

RESOLUTION NO. _____

A RESOLUTION RENEWING AND AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO AN AGREEMENT WITH WITT O'BRIEN'S, LLC FOR DISASTER DEBRIS MONITORING SERVICES; AND FOR OTHER PURPOSES.

WHEREAS, the City of North Little Rock (the "City") advertised for proposals from qualified individuals and/or firms pursuant to Request for Proposal ("RFP") No. 14-3300 to provide support for the oversight, management, and technical assistance for monitoring the debris removal and recovery contractor in accordance with Federal Emergency Management Agency ("FEMA") guidelines, policies, and procedures to ensure that the debris removal contractor is performing the scope of work as required by contract; and

WHEREAS, the North Little Rock City Council passed Resolution No. 8665, authorizing the Mayor and City Clerk to enter into an agreement with Witt O'Brien's, LLC for disaster debris monitoring services, and said agreement has expired; and

WHEREAS, the original agreement with Witt O'Brien's, LLC allowed for renewal, and it would be in the City's best interest to renew the agreement; and

WHEREAS, the proposal and agreement will not result in an immediate cost to the City until such time a natural or manmade disaster occurs in the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

SECTION 1: The Mayor and City Clerk are hereby authorized to enter into an Agreement for Disaster Debris Monitoring Services, substantially similar to Exhibit A attached hereto.

SECTION 2: That the above-referenced agreement will not result in immediate cost to the City until such time as a natural or manmade disaster occurs requiring the City of North Little Rock to monitor, manage and record the removal of disaster-generated debris as identified in the RFP, at which time the cost attributed thereto will be appropriated pursuant to unit prices listed in the agreement.

SECTION 3: That this Resolution shall be in full force and effect from and after its passage and approval.

PASSED:

APPROVED:

Mayor Joe A. Smith

SPONSOR:

ATTEST:

Joe A Smith

Mayor Joe A Smith

by AF

Diane Whitbey, City Clerk

APPROVED AS TO FORM:

Amy Beckman Fields

Amy Beckman Fields, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/cf

FILED	<u>10:35</u>	A.M.	_____	P.M.
By	<u>A Fields</u>			
DATE	<u>6-18-19</u>			
Diane Whitbey, City Clerk and Collector North Little Rock, Arkansas				
RECEIVED BY	<u>S. Ussery</u>			



**RENEWAL AGREEMENT FOR
DISASTER DEBRIS MONITORING SERVICES
RFP NO. 14-3300**

This Second Renewal Agreement ("Second Renewal"), by and between, the **City of North Little Rock**, an Arkansas municipal corporation (hereinafter referred to as "City") and **Witt O'Brien's, LLC**, a Delaware limited liability company (hereinafter referred to as "Contractor") is effective on the date signed by the City. For purposes of this Agreement, City and Contractor may be referred to individually as the "Party" or collectively as the "Parties".

WHEREAS, the Contractor has knowledge and expertise in Disaster Debris Monitoring Services as in accordance with the rules, regulations, policies and procedures of the Federal Emergency Management Agency ("FEMA"), which services will be used to ensure proper training and documentation required for the City to obtain reimbursement; and

WHEREAS, the Parties entered into a certain Agreement dated October 28, 2014, (hereinafter referred to as "Agreement" and incorporated herein); and

WHEREAS, the Parties desire to renew the Agreement as set forth herein.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the parties agree to renew the Agreement as follows:

1. Recitals. The Parties agree that the above-referenced recitals are true and correct, and incorporated herein.
2. The City and the Contractor desire to extend the Agreement under the same terms and conditions contained in the master agreement for the second of the two (2) additional one (1) year periods. The Contract will run from October 28, 2018 until October 28, 2019 under this extension.

WITNESSETH:

COMMENCEMENT. Upon approval of the North Little Rock City Council, this contract shall be for a three (3) year period, commencing on the date of signed by the City, and terminating three (3) years from that date. The City may, at its discretion and with the consent of the Contractor, extend the Agreement under all of the terms and conditions contained in this Agreement for two (2) additional one (1) year periods. The City shall give the Contractor written notice of the City's intention to extend the Agreement term not less than ten (10) days prior to the end of the Agreement term then in effect.

1. **STATEMENT OF WORK.** The Contractor shall provide Disaster Debris Monitoring Services for the City in accordance with the Proposal dated August 27, 2014, attached hereto as Appendix "A", and incorporated fully herein by reference of the Director of Commerce or her/his designee. Additional Services as required shall be mutually agreed upon in writing by the Director of Commerce or her/his designee and Contractor, prior to the provision of any additional services by Contractor.

The Contractor will assist the Director of Commerce or her/his designee in the preparation of Federal Emergency Management Agency (FEMA) and State reports for any potential reimbursement through the training of the Director of Commerce or her/his designee and the review of documentation prior to submittal. The Contractor will work closely with the Arkansas Department of Emergency Management, FEMA, and any other applicable State and Federal agencies to ensure that eligible debris collection and supporting documentation associated therewith appropriately addresses concerns of the likely reimbursement agencies, including but not limited to, the Arkansas Department of Emergency Management and FEMA.

In the event the City desires to utilize the services of the Contractor, the parties agree to negotiate "Work Authorizations" for each project/site. The Work Authorizations shall be on a form prepared by the City and shall include the specific scope of work and cost will be in accordance with Appendix "A".

2. **COMPENSATION.** The City shall pay the Contractor for the performance of services under this Agreement upon completion of the services as accepted and approved by the Director of Commerce or her/his designee and pursuant to Exhibit "A", incorporated fully herein by reference. The Contractor shall submit invoices on a weekly basis as work progresses. Each individual invoice shall be due and payable forty-five (45) days after receipt by the City of a correct, fully documented invoice, in form and substance satisfactory to the City with all appropriate cost substantiations attached.

In order for both parties herein to close their books and records, the Contractor will clearly state "Final Invoice" on the Contractor's final/last billing to the City. This certifies that all services have been properly performed and all charges and costs have been invoiced to the City. Since this account will thereupon be closed, any and other further charges if not properly included on this final invoice are waived by the Contractor.

Payment of the final invoice shall not constitute evidence of the City's acceptance of the work.

Invoices shall be accompanied by time and task records for all billable hours appearing on the invoices. Additional documents may be requested by the City and, if so requested, shall be furnished by the Contractor to the City Finance Director's satisfaction.

Project manager or designated payroll officer shall, by affidavit, attest to the correctness and accuracy of time charges and requested reimbursements.

3. **NOTICES.** Any notice given by either Party shall be in writing and shall be given by email with delivery confirmation and registered or certified mail, return receipt requested, postage prepaid, or Federal Express or DHL courier, shipped prepaid, addressed to the Parties at the addresses herein designated for each Party or at such other addresses as they may hereafter designate in writing.

To: City of North Little Rock	Witt O'Brien's, LLC
Attn: Director of Commerce	Attn: Director of Contracts
120 Main Street	818 Town & Country Blvd., Suite 200
North Little Rock, AR 72114	Houston, TX 77024
Phone: 501-975-8880	Phone: 281-606-4721 Alternate Phone: 202-207-2935
Email: mbowman@nlr.ar.gov	contractrequests@wittobriens.com with a copy to cjoiner@wittobriens.com
	For Legal Notices, a copy shall be provided to: Witt O'Brien's, LLC Attention: Legal Counsel 2200 Eller Drive Fort Lauderdale, FL 33316 Email: blong@ckor.com with a copy to cjoiner@wittobriens.com

4. **PERSONNEL SUBSTITUTION.** Consultants, firm specialists and other professional personnel assigned to the City project under this Agreement can only be changed with the express prior written permission of the Director of Commerce or her/his designee, who retains final approval of proposed replacement personnel. Other personnel such as secretarial and/or administrative support personnel may be changed at the discretion of the Contractor provided that replacements have substantially the same or better qualifications or experience.

5. **NO PARTNERSHIP.** Nothing herein contained shall create or be construed as creating a partnership between the City and the Contractor or to constitute the Contractor as an agent or employee of the City. The Contractor is an independent contractor.

6. PERMITS; LICENSES; TAXES. All permits necessary for the prosecution of the Work shall be obtained by the Contractor. Payment for all such permits issued by the City shall be processed internally by the City. All non-City permits necessary for the prosecution of the Work shall be procured and paid for by the Contractor. The Contractor shall also be solely responsible for payment of any and all taxes levied on the Contractor. In addition, the Contractor shall comply with all rules, regulations, and laws of the City of North Little Rock, Pulaski County, the State of Arkansas, and the U.S. Government now in force or hereafter adopted. The Contractor agrees to comply with all laws governing the responsibility of an employer with respect to persons employed by the Contractor.

7. NO IMPROPER USE. The Contractor will not use, nor suffer or permit any person to use in any manner whatsoever, City facilities for any improper, immoral or offensive purpose, or for any purpose in violation of any federal, state, county, or municipal ordinance, rule, order or regulation, or of any governmental rule or regulation now in effect or hereafter enacted or adopted. In the event of such violation by the Contractor or if the City or its authorized representative shall deem any conduct on the part of the Contractor to be objectionable or improper, the City shall have the right to suspend the contract of the Contractor. Should the Contractor fail to correct any such violation, conduct, or practice to the satisfaction of the City within twenty-four (24) hours after receiving notice of such violation, conduct, or practice, such suspension shall continue until the violation is cured or the contract may be terminated. The Contractor further agrees not to commence operation during the suspension period until the violation has been corrected to the satisfaction of the City.

8. TERMINATION. Should the Contractor be found to have failed to perform its services in a manner satisfactory to the City as per the requirements of this Agreement, the City shall provide ten (10) business days' notice in writing to the Contractor to remedy any performance issues. If remedy is not effective, the City may terminate said Agreement immediately for cause. Should the City be found to have failed to perform its obligation under this Agreement, including but not limited to timely payment of invoices, the Contractor reserves the right to terminate this Agreement for cause by giving prior written notice to the City and ten (10) days opportunity to cure. Further the City and Contractor may terminate this Agreement for convenience, without cause, upon sixty (60) days written notice. In any event of termination, the Contractor shall provide any and all required reports and documentation on monitoring services rendered up to the date of termination required by FEMA for reimbursement, at which time the City shall pay Contractor all fees due and expenses incurred for services performed through the date of termination.

9. FORCE MAJEURE. Neither Party shall be responsible for any delay or failure in performance, other than the obligation to make payments for work previously performed, to the extent that such delay or failure was caused by a force majeure event including Act of God, war, civil disturbance, governmental action, labor dispute unrelated to and without fault or negligence of the Party claiming the force majeure event, computer virus, or denial of access to the site or any other event beyond the reasonable control of the claiming Party. Performance under this Agreement shall resume promptly once the cause of delay or failure ceases and an equitable adjustment shall be made to the price and/or schedule of the services including any mobilization or demobilization costs of Consultant.

10. NO DISCRIMINATION. The Contractor agrees that there shall be no discrimination as to race, sex, color, creed or national origin.

11. INSURANCE. The Contractor shall provide insurance and proof of coverage as follows:

- a. Workers' Compensation. The contractor shall provide coverage for its employees with statutory workers' compensation limits, and no less than 1,000,000.00 for Employer's Liability.
- b. Commercial General Liability. The contractor shall provide coverage for all operations including, but not limited to Contractual, Products and Completed Operations, and Personal Injury. The limits shall be not less than \$1,000,000.00, per occurrence, with a \$2,000,000.00 aggregate.
- c. Business Automobile Liability. The contractor shall provide coverage for all owned, non-owned and hired vehicles, trucks, and trailers. The coverage shall be as broad as that found in the standard comprehensive automobile liability policy with limits of not less than \$1,000,000.00, per occurrence, Combined Single Limits (CSL) or its equivalent.
- d. Profession Liability (Errors & Omissions). The contractor shall provide coverage for all claims arising out of the services performed with limits not less than \$1,000,000.00 per claim. The aggregate limit shall either apply separately to this contract or shall be at least twice the required per claim limit.
- e. Special Requirements. Any insurer executing a policy required hereunder shall have a currently valid Certificate of Authority issued by the State of Arkansas, Department of Insurance authorizing it to write insurance policies in the State of Arkansas and be doing business in the State of Arkansas. Insurers shall have at least a Policy Holders Rating of A-.

The Contractor's insurance, and the insurance of any other party bound to the Contractor, shall be considered primary. The Certificate(s) of Insurance shall bear requisite endorsements providing for the "City of North Little Rock, its elected officials and employees" as Certificate Holders and additional insured and shall further provide for waiver of subrogation by the Contractor and/or any subcontractor(s) where applicable. The Certificate(s) issued pursuant to this Agreement shall, at a minimum, bear the name of the insured, the name of the insurer, the number of the policy, its effective date and termination date. For identification purposes, the Certificate shall include a reference to City of North Little Rock's RFP # 3300 and/or any purchase order or task order issued in accordance therewith.

Current, valid insurance policies meeting the requirements herein identified shall be maintained by the Contractor for the duration of this Agreement and any

extensions and/or renewals. Renewal certificates shall be sent to the City thirty (30) days prior to any expiration date. The Contractor shall provide immediate notice of any Contractor initiated cancellation, non-renewal or adverse change to the policies required to be obtained and/or maintained pursuant to this Agreement. The Contractor shall immediately forward to the City any notice it receives of cancellation, non-renewal or adverse change to any policy that is initiated by the insurer(s). The Contractor and any subcontractor(s) shall furnish complete copies of all insurance policies, forms and endorsements prior to the execution of this Renewal Agreement and, thereafter, at the request of the City.

The City reserves the right to request additional information it deems necessary, and at a frequency it deems necessary, to confirm the requisite insurance remains in effect, at the required levels, for the duration of this Agreement or any extension or renewal thereof. Receipt of Certificates or other documentation of insurance or policies or copies of policies by the City or by any of its representatives which indicate less coverage than required by this Agreement does not constitute waiver of the Contractor's obligations to fulfill the requirements of this Section.

Failure to comply with the requirements set forth in this section shall subject this Agreement to immediate termination.

12. CONTRACT ADMINISTRATION. This Agreement shall be administered on behalf of the City by the Director of Commerce or her/his designee.

13. COMPONENT PARTS OF THIS CONTRACT. This Contract consists of the attached component Parts, all of which are as fully a part of this Agreement as if herein set out verbatim. Proposal attached as Appendix "A" and Insurance Certificate attached as Appendix "B".

14. FISCAL NON-FUNDING CLAUSE. In the event sufficient budgeted funds are not available for a new fiscal period, the City shall notify the Contractor of such occurrence and this Agreement shall terminate on the last day of the current fiscal period without penalty or expense to the City.

15. SUBCONTRACTORS. Contractor agrees to provide the City, in writing, a list of subcontractors that Contractor intends to Contract with to complete services for the City under this Agreement ("Subcontractors List") within 10 days of the effective date of contract, and shall update this listing within 10 days should any changes to Subcontractors be made with a justification of such change. The Subcontractors List shall include each subcontractor's name, address, telephone number, and the name of the contact person.

16. CHOICE OF LAW AND VENUE. The parties hereto agree that this Contract shall be construed under Arkansas law, excluding its conflict of law rules. The parties further agree that proper jurisdiction and venue for any cause of action arising from this Contract shall be vested in either the U.S. District Court for the Eastern District of Arkansas or the Circuit Court of Pulaski County, Arkansas.

17. NON-WAIVER. No delay or failure to exercise any right under this Contract shall impair any such right or be construed to be a waiver thereof. No waiver shall be effective unless in writing signed by the party waiving. A waiver of a right on one occasion shall not be deemed to be waiver of such right on any other occasion.

18. NO ASSIGNMENT. The Services to be rendered pursuant to this Contract are personal in nature, and Contractor may not, voluntarily or by operation of law, assign or transfer any of its rights or obligations under this Contract without the prior written consent of the City.

19. MERGER. This Contract constitutes the full understanding of the parties, a complete allocation of risks between them and a complete and exclusive statement of the terms and conditions of their agreement, related to the services provided hereunder. All prior agreements, negotiations, dealings and understandings, whether written or oral, regarding the subject matter hereof, are superseded by and merged into this Contract.

20. MODIFICATION. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary the terms or conditions of the Contract shall be binding unless hereafter made in writing and signed by the party to be bound, and no modifications shall be effected by the acknowledgment or acceptance of any forms containing terms or conditions or variance with or in addition to those set forth in this Contract.

21. AUTHORITY. The persons executing this document each represent that he or she is duly authorized by his or her respective organization to bind the same to the terms contained herein.

22. COUNTERPART EXECUTION. This Contract may be executed in two or more counterparts, each of which is deemed as original but all constitute one and the same instrument.

23. ENTIRE AGREEMENT. This Agreement is the entire agreement. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining provisions hereof.

24. FILING. This document shall be filed in the official records of the City Clerk of the City of North Little Rock, Arkansas. Either party may additionally file this document in any other governmental office deemed appropriate; however, the parties waive all claims and defenses in law or equity based upon such additional filing.

[Signatures are on the Next Page]

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

City of North Little Rock

Witt O'Brien's, LLC ("Contractor")

By: _____
Joe A. Smith, Mayor

By: _____
Greg Fenton, COO

ATTEST:

This Contract reviewed and approved by:

Amy Beckman Field
City Attorney, North Little Rock, AR

Diane Whitbey, City Clerk

By: _____
Deputy City Attorney

DRAFT