#### And

Ashbritt, Inc., a Florida Corporation, hereinafter referred to as "Ashbritt".

WHEREAS, City of Miami Beach, a City of the State of Florida, may experience destruction of life and property because of hurricanes, floods, tornadoes, and other weather events as well as other natural or technological disasters; and

WHEREAS, governing bodies of political subdivisions of the State of Florida need to provide for disaster recovery technical and support assistance; and

WHEREAS, although City of Miami Beach has personnel, equipment, and price agreements in place to manage disaster recovery for most emergency situations, a major catastrophe may overwhelm local capabilities to the point that outside assistance will be required; and

WHEREAS, during a state or local state of emergency the City Manager may deem it necessary to issue notices to proceed with certain disaster services.

Now, Therefore, in consideration of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, City and Ashbritt agree as follows:

#### <u>ARTICLE 1</u>

### **DEFINITIONS AND IDENTIFICATIONS**

- 1.1 Agreement means this document, Articles 1 through 9, inclusive. Other terms and conditions are included in the exhibits and documents that are expressly incorporated by reference.
- 1.2 Commission Commission of the City of Miami Beach.
- 1.3 City Manager The City of Miami Beach Manager or the designee of such City Manager. The primary responsibilities of the City Manager are to coordinate and communicate with Ashbritt and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement, as set forth herein. In the administration of this Agreement, as contrasted with the matters of policy, all parties may rely on instructions or determinations made by the City Manager; provided, however, that such instructions and determinations do not change the Scope of Services.
- 1.4 City Attorney The chief legal counsel for City.
- 1.5 Project The Project consists of the services described in Article 2.

### ARTICLE 2

#### **SCOPE OF SERVICES**

- Ashbritt shall perform all work identified in this Agreement and "Exhibit A" and "Exhibit D". The parties agree that the Scope of Services is a description of Ashbritt's obligations and responsibilities and is deemed to include preliminary consideration and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the work described that exclusion would render performance by Ashbritt impractical, illogical, or unconscionable. This Agreement does not establish exclusive rights on the part of Ashbritt and the City may at its option retain additional contractors to assist in disaster recovery efforts.
- 2.2 Ashbritt acknowledges and agrees that the City Manager has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement.
- 2.3 All work will be described by a work authorization form that will be signed by the City Manager, or his designee, and shall describe the extent and limits of each task. No work shall be compensated that is not in accordance with an approved work authorization. The prescribed work authorization form is attached as "Exhibit E".

#### **ARTICLE 3**

### TERM AND TIME OF PERFORMANCE

- 3.1 The term of this Agreement shall begin on the date it is fully executed by both parties and shall end on December 31, 2004; provided, however, if the term of this Agreement extends beyond a single fiscal year of City, the continuation of this Agreement beyond the end of any fiscal year shall be subject to the availability of funds from the City in accordance with Chapter 129, Florida Statues.
- 3.2 Time shall be deemed of the essence in performing the duties, obligations, and responsibilities required by this Agreement.
- 3.3 This Agreement may be renewed by mutual written agreement between the City and Ashbritt for an additional four (4) oneyear terms.

#### **ARTICLE 4**

### **COMPENSATION**

4.1 City agrees to pay Ashbritt, in the manner specified in Section 4.2, for work actually performed and completed pursuant to this Agreement and as detailed in an approved work authorization, which amount shall be accepted by Ashbritt as full compensation for all such work. It is acknowledged and agreed by Ashbritt that this amount is the maximum payable and constitutes a limitation upon City's obligation to compensate Ashbritt for its services related to this Agreement. This maximum amount, however, does not constitute a limitation, of any sort, upon Ashbritt's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services. Ashbritt is only eligible for compensation for specifically approved and successfully completed work authorizations. No amount shall be paid to Ashbritt to reimburse its expenses. Work authorization costs connected to Exhibits "A" and "D" shall be payable based on a standard of reasonableness, but in no circumstance shall City be liable to Ashbritt for costs that exceed reasonable costs as determined by the Federal Emergency Management Agency (FEMA). Ashbritt shall reimburse costs paid by City to Ashbritt at rates that are determined by FEMA as not reasonable to City.

#### 4.2 Method of Billing and Payment

4.2.1 Ashbritt may submit invoices for compensation no more often than on a monthly basis, but only after the services for which the invoices are submitted have been completed. An original invoice plus one copy are due within fifteen (15) days of the end of the month except the final invoice which must be received no later than sixty (60) days after this Agreement expires. Invoices shall reference the specific work authorization and approval date and designate the nature of the services performed and/or the expenses incurred.

- 4.2.2 Ashbritt hereby waves all rights to make claims for prompt payment that Ashbritt may accrue pursuant to the "City of Miami Beach Prompt Payment Ordinance" and general statutory laws relating to prompt payment or both.
- 4.3 Notwithstanding any provision of this Agreement to the contrary, City may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work which has not been remedied or resolved in a manner satisfactory to City Manager The amount withheld shall not be subject to payment of interest by the City.
- 4.4 Payment shall be made to Ashbritt at:

Ashbritt, Inc. 480 S. Andrew Ave Suite 103 Pompano Beach, Fl 33069

#### **ARTICLE 5**

#### **CHANGES IN SCOPE OF SERVICES**

5.1 Any change in Scope of Services must be accompanied by a written amendment, executed by the parties in accordance with Section 9.18 below.

### **ARTICLE 6**

#### **INDEMNIFICATION**

6.1 Ashbritt shall at all times hereafter indemnify, hold harmless and, at City Attorney's option, defend or pay for an attorney selected by the City Attorney to defend City, its officers, agents, servant, and employees against any and all claims, losses, liabilities, and expenditures of any kind, including attorney fees, court costs, and expenses, caused by negligent act or omission of Ashbritt, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, demands, or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. The provisions of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the City Manager and City Attorney, any sums due Ashbritt under this Agreement may be retained by the City until all of City's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by the City.

#### ARTICLE 7

#### **INSURANCE**

- 7.1 In order to insure the indemnification obligation contained above, Ashbritt shall, as a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement (unless otherwise provided), the insurance coverage's as set force in Sections 7.3, 7.4, and 7.5, in accordance with the terms and conditions required by this article. Each Insurance policy shall clearly identify the foregoing indemnification as insured.
- 7.2 Such policy or policies shall be without any deductible amount and shall be issued by approved companies authorized to do business in the state of Florida, and having agents upon whom service of process may be made in City of Miami Beach, Florida. Ashbritt shall specifically protect the City and the City of Miami Beach Commissioners by naming the City of Miami Beach, Florida and the City of Miami Beach Commission as additional insured's under the Comprehensive General Liability policy only.
- 7.3 Comprehensive General Liability insurance. A Comprehensive General Liability insurance Policy shall be provided which shall contain minimum limits of Five Hundred Thousand Dollars (\$500,000.00) per occurrence combined single limit for bodily injury liability and property damage liability. Coverage must be afforded on a form no more restrictive

than the latest edition of Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include:

Premises and /or operations

Independent Contractors

Products and/or Completed Operations for contracts

Broad Form Contractual Coverage applicable to this specific Contract, including any hold harmless and/or indemnification agreement.

Personal Injury coverage with Employee and Contractual Exclusions removed, with minimum limits of coverage equal to those required for bodily injure liability and Property damage liability.

7.4 Business Automobile Liability. Business Automobile liability with minimum limits of Three Hundred Thousand Dollars (\$300,000.00) per occurrence combined single limit for bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of Business Automobile Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include:

Owned Vehicles Hired and Non-owned Vehicles Employers' Non-Ownership

7.5 Worker's Compensation Insurance. Worker's Compensation Insurance to apply for all Ashbritt employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include:

Employers' Liability with a limit of One Hundred Thousand Dollars (\$100,000.00) per each accident.

If any operations are to be undertaken on or about navigable waters, coverage must be included for the US Longshoremen & Harbor Workers Act and Jones Act.

- 7.6 Ashbritt shall furnish to the City Manager Certificates of Insurance or endorsements evidencing the insurance coverages specified by this Article prior to beginning performance of work under this Agreement.
- 7.7 Coverage is not to cease and is to remain in force (subject to cancellation notice) until all performance required of Ashbritt is completed. All policies must be endorsed to provide City with at least thirty (30) days notice of cancellation and/or restriction. If any of the insurance coverages will expire prior to the completion of work, copies of renewal policies shall be furnished at least thirty (30) days prior to the date of their expiration.

#### ARTICLE 8

#### **TERMINATION**

- 8.1 If either the City of Ashbritt shall default in the observance or performance of any term, covenant or condition, of this agreement, this Agreement may be terminated for cause by the non-defaulting party, if the party in default has not corrected the default within ten (10) calendar days after written notice from the aggrieved party identifying the breach; or for convenience by the City, and without cause, by action of the City Manager upon not less than sixty (60) calendar days' written notice by City Manager. This Agreement may also be immediately terminated for cause by the City Manager, said immediate termination effective upon verbal notice to Ashbritt if the City Manager deems, in his reasonable judgment, that immediate termination is necessary to protect the public health, safety, or welfare. Failure to perform in accordance with a work authorization may also, at the City's option, result in immediate termination of this Agreement.
- 8.2 Termination of this Agreement for cause shall include, but not be limited to, failure to suitably perform the work, failure to continuously perform the work in a manner calculated to meet or accomplish the objectives of City as set forth in this agreement and detailed in an approved work authorization, or breach of the provisions of this Agreement, not-withstanding whether any such breach was previously waived or cured.

- 8.3 Notice of termination shall be provided in accordance with the "Notices" section of this Agreement except that notice of immediate termination by the City Manager, as provided in Section 8.1 may be made by verbal notice, which shall be promptly confirmed in writing in accordance with the "Notices" section of this Agreement.
- 8.4 In the event this Agreement is terminated for convenience, Ashbritt shall be paid for any services performed to date the Agreement is terminated; however, upon being notified of City's election to terminate, Ashbritt shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. Ashbritt acknowledges and agrees that one hundred dollars (\$100.00) of the compensation to be paid by City, the adequacy of which is hereby acknowledged by Ashbritt, is given as specific consideration to Ashbritt for City's right to terminate this Agreement for convenience.
- 8.5 In the event this Agreement is terminated, any compensation payable by the City shall be withheld until any and all documents are provided to City pursuant to Section 9.1 of Article 9.

#### ARTICLE 9

#### **MISCELLANEOUS**

- 9.1 Ownership of Documents Any and all reports, photographs, surveys and other data and documents provided or created in connection with this Agreement are and shall remain the property of City. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by Ashbritt, whether finished or unfinished, shall become the property of City and shall be delivered by Ashbritt to the City Manager within seven (7) days of termination of this Agreement by either party. Any compensation due to Ashbritt shall be withheld until all documents are received as provided herein.
- 9.2 Audit Right and Retention of Records City shall have the assignable right (to FEMA, for example) to audit the books, records, and accounts of Ashbritt that are related to this project. Ashbritt shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the project
  - Ashbritt shall preserve and make available, at reasonable times for examination and audit by City, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (chapter 119, Fla. Stat.), if applicable, or if the Florida Public Records Act is not applicable, for a minimum period of three years after termination of this agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by City to be applicable to Ashbritt's records, Ashbritt shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by Ashbritt. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for City's disallowance and recovery of any payment upon such entry.
- 9.3 Nondiscrimination, Equal Employment Opportunity, and Americans with Disabilities Act Ashbritt shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. Ashbritt shall affirmatively comply with all applicable provisions of the Americans with disabilities Act (ADA) in the course of providing any services funded by the City, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines and standards. In addition, Ashbritt shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), disability accommodation and accessibility.

Ashbritt's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation (City of Miami Beach Code, Chapter 16 1/2), national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery.

9.4 Public Entity Crime - Ashbritt represents that the execution of this Agreement will not violate the Public Entity Crime Act (Section 287.133, Florida Statues), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to City, may not submit a bid on a contract with City for the construction or repair of a public building or public work, may not submit bids on leases of real property to City, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with City, and may not transact any business with City in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment pursuant to the City's Debarment Ordinance.

In addition to the foregoing, Ashbritt further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing any act defined as a "public entity crime" regardless of the amount of money involved or whether Ashbritt has been placed on the convicted vendor list.

- 9.5 Independent contractor Ashbritt is an independent contractor under this Agreement. Services provided by Ashbritt pursuant to this Agreement shall be subject to the supervision of Ashbritt. In providing such services, neither Ashbritt nor its agents shall act as officers, employees, or agents of the City. This Agreement shall not constitute or make the parties a partnership or joint venture.
- 9.6 Prevailing wage requirement- As applicable, Ashbritt shall fully comply with the requirements of the City's Prevailing Wage Ordinance No. 94-2960, as some may be amended, and shall satisfy, comply with, and complete the requirements set forth in Exhibits B and C.
- 9.7 Third Party Beneficiaries- Neither Ashbritt nor City intend to directly or substantially benefit a third party Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.
- 9.8 Notices- Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand-delivery with a request for a written receipt of acknowledgement of delivery, addressed to the party for whom it is intended at the place specified below. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

#### For City of Miami Beach:

Robert C. Middaugh, Assistant City Manager City of Miami Beach 1700 Convention Center Dr, 4<sup>th</sup> Floor, City Managers Office Miami Beach, Fl 33139

#### For Ashbritt:

Mr. Randall Perkins, Vice President Ashbritt, Inc. 480 S. Andrews Ave Suite 103 Pompano Beach, FL 33069

9.9 Assignment and Performance- Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by either party. In addition, Ashbritt shall not assign any portion of the work required by this Agreement. It is envisioned that substantial subcontracting will take place on the part of Ashbritt in order to accomplish approved work authorizations. Ashbritt will provide an updated list of subcontractors on a daily basis to the City Manager.

Ashbritt 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 Scope of Services and approved work authorization services to City's satisfaction for the agreed compensation.

Ashbritt shall perform its duties, obligations, and services under this Agreement in a skillful and respectful manner. The quality of Ashbritt's performance and all interim and final product(s) provided to or on behalf of City shall be comparable to the best local and national standards.

9.10 Conflicts- Neither Ashbritt nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Ashbritt's loyal and conscientious exercise of judgment related to its performance under this Agreement.

Ashbritt agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against City in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process. Further, Ashbritt agrees that such persons shall not give sworn testimony or issue a report of writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of the City in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude Ashbritt or any other persons from representing themselves in any action or in any administrative or legal proceeding.

In the event Ashbritt is permitted to utilize subcontractors to perform any services required by this Agreement, Ashbritt agrees to prohibit such subcontractors, by written contract, from having any conflicts within the meaning of this section.

- 9.11 Contingency Fee- Ashbritt warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Ashbritt, 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 Ashbritt, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, City shall have the right to terminate this Agreement without liability at this discretion, or to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.
- 9.12 Enforcement- City and Ashbritt agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.
  - City's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.
- 9.13 Compliance with Laws- Ashbritt shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.
- 9.14 Severance- In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid; the remaining provisions shall continue to be effective unless City or Ashbritt elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.
- 9.15 Joint Preparation- The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be constructed more severely against one of the parties than the other.
- 9.16Priority Of Provisions- If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, requirement, or provision of this Agreement the term statement requirement, or provision contained in Articles 1 through 9 of this Agreement shall prevail and be given effect.
- 9.17 Applicable Law and Venue- This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out if this Agreement and any action

involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Eleventh Judicial Circuit of Miami-Dade County, Florida. By entering into this Agreement, Ashbritt and City hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to, or arising out of the Agreement.

- 9.18 Amendments- No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Commission and Ashbritt.
- 9.19 Prior Agreements- This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless set forth in writing in accordance with Section 9.18 above
- 9.20 Incorporation by Reference- The attached exhibits A, B, C, D, and E are incorporated into and made a part of this Agreement.
- 9.21 Multiple Originals- This Agreement may be fully executed in three (3) copies by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION

City Attorney Date

AGREEMENT BETWEEN CITY OF MIAMI BEACH AND ASHBRITT, INC., FOR DISASTER RECOVERY SERVICES

WITNESSES:

ASHBRITT, INC.

Saily Perkins, Rresident

9 day of Jehmany , 2001

APPROVED AS TO FORM& LANGUAGE & FOR EXECUTION

City Attorney

Date

## **EXHIBIT A**

- 1. <u>Debris Management</u>. ASHBRITT shall, but not be limited to, the removal all hazards to life and property resulting from the disaster. Clean-up, demolition, and removal shall be work authorization approved by the CITY Project Manager by individual work authorizations. Clean-up, demolition, and removal shall be limited to eligible debris. Eligible debris is that which after its clean-up, demolition, and removal: 1) eliminates immediate threats to life, public health, and safety; 2) eliminates threats of significant damage to improved public or private property; and 3) is essential by its absence of ensuring economic recovery. Scope of Services shall include, items such as emergency road clearance, debris removal from public rights-of-way, removal of hazardous stumps, leaning trees/limbs, temporary debris staging areas and reduction sites, debris disposal, hazardous waste abatement, and sand screening, etc.
- 2. Technical Disaster Recovery Assistance. ASHBRITT shall provide disaster recovery technical assistance to elected and appointed officials of CITY government. This assistance shall include documentation and management for the public assistance program, planning, training, and exercise development, as well as attendance at the City of Miami Beach Emergency Operations Center (EOC) during activation of the EOC for exercise and actual emergency events as requested by the City Manager.
- 3. <u>Temporary Satellite Communications</u>. ASHBRITT shall provide Temporary Satellite Communications equipment and "on-air" talk time to the CITY to facilitate emergency communications within the CITY and with outside agencies because of the loss of communications capability. Specifically, ASHBRITT shall provide the satellite communications equipment and space time as listed in the work authorizations and the notice to proceed.
- 4. <u>Emergency Power Generators</u>. ASHBRITT shall provide Temporary Emergency Power Generators to CITY to supply temporary electricity to critical facilities because of power failures. Specifically, ASHBRITT shall provide the power generation equipment to the capacity and quantity as listed in the work authorizations and the notice to proceed.
- 5. <u>Emergency Delivery of Ice</u>. ASHBRITT shall provide an Emergency Supply of Ice to CITY to facilitate food storage and other life sustaining measures. Specifically, ASHBRITT shall provide the ice within the specifications and quantities as listed in the work authorizations and the notice to proceed.
- 6. <u>Emergency Delivery of Potable Water</u>. ASHBRITT shall provide an Emergency Supply of Potable Water to CITY to facilitate a safe supply of water for human consumption, cooking of food, and other life sustaining measures. Specifically, ASHBRITT shall provide the potable water within the specifications and quantities as listed in the work authorizations and the notice to proceed. Ashbritt will also provide portable sanitary toilet facilities for the City Municipal complex.
- 7. <u>Emergency Equipment Rental, Labor, Materials, and Supplies.</u> ASHBRITT shall provide Emergency Rental of Light, Medium, and Heavy Equipment; Trucks and other Vehicles; Labor; Materials; and Supplies as requested by CITY. Specifically, ASHBRITT shall provide the rental of light, medium, and heavy equipment; trucks and other vehicles; labor; materials; and supplies as listed in the work authorizations and the notice to proceed.
- 8. <u>Logistical Staging Areas</u>. ASHBRITT shall provide for the operation and management of Logistical Staging Areas to facilitate disaster recovery operations. Specifically, ASHBRITT shall provide for the supplies and labor for the operations and management needed to establish and operate Logistical Staging Areas within the specifications and quantities as listed in the work authorizations and the notice to proceed.
- 9. Services and Facilities. ASHBRITT 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 term specified in the work authorization. All work authorizations involving a time and materials portion of this Agreement shall have a not-to-exceed amount placed within them.
- 10. <u>Permits and Licenses</u>. ASHBRITT shall obtain, with the assistance of CITY, Permits and Licenses of a temporary nature necessary for the prosecution of Services. ASHBRITT shall not be responsible to obtain permits or

licenses where the requirement for which has or will be waived because of a declaration of emergency or disaster.

- 11. <u>Supervision by ASHBRITT</u>. Under the general oversight of the CITY, ASHBRITT shall supervise and direct all work, workers, and equipment. ASHBRITT is solely responsible for the means, methods, techniques, sequences, safety program, and procedures utilized. ASHBRITT shall employ and maintain on the work site a qualified supervisor(s) who shall have full authority to act on behalf of ASHBRITT, and all communications given to the supervisor in writing by the CITY'S Authorized Representative shall be as binding as if given to ASHBRITT.
- 12. Other Related Work. ASHBRITT shall perform other related work as directed by the City Manager.

#### EXHIBIT B

<u>Prevailing Wage Rates</u>: Providing that, in all non-federally funded construction procurement activity of \$1,000,000 or more, the rate of wages and fringe benefit payments for all laborers, mechanics, and apprentices shall not be less than those payments for similar skills in classifications of work in like industries as determined by the Secretary of Labor and as published in the Federal Register (latest revision).

- 10 <u>Prevailing Wage Rate Ordinance</u>. This Project is not federally funded. If the construction cost is in excess of \$1,000,000, the following sections shall apply:
  - 1.1. The rate of wages and fringe benefit payments for all laborers, mechanics, and apprentices shall not be less than those payments for similar skills in classifications of work in a like construction industry as determined by the Secretary of Labor and as published in the Federal Register (latest revision).
  - 1.2. All mechanics, laborers, and apprentices, employed or working directly upon the site of the work shall be paid in accordance with the above-referenced wage rates. ASHBRITT shall post notice of these provisions at the site of the work in a prominent place where it can be easily seen by the workers.
  - 1.3. If the parties cannot agree on the proper classification of a particular class of laborers or mechanics or apprentices to be used, the City Manager will make the final determination.
  - 1.4. In the event it is found by the City Manager that any laborer or mechanic or apprentice employed by ASHBRITT, or any Subcontractor directly on the site of the work has been or is being paid at a rate of wages less than the rate of wages required by the ordinance, the City Manager may: (1) by written notice to ASHBRITT terminate its right to proceed with the work or such part of work for which there has been a failure to pay said required wages; and (2) prosecute the work or portion thereof to completion by contract or otherwise. Whereupon, ASHBRITT and its sureties shall be liable to CITY for any excess costs occasioned to CITY thereby.
  - 1.5. Sections 1.1 through 1.4 above shall apply to this Contract to the extent that it is: (1) a prime Contract subject to the ordinance; or (2) a subcontract also subject to the ordinance under such prime Contract.
  - 1.6. ASHBRITT shall maintain payrolls and basic records relating thereto during the course of the work and shall preserve such for a period of 3 years thereafter for all laborers, mechanics, and apprentices working at the site of the work. Such records shall contain the name and address of each such employee; its current classification; rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits); daily and weekly number of hours worked; deductions made; and actual wages paid.
  - 1.7. ASHBRITT shall submit, with each requisition for payment, a signed and sworn "Statement of Compliance" attesting to compliance with City of Miami Beach. The Statement shall be in the form attached as Exhibit C.
  - 1.8. The City Manager may withhold or cause to be withheld from ASHBRITT so much of the payments requisitioned as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, watchpersons, and guards employed by ASHBRITT or any subcontractor on the work, the full amount of wages required by this Agreement.
  - 1.9. If ASHBRITT or any subcontractor fails to pay any laborer, mechanic, or apprentice employed or working on the site of the work all or part of the wages required by this Agreement, the City Manager may, after written notice to ASHBRITT, take such action as may be necessary to cause suspension of any further payments or advances until such violations have ceased.

## EXHIBIT C STATEMENT OF COMPLIANCE (PREVAILING WAGE RATE)

No. \_\_

Contract No.	Project Title
payment to which this statement the Project, have been paid at v	reby swears under penalty of perjury that, during the period covered by the application for it is attached, all mechanics, laborers, and apprentices, employed or working on the site or rage rates, and that the wage rates of payments, contributions, or costs for fringe benefits equired by City of Miami Beach and the applicable conditions of this Agreement.
Dated Lb. 9 2004.	ASHBRITT  (Signature)
STATE OF Hovida,	By Saily Perkins, President (Name and Title)
STATE OF Horida , CITY OF Fortlandudaly SS.	- A.i
L) (Lilly Y LL) (LW) who did/did no	Hi
WITNESS my hand and	official seal, this M day of Floward, 2004
(NOTARY SEAL)	official seal, this A day of Floward, 2004  Signature of person taking acknowledgment)
LORETTA R. BOONE MY COMMISSION II DD 258198 EXPIRES: October 13, 2007 Bonded Thru Notary Public Underwriters	Name of officer taking acknowledgment)  typed, printed or stamped
	(Title or rank)
My commission expires:	(Serial number, if any)

## Exhibit D

## **Disaster Recovery Services**

## RLI # 08100-00-RB

All prices noted in this attachment are considered a baseline estimate. Actual prices that will be charged will be justified at the time a work authorization is approved. All costs must be based upon reasonable expenses for labor, equipment, material, and overhead/profit. Under no circumstances will costs that exceed reimbursable limits acceptable to the Federal Emergency Management Agency (FEMA) be proposed or approved in a work authorization.

## **Emergency Road Clearance**

AshBritt shall accomplish the cutting, tossing, and/or pushing of debris, hanging limbs, or leaning trees from primary roads as identified and directed by City of Miami Beach. The debris shall be stacked on the right-of-way to allow passage of vehicles along the primary transportation routes.

Compensation shall be as per attached hourly rate schedule.

## Debris Removal from Public Right-of-Way

As directed by City of Miami Beach, AshBritt shall load and haul all eligible debris to a City designated Temporary Debris Storage and Reduction Site (TDSRS) or other disposal destination.

0 to 15 miles \$12.75 per cubic yard 16 to 30 miles \$15.75 per cubic yard

## Debris Separation/Reduction and TDSRS Management

AshBritt shall operate and manage the TDSRS to accept and process all event debris. AshBritt shall perform any site preparation, to include but not be limited to: (1) building and/or maintaining roads; (2) construction of a roofed inspection tower sufficient for a minimum of three inspectors; (3) any environmental requirements necessary to include wind control fencing, silt fencing, hazardous materials containment area, and/or water retention berms. All debris will be processed in accordance with all local, state and federal rules, standards and regulations. Processing may include, but is not limited to, reduction by tub grinding, incineration when approved, or other alternate methods of reduction such as compaction. Prior to reduction all debris will be segregated between vegetative debris, C&D, recyclable debris, white goods, and hazardous waste. Upon the closure of the TDSRS the site will be restored to its Pre-Use Condition.

Operation of TSDRS \$6.75 per cubic yard

## Hazardous Stumps

AshBritt shall remove hazardous stumps as identified and directed by City of Miami Beach. Stump removal shall include backfilling the void with appropriate fill material and hauling the stump to the TDSRS.

Stumps up to 6 inches in diameter	\$ 125.00
Stumps greater than 12 inches, less than 24 inches in diameter	\$ 250.00
Stumps greater than 24 inches, less than 48 inches in diameter	\$ 500.00
Stumps equal to or greater than 48 inches in diameter	\$1250.00

### Sand Screening

As directed by City of Miami Beach, AshBritt shall screen sand to remove all eligible debris deposited by the event. This process includes the collection of debris laden sand, transporting the sand to the processing screen located on the beach, processing the debris laden sand through the screen and returning the sand to the approximate original location. Debris removed from the sand will be collected, hauled, and processed as ROW debris.

Sand Screening

\$12.00 per cubic yard

## Final Disposal

AshBritt shall load and transport processed debris to from the TDSRS to a final disposal site as directed by City of Miami Beach.

0 to 15 miles \$7.00 per cubic yard 15 to 30 miles \$8.50 per cubic yard

#### Technical Assistance

AshBritt shall provide disaster recovery technical assistance to elected and appointed officials of City of Miami Beach. This service shall include documentation and management for the public assistance program, planning, training, and exercise development.

Service provided at no additional charge

## Permits and Licensing

AshBritt shall obtain, with the assistance of City of Miami Beach, permits and licenses of a temporary nature necessary for the execution of the scope of services.

Service provided at no additional charge

## **Quality Assurance and Supervision**

AshBritt shall provide sufficient supervision and programmatic controls to ensure compliance with procedural and regulatory standards established by FEMA, State of Florida, and City of Miami Beach.

Service provided at no additional charge

## **Temporary Satellite Communications**

AshBritt shall provide temporary satellite communications equipment and service as directed by City of Miami Beach to facilitate emergency communications within City of Miami Beach and with state and federal agencies supporting City of Miami Beach's recovery effort.

Satellite Communications provided at actual equipment lease and airtime cost, plus 15 percent

## **Emergency Delivery of Ice**

As directed by City of Miami Beach, AshBritt shall provide an emergency supply of ice to facilitate food storage and other life sustaining measures. Ice is delivered by refrigerated trucks in 40,000 lb increments, with 20 pallets of bagged ice to each delivery.

Emergency Ice

\$0.31 per pound\*

Additional Charge for storage Additional Charge for final distribution Additional Charge for standby (waiting to unload) past 4 hours

## **Emergency Delivery of Potable Water**

As directed by City of Miami Beach, AshBritt shall provide an emergency supply of water to facilitate a safe water supply for human consumption, cooking of food, and other life sustaining measures. Water is delivered by truck with 20 pallets per trailer.

**Emergency Water** 

\$1.90 per galion\*

\$0.15 per gallon to unload
Additional Charge for storage
Additional Charge for final distribution
Additional Charge for standby (waiting to unload) past 4 hours

## **Emergency Power Generators**

As directed by City of Miami Beach, AshBritt has the capability to provide emergency power generators to supply temporary electricity to critical City facilities. Prior to establishing pricing for temporary generators it is necessary to collect technical information regarding the potential type and use of power at each facility indicated by the City. It is also necessary to determine the City's needs for technicians and the availability of emergency fuel supply. Unlike other emergency commodities power generators must be tailored to the specific need.

**Emergency Power Generators** 

Price TBD

## Demolition of Structures, Debris Removal from Private Property (ROE)

As directed by City of Miami Beach, AshBritt shall demolish unsafe structures and remove debris that has been determined by the City to be a threat to the health and safety of the public. Examples of enabling elected body resolutions and other necessary documentation for the right-of-entry (ROE) process are provided by the technical assistance experts working with AshBritt and City of Miami Beach. Debris generated through the ROE program will be placed on the right-of-way and collected as part of the ROW debris program.

Compensation per attached hourly rate schedule

# Hourly Equipment Schedule

With Operators for Emergency Road Clearance, Leaning Trees, Hanging Limbs, and Debris Removal From Private Property (ROE)

<u>Equipment</u>	<b>Hourly</b>
210 Prentice Loader	\$140.00
Self Loading Prentice truck - 25 to 40 yard dump body	\$130.00
Wheel Loader, John Deere 544 or equivalent -2/12 to 3 yard bucket	\$105.00
Tandem Dump Truck - 16 to 20 yards	\$ 75.00
Mini Loader Bobcat or equivalent	\$ 55.00
D6 Dozer or equivalent	\$115.00
Excavator, Cat 325 or equivalent w/ debris loading grapple	\$125.00
Wheel Loader, John Deere 644 or equivalent - 3 to 5 yard bucket	\$115.00
Chainsaw Operator with gear	\$ 35.00
Supervisor with pick-up truck	\$ 45.00
Safety Manager with pick-up truck	\$ 45.00
Mechanic's Truck with tools	\$ 45.00
Flagmen for traffic control	\$ 28.50
Trash Transfer Trailers - 110 yard with Tractor	\$125.00
Bucket Truck - 50 cubic yard bed	\$135.00
Equipment Transports	\$ 90.00
Clerical	\$ 35.00
Laborers	\$ 25.00
Mobilization and Demobilization	A Pass Thru