

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:)	
)	
JEFFERSON COUNTY, ALABAMA,)	Case No. 11-05736-TBB9
a political subdivision of the State of)	
Alabama,)	Chapter 9
)	
Debtor.)	

**JEFFERSON COUNTY’S OBJECTION TO PROOF OF CLAIM NUMBER 1349
FILED BY CERES ENVIRONMENTAL SERVICES INC.**

Jefferson County, Alabama (the “County”), pursuant to 11 U.S.C. § 502 and Federal Rule of Bankruptcy Procedure 3007, objects to Claim Number 1349 (the “Disputed Claim”),¹ filed by Ceres Environmental Services Inc. (the “Claimant”), as follows:

SUMMARY OF OBJECTION

1. The Disputed Claim is due to be disallowed as filed. As discussed in further detail below, the Claimant performed debris removal services for the County following the tornadoes of April 27, 2011. The parties’ contract is based upon and governed by certain Federal Emergency Management Agency (“FEMA”) policies. The Disputed Claim alleges fees for work that was not performed in compliance with the parties’ contract and applicable FEMA policies and therefore is not compensable.

2. Moreover, the Disputed Claim was untimely filed and is due to be disallowed in its entirety.

¹ The Disputed Claim is numbered as set forth in the claims register maintained by Kurtzman Carson Consultants LLC, the County’s duly-appointed claims agent.



BACKGROUND

A. Case Background.

3. On November 9, 2011 (the “Filing Date”), the County filed a voluntary petition for relief under chapter 9 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”).

4. On March 4, 2012, this Court entered the order for relief in the County’s case [Docket No. 778], confirming the County’s eligibility to be a debtor under Chapter 9 of the Bankruptcy Code.

5. By order dated November 22, 2013 [Docket No. 2248] (the “Confirmation Order”), the Court confirmed the *Chapter 9 Plan of Adjustment of Jefferson County, Alabama (Dated November 6, 2013)* [Docket No. 2182] (as previously or subsequently supplemented, amended, or modified, the “Plan”).

6. The Effective Date of the Plan occurred on December 3, 2013. *See* Docket No. 2274.

B. The Claims Process in the County’s Case.

7. On April 6, 2012, the Court entered its *Order (i) Setting Bar Dates and Procedures for Filing Proofs of Claim; (ii) Setting the Bar Date and Procedures for Filing Requests for Allowance of Section 503(b)(9) Claims; and (iii) Approving Form and Manner of Serving and Publishing the Notice of Bar Dates and the Entry of the Order for Relief* [Docket No. 889] (the “Bar Date Order”).

8. Among other things, the Bar Date Order set June 4, 2012 (the “Bar Date”) as the deadline for filing proofs of claim. Moreover, the Court approved the County’s proposed Proof of Claim Form and Bar Date Notice (as those terms are defined in the Bar Date Order).

9. The County duly served the Bar Date Notice and Proof of Claim Form. The County also published notice of the Bar Date in *The Birmingham News* and *The Bond Buyer*. See Docket No. 1057.

C. The Disputed Claim.

10. The Claimant filed the Disputed Claim as an unsecured claim in the amount of \$3,741,915.52 on August 31, 2012. A copy of the Disputed Claim is attached hereto as **Exhibit A**.

11. The Disputed Claim seeks to collect on open invoices from June and July 2011 in the amount of \$3,556,732.54, as well as an invoice from September 15, 2011 in the amount of \$185,182.98. See Disputed Claim.

12. Under the Plan and Confirmation Order, if and to the extent the Disputed Claim is allowed, such allowed claim will be treated as a Class 6 “General Unsecured Claim.” See Plan § 2.3(t).

D. Background Regarding the Disputed Claim.

13. On April 27, 2011 tornadoes caused extensive property damage and debris across the County. On May 3, 2011 the County issued Request for Proposal No. 133-11 (the “RFP”) for debris removal and disposal services, to address the damage caused by the April 27 tornadoes. The RFP was provided to contractors and published on the County’s website.

14. The Claimant submitted a proposal in response to the RFP. The Claimant represents itself as one of the nation’s largest debris and environmental services contractors, providing extensive disaster-related services to all levels of government in the aftermath of catastrophic events.

15. On May 4, 2011 the Jefferson County Commission (the “Commission”) adopted a resolution (the “Resolution”) authorizing and directing the Commission President to execute a

contract with the Claimant for debris cleanup and hauling services (as amended, the “Contract”). A copy of the Resolution and Contract are attached hereto as **Exhibit B**.

16. The purpose of the Contract was “to remove and dispose of all eligible debris from [County] Rights-of-Way.” Contract § 1.0. The Claimant was to provide “debris removal and disposal of all eligible debris from the COUNTY [rights-of-way] and COUNTY maintained property.” *Id.* § 2.1. Under the Contract, “[e]ligible debris is considered all storm related debris, which is located within the public right of way . . . and creates an immediate threat to lives, public health and safety.” *Id.* § 4.1. The Contract applies only to public rights-of-way and other public property. *See id.* § 2.6 (“The Contractor shall not enter onto private property during the performance of this contract.”). State law prevents the County and its contractors from entering private property to remove debris.

17. Consistent with state law, the Contract precludes the Claimant from entering private property for Extraction or Hauling. In addition, the Contract requires performance by the Claimant in accordance with applicable FEMA policies. Such compliance is necessary for the County to receive reimbursement from FEMA for payments under the Contract. *See* Contract § 19.0 (acknowledgement that Claimant’s “services qualify for the County to seek reimbursement for payment . . . under all applicable Federal Public Assistance Debris Removal Regulations”); *id.* at Attachment A (certification that Claimant’s “operations in Jefferson County, Alabama will substantially conform with the Debris Management Guide FEMA P-325, Public Assistance, Debris Management dated July 2007”).

18. FEMA Disaster Assistance Policy 9523.11 (attached hereto as **Exhibit C**, the “DAP”) distinguishes between (a) the extraction of uprooted tree stumps from the ground (“Extraction”) and

(b) normal debris removal for all stumps placed on public rights-of-way (“Hauling”).² *See* DAP § VII(A) (distinguishing between “supplemental assistance to remove, transport, dispose, and provide fill for the root cavity of an eligible uprooted tree or stump” and “normal debris removal for all stumps, regardless of size, placed on the rights-of-way by others”); *see also* Contract § 4.3.

19. The DAP establishes a fee structure for Extraction of tree stumps more than 24 inches in diameter on public rights-of-way that pose an immediate threat to life, public health, and safety (the “Extraction Fee”). DAP § VII(A). Pursuant to the DAP, FEMA, the State of Alabama Emergency Management Agency (“AEMA”), and the County must give prior approval for any Extraction to be eligible for an Extraction Fee. *See id.* In contrast, reimbursement for any removal of tree stumps that are not eligible for Extraction is based on the cubic yards of debris (the “Hauling Fee”). *See id.* As set forth in the DAP, the Hauling Fee is less than the Extraction Fee because contractors “do not incur additional cost to remove these stumps because the same equipment that is used to pick up ‘regular’ debris can be used to pick-up these stumps.” *Id.*

20. Consistent with the DAP, the Contract includes a fee schedule that distinguishes between the Hauling Fee (based on cubic yards of debris and the distance hauled) and the Extraction Fee (based on the size of the tree stump approved for Extraction). Without limitation, the Claimant is entitled to the Extraction Fee only to the extent the tree stump is otherwise eligible and the County and FEMA give pre-approval of the Extraction. *See* Fee Schedule (attached to Contract) at Item Nos. 1, 19-21; Contract § 4.3. Under the Contract, the Extraction of ineligible tree stumps (i.e., tree stumps not in the ground, not in the public rights-of-way, not over 24 inches in diameter, or not

² DAP 9523.11 is included within Debris Management Guide FEMA P-325 at Appendix G.

properly pre-approved for Extraction) is compensable only by Hauling Fees. *See* Contract §§ 4.1, 4.3.

21. The County has paid the Claimant over \$11 million under the Contract. The Disputed Claim covers invoices the Claimant submitted to the County for the period of June 14, 2011 through July 28, 2011 in the total amount of \$3,556,732.54.³ The County reviewed these invoices and determined that the Claimant improperly billed the County. Without limitation, the County determined the invoices included Extraction Fees for ineligible tree stumps that were not pre-approved by FEMA or not subject to Extraction because the tree stumps were already out of the ground and placed in the public rights-of-way. The Claimant is not entitled to an Extraction Fee for ineligible tree stumps. If anything, the Claimant is only entitled to a Hauling Fee.

22. The County further reserves all rights, claims, and defenses with respect to any invoices for the Hauling or Extraction of tree stumps, or any other debris, from private property.

JURISDICTION AND NOTICE

23. The County brings the instant objection (the “Objection”) pursuant to 11 U.S.C. § 502 and Federal Rule of Bankruptcy Procedure 3007.

24. The Court has jurisdiction over the Objection pursuant to 28 U.S.C. §§ 157 and 1334. The Objection is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue of the County’s case and the Objection is proper before the Court under 28 U.S.C. §§ 1408 and 1409.

25. The County will serve a copy of this Objection on the Claimant and all parties on the Master Service List, as that term is defined in the Court’s *Order Establishing Notice, Service, and*

³The Claimant submitted an additional invoice to the County on September 15, 2011. The County disputed the amount of this invoice as well. The County and the Claimant resolved their dispute regarding the September 15, 2011 invoice and the County satisfied the September 15, 2011 invoice at an agreed upon amount. Accordingly, the County is not liable for any part of the September 15, 2011 invoice as alleged in the Disputed Claim.

Case Management Procedures Pursuant to 11 U.S.C. §§ 102(1)(A) and 105(a) and Bankruptcy Rule 2002(m) [Docket No. 89].

THE COUNTY’S OBJECTIONS TO THE DISPUTED CLAIM

A. The Claimant Did Not Comply With the Terms of the Contract and Applicable FEMA Policies.

26. Upon the County’s objection, the Disputed Claim may not be allowed to the extent that “such [Disputed Claim is] unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such [Disputed Claim is] contingent or unmatured” See 11 U.S.C. §§ 502(b)(1), 901; see also *Raleigh v. Ill. Dept. of Rev.*, 530 U.S. 15, 20 (2000) (“[c]reditors’ entitlements in bankruptcy arise in the first instance from the underlying substantive law creating the debtor’s obligation, subject to any qualifying or contrary provisions of the Bankruptcy Code”).

27. The Disputed Claim as filed is due to be disallowed because the County is not liable under the Contract for the amounts alleged in the Disputed Claim. The DAP and the Contract make a distinction between Extraction and Hauling. For loose tree stumps placed in the public rights-of-way, the Claimant is only entitled to the Hauling Fee of between \$7.19 per cubic yard and \$7.47 per cubic yard (depending on the distance hauled). The Claimant is entitled to an Extraction Fee only with respect to eligible tree stumps (i.e., tree stumps in the ground, in the public rights-of-way, over 24 inches in diameter, and pre-approved for Extraction). The Claimant could not in any event go on private property for the purposes of Extraction or Hauling of any debris.

28. Without limitation, the Disputed Claim is due to be disallowed to the extent the Claimant seeks Extraction Fees for tree stumps or other debris: (a) for which the Claimant did not perform an Extraction; (b) for which FEMA did not authorize Extraction and Extraction Fees; or (c)

not otherwise eligible for Extraction or Extraction Fees under the terms of the Contract or the DAP. At most, the Claimant is entitled to Hauling Fees with respect to such tree stumps and other debris. Furthermore, the County is not liable to the Claimant for any fees arising from the Claimant's work on private property.

B. The Disputed Claim is Untimely.

29. Pursuant to section 502(b)(9) of the Bankruptcy Code, a proof of claim is due to be disallowed to the extent that "proof of such claim is not timely filed" Federal Rule of Bankruptcy Procedure 3007 provides that the County may object to proofs of claim to the extent they were not timely filed.

30. As discussed above, the Disputed Claim was filed after the Bar Date. Accordingly, the Disputed Claim is untimely and due to be disallowed.

DENIAL OF LIABILITY AND GENERAL RESERVATION OF RIGHTS

31. Without limitation or waiver of any other basis for objection or disallowance, the County denies the allegations on which the Disputed Claim is based, disputes liability for the Disputed Claim, and demands strict proof thereof.

32. The County reserves all rights, claims, and defenses with respect to the Disputed Claim and all other proofs of claim filed in its case.

33. The County files this Objection without prejudice to or waiver of its rights pursuant to section 904 of the Bankruptcy Code, and nothing herein is intended as or shall be deemed to constitute the County's consent to this Court's interference with (a) any of the political or governmental powers of the County, (b) any of the property or revenues of the County, or (c) the County's use or enjoyment of any income-producing property.

WHEREFORE, the County respectfully requests the Court to enter an order disallowing the Disputed Claim as filed and granting such other, further, and different relief as may be just and proper.

Respectfully submitted this 27th day of May, 2014.

By: /s/ Patrick Darby

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-and-

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Counsel for Jefferson County, Alabama

EXHIBIT A

UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF ALABAMA		PROOF OF CLAIM
Name of Debtor: JEFFERSON COUNTY, ALABAMA		Case Number: 11-05736 (TBB)
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): CERES ENVIRONMENTAL SERVICES INC		<input type="checkbox"/> Check this box if this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: _____
Name and address where notices should be sent: c/o James S. Ward 2100 Southbridge Parkway, Suite 580 Birmingham, Alabama 35209		
Telephone number: 205-871/5404 email: datkisson@wardwilsonlaw.com		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars. 5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount. <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier - 11 U.S.C. §507 (a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5). <input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507 (a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507 (a)(____). Amount entitled to priority: \$ _____
Name and address where payment should be sent (if different from above): Same as above		
Telephone number: _____ email: _____		
1. Amount of Claim as of Date Case Filed: \$ <u>3,741,915.52</u> If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
2. Basis for Claim: <u>Debris removal services</u> (See instruction #2)		
3. Last four digits of any number by which creditor identifies debtor: _____	3a. Debtor may have scheduled account as: <u>N/A</u> (See instruction #3a)	3b. Uniform Claim Identifier (optional): <u>N/A</u> (See instruction #3b)
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: Value of Property: \$ _____ Annual Interest Rate _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable (when case was filed) Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)		
7. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. (See instruction #7, and the definition of "redacted".) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:		
8. Signature: (See instruction #8) Check the appropriate box. <input checked="" type="checkbox"/> I am the creditor. <input type="checkbox"/> I am the creditor's authorized agent. (Attach copy of power of attorney, if any.) <input type="checkbox"/> I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004.) <input type="checkbox"/> I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)		
I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief. Print Name: <u>Troy Garrett</u> Title: <u>President</u> Company: <u>Ceres Environmental Services Inc.</u> (Signature) _____ (Date) <u>8/30/12</u> Address and telephone number (if different from notice address above): <u>3825 85th Ave N</u> <u>Brooklyn Park, MN 55443</u> Telephone number: <u>800-218-4424</u> Email: <u>troy.garrett@ceresenvironmental</u>		
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.		COURT USE ONLY

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

<p>Court, Name of Debtor, and Case Number: Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.</p> <p>Creditor's Name and Address: Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).</p> <p>1. Amount of Claim as of Date Case Filed: State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.</p> <p>2. Basis for Claim: State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.</p> <p>3. Last Four Digits of Any Number by Which Creditor Identifies Debtor: State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.</p> <p>3a. Debtor May Have Scheduled Account As: Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.</p> <p>3b. Uniform Claim Identifier: If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.</p>	<p>4. Secured Claim: Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.</p> <p>5. Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a). If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.</p> <p>6. Credits: An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.</p> <p>7. Documents: Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.</p> <p>8. Date and Signature: The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, attach a complete copy of any power of attorney, and provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.</p>
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DEFINITIONS

Debtor
A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor
A creditor is a person, corporation, or other entity to whom debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. §101 (10).

Claim
A claim is the creditor's right to receive payment for a debt owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

Proof of Claim
A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

Secured Claim Under 11 U.S.C. §506(a)
A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien.

A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

Unsecured Claim
An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. §507(a)
Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted
A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.

Evidence of Perfection
Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

INFORMATION

Acknowledgment of Filing of Claim
To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may view a list of filed claims in this case by visiting the Claims and Noticing Agent's website at <http://www.kccllc.net/jeffersoncounty>

Offers to Purchase a Claim
Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 et seq.), and any applicable orders of the bankruptcy court.

PLEASE SEND COMPLETED PROOF(S) OF CLAIM TO:

Jefferson County Claims Processing
c/o Kurtzman Carson Consultants LLC
2335 Alaska Avenue
El Segundo, CA 90245

OR EMAIL TO:

JeffersonCountyClaims@kccllc.com

Ceres Environmental Services, Inc.
Recap of Unpaid Invoices

Contract 133-11: Stump Removal

Inv.	Date	Amount
82549	6/14/2011	\$ 838,191.52
82548	6/14/2011	\$ 842,692.24
CM2941	6/14/2011	\$ (26,664.31)
82713	6/23/2011	\$ 56,981.48
82715	6/23/2011	\$ 752,522.16
82824	6/30/2011	\$ 106,884.55
82825	6/30/2011	\$ 335,119.84
82879	6/30/2011	\$ 7,617.69
82880	6/30/2011	\$ 145,220.82
82850	7/1/2011	\$ 185,241.42
82963	7/11/2011	\$ 104,167.83
82962	7/11/2011	\$ 2,049.47
83225	7/28/2011	\$ 206,707.83
		\$ 3,556,732.54

Contract 133-11: Additional Grinding for County Hauled Material

Inv.	Date	Amount
83661	9/15/2011	\$ 185,182.98
Total Amount Due		\$ 3,741,915.52

EXHIBIT B

**JEFFERSON COUNTY
CONTRACT COVER SHEET**

Originating Department:	Roads and Transportation	BID: YES	Original Contract																								
Department Contact:	Wayne Sullivan	Phone Number: 205-325-5795																									
Contract Information:	Contract Name: Rights-of-Way Debris Removal and Disposal Services	Contract ID: CON-00002603	Amount of Contract: \$0.00																								
Date:	05/04/2011																										
30 Day Cancellation:	30 DAY CANCELLATION CLAUSE: YES		IF NO, GIVE EXPLANATION BELOW N/A																								
Funding Source:	<table border="1"> <thead> <tr> <th></th> <th></th> <th>Bus.</th> <th>G/L</th> <th>Funct</th> </tr> <tr> <th>Fund</th> <th>Funding Source Percent</th> <th>Area</th> <th>Acct</th> <th>Area</th> </tr> </thead> <tbody> <tr> <td>N/A</td> <td>100</td> <td>N/A</td> <td>N/A</td> <td>N/A</td> </tr> </tbody> </table>			Bus.	G/L	Funct	Fund	Funding Source Percent	Area	Acct	Area	N/A	100	N/A	N/A	N/A	<table border="1"> <thead> <tr> <th>WBS</th> <th>Grant</th> <th>I/O</th> </tr> <tr> <th>Element</th> <th>Number</th> <th>Number</th> </tr> </thead> <tbody> <tr> <td>N/A</td> <td>N/A</td> <td>N/A</td> </tr> </tbody> </table>	WBS	Grant	I/O	Element	Number	Number	N/A	N/A	N/A	
		Bus.	G/L	Funct																							
Fund	Funding Source Percent	Area	Acct	Area																							
N/A	100	N/A	N/A	N/A																							
WBS	Grant	I/O																									
Element	Number	Number																									
N/A	N/A	N/A																									
Current Available Budget:	\$0.00																										
Contractor:	Ceres Environmental Services, Inc.	RECEIVED MAY 11 4 2011																									
Remittance Address:	Ceres Environmental Services, Inc. 2323 Bainbridge Street Suite 109 Kenner, LA 70062	COUNTY ATTORNEY																									
Taxpayer Identification#:	41-1816075	Vendor ID: N/A																									
Contractor Contact Person:	David A. Preus	Phone Number: 800-218-4424																									
Contract Agreement:	To remove and dispose of all eligible debris from Jefferson County, Alabama.																										
BID/RFP Number (if no service fees not bid, give detailed explanation):	Bid/RFP# 133-11	Explanation (if no Bid/RFP# given): N/A																									
Payment Terms:	Net 30																										
Purchasing Agent Signature:	<i>[Signature]</i>	Date:	5/4/11																								
Department Head Signature:	<i>[Signature]</i>	Date:	5/4/11																								
Human Resources Director Signature:	N/A	Date:																									
Personnel Board Signature (If applicable):	N/A	Date:																									
Chief Information Officer Signature (If applicable):	N/A	Date:																									
Chief Financial Officer:	<i>[Signature]</i>	Date:	5/4/2011																								
County Attorney:	<i>[Signature]</i>	Date:	5/4/11																								
Commission President Signature:	<i>[Signature]</i>	Date:	5-4-11																								
Commission Approval Date:		Minute Book:	Page(s):																								
	Print this page	Contract Management System by PMO Division of Information Technology Department																									

EXHIBIT A

JEFFERSON COUNTY COMMISSION
DATE: 5-4-11
MINUTE NUMBER: 161
PAGE(S): 498

RESOLUTION

WHEREAS, on April 27, 2011, the citizens of Jefferson County, Alabama, suffered extensive property damage, personal injury and loss of life in an outbreak of unprecedented severe weather; and

WHEREAS, the destruction and debris have created conditions on and about public highways, roads and streets, so as to jeopardize the safety, health and convenience of the traveling public and others; and

WHEREAS, this condition has produced an emergency need for the County to contract for debris removal from the public rights-of-way for such highways, roads and streets; and

WHEREAS, the Jefferson County Commission has determined pursuant to Alabama law that such emergency condition requires the awarding of a contract without the standard public advertisement provided, however, that the Jefferson County Commission has issued a Request For Proposals to 21 contractors, published the request on the County website and has received twelve proposals to perform said work.

NOW THEREFORE BE IT RESOLVED BY THE JEFFERSON COUNTY COMMISSION that the Commission hereby determines that Ceres Environmental has submitted the lowest qualified proposal and the President is hereby authorized and directed to execute the contract with Ceres Environmental upon approval of said contract by the County Attorney.

BE IT FURTHER RESOLVED BY THE JEFFERSON COUNTY COMMISSION that the President is hereby authorized to execute a Memorandum of Understanding between the Jefferson County Commission and any municipality or township within Jefferson County, Alabama, regarding storm debris removal and disposal in such municipality or township, upon approval of the Memorandum of Understanding by the County Attorney.

STATE OF ALABAMA)

CONTRACT NO. 00002603

JEFFERSON COUNTY)

THIS AGREEMENT entered into this 4th day of May, 2011, by and between Jefferson County, Alabama, hereinafter called "the County", and (Ceres Environmental Services, Inc.), located at 2323 Bainbridge St., Suite 109, Kenner, LA 70062 hereinafter called "the Contractor".

WHEREAS, the County desires to contract for Rights-of-Way Debris Removal and Disposal services for Jefferson County, for the Department of Roads and Transportation, hereinafter called "Contracting Officer's Representative (COR)", and

WHEREAS, the Contractor desires to furnish said services to the County;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. **ENGAGEMENT OF CONTRACTOR:** The County hereto agrees to engage the Contractor and the Contractor hereby agrees to comply with the conditions hereinafter set forth.
2. **SCOPE OF SERVICES:** This Contract results from Jefferson County's Request for Proposal No. 133-11 dated May 3, 2011, the terms of which are included herein by reference.

1.0 GENERAL.

The purpose of this contract is to remove and dispose of all eligible debris from Jefferson County, Alabama (COUNTY) Rights-of-Way (ROW). The area to be included as part of this contract is located within the COUNTY Limits.

2.0 SERVICES.

- 2.1. The Contractor shall provide for debris removal and disposal of all eligible debris from the COUNTY ROW and COUNTY maintained property.
- 2.2. The debris shall be taken to an approved dumpsite(s) indicated on the attached MAPS. All necessary permits shall be obtained by the CONTRACTOR.
- 2.3. The estimated amount of debris to be removed under this contract is shown on the individual bid schedules, but not guaranteed. The unit price on the individual bid schedules will be used for payment.

- 2.4. The Contractor shall document the current conditions of all roadways, sidewalks and all structures to remain in the debris removal area. In addition, all roadways along the haul routes shall be documented. A representative of the COUNTY shall be present during this inspection. The Contractor shall provide photographic and/or video documentation. The documentation shall be submitted to the COUNTY prior to beginning the work.
- 2.5. Haul and Dispose. The work shall consist of clearing, separating, and removing any and all eligible debris (see definitions of eligible debris) from public property only, including ROW of streets and roads. Work shall include: 1) examining and sorting debris to determine whether or not debris is eligible and to determine whether eligible debris is burnable or non-burnable (or other categories specific to the project site); 2) loading and sorting the debris; 3) hauling the eligible debris to an approved dumpsite(s). Ineligible debris shall not be loaded, hauled, or dumped under this contract. The Contractor is liable for all ineligible debris handled during the life of this contract. The contracting officers representative (COR) or other contracting term used by the local community. This should be changed throughout the contract shall be immediately notified of any ineligible debris placed at the right of way for collection.
- 2.5.1. Wood waste shall be hauled to wood reduction sites. Hauling of household hazardous waste and other hazardous material shall be hauled separately and only to an approved site for receiving hazardous materials.
- 2.5.2. The Contractor shall make a maximum of (3) three passes with a minimum of one weekend between each pass. The contractor shall not move from one designated work area to another designated work area without prior approval from the contracting officers representative (COR) or other contracting term used by the local community. This should be changed throughout the contract.
- 2.6. Any eligible debris, such as fallen trees, which extend onto the public ROW from private property, shall be cut at the point where it enters the ROW. Only that part of the debris that lies within the ROW shall be removed. Hazardous limbs are considered eligible debris and are defined as limbs greater than two inches in diameter that are still hanging in the tree and are threatening a public use area, such as a trail, sidewalk, road, etc. Trees in the public ROW with more than 50% of the crown broken are eligible debris and shall be removed. Holes present as a result of uprooted trees in the public ROW shall be filled to ground level. The Contractor shall not enter onto private property during the performance of this contract.
- 2.7. Contractors shall note that a portion of the project will occur in residential areas. The contractors should exercise due care to minimize any damages to trees, shrubs, landscaping and general property. The contractor shall repair any damages caused by the contractor's equipment in a timely manner at no expense to the COUNTY. The debris work area shall be left clear of debris and cleaned, as reasonably and practical under the conditions of this project.

- 2.8. The contractor shall use equipment and perform work in a manner to prevent damages to the COUNTY infrastructure facilities and adjacent ROWs, including all landscaped areas. The contractor shall repair any damages caused by the contractor's equipment in a timely manner at no expense to the COUNTY. All tracked equipment shall be approved by the COUNTY prior to use. All loading equipment is required to operate from the street/road using buckets and/or boom and grapple devices to remove and load the debris. Any damage to private property, sidewalks, curbs, or streets shall be repaired at the expense of the contractor.
- 2.9. The Contractor shall conduct the work so as not to interfere with the disaster response and recovery activities of federal, state, and local governments or agencies, or of any public utilities.
- 2.10. The County reserves the right to inspect the site, verify quantities and review operations at any time.
- 2.11. All work shall be accomplished in a safe manner in accordance with COUNTY Safety Standards and OSHA standards.

3.0 LOAD TICKETS.

- 3.1. Load Tickets shall be used for recording the cubic yard volume for stumps of debris removed for disposal. Load tickets shall be provided by the CONTRACTOR. A copy of the load ticket to be used by the contractor shall be submitted for COUNTY approval prior to beginning work. The CONTRACTOR shall provide all load tickets to the COUNTY. The load ticket numbers shall be sequentially numbered. The load tickets shall be a minimum of four-parts.
- 3.2. Each ticket shall contain the following information:
 - Ticket Number
 - Contract Number
 - Contractor Name
 - Date
 - Truck or Roll-off Number
 - Truck Capacity
 - Point of Debris Collection
 - Loading Departure Time
 - Dump Arrival Time
 - Percent of Load
 - Actual Debris Volume
 - Debris Eligibility (Y/N)
- 3.3. A minimum four-part load ticket will be issued by a COUNTY monitor prior to transport of the debris from the loading site. The entire four-part load ticket is given to the vehicle operator. Upon arrival at the dumpsite, the vehicle operator will give the entire four-part

load ticket to the COUNTY monitor. The COUNTY monitor will verify the hauler and equipment and establish a percent of truck capacity of the eligible cubic yardage of debris load. After documenting percentage to the nearest 5%, the COUNTY monitor will calculate the actual cubic yardage of the load. The actual cubic yard will be recorded on the load ticket by the COUNTY monitor to the nearest cubic yard. The COUNTY monitor will document the data on the load ticket. The COUNTY monitor will give one copy to the vehicle operator. One copy is then given to the CONTRACTOR; the original is kept by the COUNTY and the fourth for any other entity that may need a copy. The load tickets shall be submitted with the daily operational report.

4.0 DEBRIS CLASSIFICATION.

- 4.1 Eligible Debris. Eligible debris is considered all storm related debris, which is located within the public right of way JEFFERSON COUNTY and defined below. Eligible debris consists of damaged trees, woody debris, construction and household debris, and other hurricane-related material that exists in the right-of-way and creates an immediate threat to lives, public health and safety.
- The debris must present a HEALTH & SAFETY threat to the general public or to the users of an eligible facility.
 - The debris must be the direct result of the declared event.
 - The debris must be the legal responsibility of the eligible applicant.
 - The debris must not be the responsibility of or fall under the authority of another federal agency.
- 4.2 Construction demolition and household debris that is placed within the applicant's right-of-way is eligible for removal and to be taken to an approved landfill site. Construction and household debris should not be mixed with vegetative debris or appliances (includes any device made of metal). Hazardous and toxic waste shall not be mixed with construction and household debris, woody debris or appliances.
- 4.3 Stumps The removal and disposal of all stumps maybe paid on the cubic yard basis, regardless or size or whether or not the stumps require extraction by the contractor. Stumps 24" or larger hauled separate from other debris shall be individually measured and converted to cubic yards using the attached TABLE by the COR or his designee. Uprooted stumps with an exposed root ball on improved public property or ROW 24" or larger that create an immediate threat to life, public health, and safety which have to be extracted by mechanical means maybe addressed on a case by case basis by the COR after FEMA approval. Stumps not approved in advance by FEMA shall be paid for on a cubic yard basis.

5.0 PERFORMANCE SCHEDULE.

- 5.1. The Contractor shall commence performance within twenty-four (24) hours of receipt of notice to proceed.
- 5.2. Prior to commencing debris removal operations a CONTRACTOR shall, with the COUNTY direction, provide a work plan showing where operations will begin and which

streets/roads will be cleared on a 7 and 14-day projection. The plan shall be updated every Monday.

- 5.3 All activity associated with debris operations shall be performed during daylight hours as directed by the County Engineer. The contractor may work (7) seven days per week, excluding holidays.
- 5.4 Maximum allowable time for completion shall be (30) thirty calendar days, unless the COUNTY initiates additions or deletions to the contract by written change orders. Both parties pursuant to applicable COUNTY, State and Federal Law will equitably negotiate subsequent changes in cost and completion time.
- 5.5 A reasonable daily production rate will be determined by the County Engineer. If the Contractor fails to complete the contract within the allowable time for completion, Contractor agrees to pay the County liquidated damages equal to the amount of the cost of the Jefferson County monitoring team for each day beyond the completion date.

6.0 EQUIPMENT.

- 6.1 All trucks and other equipment must be in compliance with all applicable federal, state, and local rules and regulations. All trucks and other equipment shall be equipped with back up alarms. Any truck used to haul debris must be mechanically loaded and be capable of rapidly dumping its load without the assistance of other equipment. 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 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 bedsides. All extensions are subject to acceptance or rejection by the COUNTY. The contractor shall provide means to rapidly unload any trailer that does not have a means for dumping. All trailers shall have a metal-framed exterior and a minimum of 5/8" plywood (not wafer board) interior walls. All equipment used to haul debris shall be equipped with a tailgate that will effectively contain the debris during transport and permit the truck to be filled to capacity. Plastic webbing is not acceptable for a tailgate. All equipment that becomes damaged to the extent that it can no longer hold its original capacity (i.e. trailers with plywood sides, etc.) must be repaired to its original capacity or it will be ineligible for any debris operations. All hauling equipment shall be measured and marked for its load capacity. The Contractor is responsible for ensuring all loading and transport equipment complies with state and local laws. The COUNTY prior to use shall inspect all equipment. The COUNTY will provide a form for this purpose.
- 6.2 Trucks and other heavy equipment designated for use under this contract shall be equipped with two signs, one attached to each side. These signs shall be furnished by the CONTRACTOR. The signs remain the property of the COUNTY, and will be returned to the COUNTY at the conclusion of the contract. Magnetic signs are not permitted. The signs shall contain the following information:

- Company Name
- Truck Number
- Cubic Yardage
- Inspectors Name and Date

- 6.3. Prior to commencing debris removal operations, the CONTRACTOR shall present to the COUNTY all trucks, trailers, or containers that will be used for hauling debris. Each truck or trailer will be measured to determine the load capacity. Each truck or trailer shall be numbered and clearly display the load capacity for identification with a permanent marking. The COUNTY may, at any time, request that the trucks be re-measured. The CONTRACTOR shall notify the COUNTY each time a new truck, trailer or container is to be used under this contract. No capacity can exceed 100% of the measured volume.
- 6.4. Trucks or equipment, which is designated for use under this contract, shall not be used for any other work during the working hours of this contract. The Contractor shall not solicit work from private citizens or others to be performed in the designated work area during the period of this contract. Under no circumstances will the Contractor mix debris hauled for others with debris hauled under this contract.
- 6.5. Loading equipment used under this contract shall be rubber tired and sized properly to fit loading conditions. Excessive size loading equipment (6 CY and up) and non-rubber tired equipment must be approved by the COUNTY.
- 6.6. The CONTRACTOR shall provide an inspection tower at each dumpsite. This tower shall be constructed such that the COUNTY monitor can see the bed when empty and to fully view the debris load (at least 10 feet above the existing ground surface), establishing the volume. The inspection tower shall be constructed to meet all local, state and federal safety requirements. The tower shall be constructed using pressure treated wood. The floor area shall be 8' by 8', constructed of 2" x 8" joists, 16" O.C. with 5/8" plywood supported by four 6" x 6" posts. The perimeter of the floor area shall be protected by a 4 foot high wall constructed of 2" x 4" studs and 1/2" plywood. The floor area shall be covered with a corrugated tin roof. The roof shall provide a minimum of 6'-6" of headroom below the support beams. Wooden steps with a handrail shall provide access. The towers shall include a writing surface area. The contractor may provide a mechanical lift to be used in place of the constructed tower. The CONTRACTOR shall remove and dispose of the inspection towers following completion of the debris removal at the direction of the COUNTY. The CONTRACTOR shall provide portable restroom facilities at all dumpsites.

7.0 REPORTING.

- 7.1. The CONTRACTOR shall submit a report to the COUNTY each day for the term of the contract. A sample daily haul record is attached. Each report shall contain, at a minimum, the following information:

- Contractor's Name
- Contract Number
- Truck Number
- Location of work
- Day of Report
- Daily and cumulative totals of debris removed, by category

7.2. Discrepancies between the daily operational report and the corresponding load tickets shall be reconciled no later than the following day.

8.0 OTHER CONSIDERATIONS.

- 8.1. The CONTRACTOR shall supervise and direct the work, using skillful labor and proper equipment for all tasks. Safety of the CONTRACTOR'S personnel and equipment is the responsibility of the CONTRACTOR. Additionally, the CONTRACTOR shall pay for all materials, personnel, taxes, and fees necessary to perform under the terms of this contract.
- 8.2. The CONTRACTOR shall be duly licensed in accordance with the City's, State's and County's statutory requirements to perform the work.
- 8.3. The CONTRACTOR shall be responsible for taking corrective action in response to any notices of violations issued as a result of the CONTRACTOR'S or any subcontractors' actions or operations during the performance of this contract. Corrections for any such violations shall be at no additional cost to the COUNTY. The CONTRACTOR shall be responsible for control of pedestrian and vehicular traffic in the work area. The 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 in addition to the personnel and equipment required in other parts of this contract. At a minimum, one flag person should be posted at each approach to the work area. Work shall be accomplished in a safe manner in accordance with County Safety Standards and OSHA standards.
- 8.4. The CONTRACTOR is responsible for obtaining all applicable environmental and regulatory permits prior to the CONTRACTOR commencing operations.
- 8.5. The CONTRACTOR is responsible for dust control. The CONTRACTOR shall be in compliance with all state and local laws for dust control.
- 8.6. The COUNTY may suspend the contractor's operations due to inclement weather. The performance period may be extended for weather delays.
- 8.7. The CONTRACTOR shall employ as many local residents and subcontractors as possible as part of this contract.

9.0 FINAL DISPOSITION

The method of final disposal will be determined by the contracting authority. Landfill disposal fees are the responsibility of the COUNTY.

10.0 MEASUREMENT

Measurement for all debris removed shall be by the cubic yard as determined by the eligible debris delivered to dumpsite, as supported by the load ticket. Load tickets shall document measurement.

11.0 BONDING, INSURANCE, INDEMNIFICATION

Prior to signing of contract, CONTRACTOR agrees to furnish the COUNTY with all applicable certificates of insurance. Within 24 hours following signing of contract, contractor shall provide copies of insurance policies including all endorsements. In addition, a payment and performance bond equal to the bid or \$1,000,000.00, whichever is higher, is required within 24 hours of award of the contract. The contractor shall be able to cover expenses associated with a major recovery operation prior to the initial payment and between subsequent payments as well as the aforementioned bonds and insurance. Contractor mobilization costs will not be paid if the contractor is unable to obtain bonding.

- 11.2. The Contractor shall save and hold the COUNTY harmless from and against all liability, claims and demands on account of personal injuries (including without limitation workmen's compensation and death claims) or property loss or damages of any kind whatsoever, which arise out of or be in any manner connected with, or are claimed to arise out of or be in any manner connected with, the performance of this contract, regardless of whether such injury, loss or damage shall be caused by, or be claimed to be caused by, the negligence or other fault of the Contractor, any subcontractor, agent or employee.
- 11.3 The CONTRACTOR agrees to protect, defend, indemnify, and hold harmless the COUNTY its employees and representatives, from any and all claims and liabilities for which the COUNTY, its employees and representatives, can or may be held liable as a result of injury (including death) to persons or damage to property occurring by reason of any acts or omissions of the CONTRACTOR, its employees, or agents, arising out of or connected with this agreement.
- 11.4 THE CONTRACTOR acknowledges that it (and its agents and employees) is an independent contractor and not an agent or employee of Jefferson County for any purpose and is not entitled to any type of leave, insurance, or other employee benefit from Jefferson County. Additionally Contractor understands and agrees that this agreement does not establish any employer-employee relationship, nor master-servant relationship, in any way whatsoever, between Jefferson County and any employee or

agent of Contractor. Contractor shall not represent itself to any third party as an agent or employee of Jefferson County.

12.0 PAYMENT.

- 12.1. Payment for work completed may be invoiced on a monthly basis. Invoices shall be based on reconciled load tickets from the daily operational reports. Payment will be based on the unit pricing submitted by the contractor in the attached BIDDING SCHEDULE.
- 12.2. Time is of the essence to the performance hereunder and the COUNTY shall recover from the CONTRACTOR any delay costs caused by the acts or omissions of the contractor or its agents. Except as otherwise provided herein, payment shall be made for actual work accepted and completed.
- 12.3. For reasonable cause and/or when satisfactory progress has not been achieved by the CONTRACTOR during any period for which a payment is to be made, the COUNTY'S authorized agent may retain a percentage of said payment, not to exceed 5% of the contract value to insure performance of the contract. Said cause and progress shall be determined by the COUNTY'S authorized agent, in his sole discretion, based on his assessment of any past performance of the CONTRACTOR and the likelihood that such performance will continue. Upon completion of all contract requirements, retained amounts shall be paid promptly less any offsets or deductions authorized hereunder or by law.
- 12.4. The COUNTY may withhold payment or final payment for reasons including, but not limited to the following: unsatisfactory job performance or progress, defective work, disputed work, failure to comply with material provisions of the contract, third party claims filed or reasonable evidence that a claim will be filed or other reasonable cause.
- 12.5. Final payment, less any offsets or deductions authorized hereunder or by law, shall be made within thirty days of the certification of completion of the project by the COUNTY'S authorized agent provided the CONTRACTOR has completed filing of all contractually required documents and certifications with the COUNTY'S authorized agent including acceptable evidence of the satisfaction of all claims or liens.

13.0 CHANGES, ADDITIONS, DEDUCTIONS, AND EXTRA WORK

Upon proper action by the Jefferson County Commission the COUNTY'S authorized agent may authorize changes, additions or deductions from the work to be performed by written notice to the CONTRACTOR. No extra work shall be done or any obligation incurred except upon written order by the COUNTY'S authorized agent. If any change causes an increase or decrease in the CONTRACTOR'S cost of, or the time required for, the performance of any part of the work under this contract, the COUNTY'S authorized

agent, with COUNTY concurrence, shall make an equitable adjustment and modify the contract in writing.

No portion of this contract may be sold, assigned, transferred or conveyed to a third party without the express written consent of the County.

14.0 TERMINATION OF CONTRACT

- 14.1. This contract may be terminated at any time for the convenience of the COUNTY. The COUNTY agrees to pay the contractor for all work completed through the termination date, as well as any demobilization costs that were a part of the original contract.
- 14.2. This contract shall be terminated for cause if the Contractor defaults in the performance of any of the terms hereof, including but not limited to: unsatisfactory job performance or progress, defective work, disputed work, failure to comply with material provisions of the contract, third party claims filed or reasonable evidence that a claim will be filed, or other reasonable cause; or otherwise fails to cure any other deficiency identified by the COUNTY'S authorized agent within 24 hours of delivery of notice of said deficiency. The COUNTY retains all other legal or equitable rights or remedies existing as a result of said default, including but not limited to any legal process necessary to obtain any sureties securing this contract. Any reasonable attorney's fee incurred in enforcing this contract will not exceed 5% of said contract price.

15.0 WARRANTIES AND REPRESENTATIONS

- 15.1. This contract is binding upon and inures to the benefit of the COUNTY or Assigns and is the whole agreement of the parties and governed by the Law of the State of Alabama. The appropriate venue for any litigation resulting hereunder is the Jefferson County Circuit Court, Alabama, Birmingham Division.
- 15.2. The Contractor shall comply with all Federal, State, County, and municipal laws, ordinances, and regulations. The Contractor shall not discriminate against any employee or applicant due to sex, race, color, creed, national origin or ancestry. The Contractor further certifies he is eligible to perform this contract under local and Federal law, is not now and has never been debarred from performing Federal or State government contracts and that all subcontractors used in the performance of this contract have the same qualifications.
- 15.3. The County is strongly committed to equal opportunity in solicitation of RFP's. The County encourages bidders and proposers to share this commitment. Each bidder submitting a proposal agrees not to refuse to hire, discharge, promote, demote, or to otherwise discriminate against any person otherwise qualified solely because of race, creed, sex, national origin or disability.

15.4 COUNTY FUNDS PAID

County, Contractor and Contractor's representative signed below certify by the execution of this Agreement that no part of the funds paid by the County and or State pursuant to this Agreement nor any part of the services, products or any item or thing of value whatsoever purchased or acquired with said funds shall be paid to, used by or used in any way whatsoever for the personal benefit of any member or employee of any government whatsoever or family member of any of them, including federal, state, county and municipal and any agency or subsidiary of any such government; and further certify that neither the contractor nor any of its officers, partners, owners, agents, representatives, employees or parties in interest has in any way colluded, conspired, connived, with any member of the governing body or employee of the governing body of the Consortium or any other public official or public employee, in any manner whatsoever, to secure or obtain this Agreement and further certify that, except as expressly set out in the scope of work or services of this Agreement, no promise or commitment of any nature whatsoever of any thing of value whatsoever has been made or communicated to any such governing body member or employee or official as inducement or consideration for this Agreement.

Any violation of this certification shall constitute a breach and default of this Agreement, which shall be cause for termination. Upon such termination Contractor shall immediately refund to the County all amounts paid by the County pursuant to this Agreement.

16.0 DEFICIENCIES, CORRECTIVE ACTIONS AND DEDUCTIONS

- 16.1. When the Contractor's work does not conform to the Contract requirements completely, a deficiency exists. If a deficiency(s) is serious enough to render a service unacceptable, it is also considered a defect. Defects are important in determining if non-compliance levels have been exceeded for services inspected.
- 16.2. Corrective Actions. If deficiencies are identified, the COUNTY must take action to correct those deficiencies using one, or in some cases a combination of, the following:
 - 16.2.1. Stop Unsafe Work. The COUNTY authorized agent may immediately stop work on that portion of the job affected by a safety hazard, until it is corrected.
 - 16.2.2. Issue a Stop Work Order. If the COUNTY authorized agent determines the deficiency is serious, the COUNTY can issue a stop work order.
 - 16.2.3. Reduced Value Deduction. The COUNTY may reduce the Contract price to reflect the reduced value of the services performed. This method is normally used when the work is performed by the, COUNTY or another contractor rather than the Contractor under this contract. The amount of the deduction is equal to the value of the service(s) not performed. As appropriate, calculation of deductions for certain deficiencies will be made using approved methods allowed by the contract clause entitled "Inspection of Services".

16.2.4. The Contract may be terminated.

16.3. The COUNTY may discuss corrective actions with the Contractor to prevent future occurrences.

16.4. The COUNTY authorized agent will notify the Contractor, in writing, of any observed noncompliance with the aforementioned Federal, State, or local laws or regulations. Such notice, when delivered to the Contractor at the site of the work, shall be deemed sufficient for the purpose. After receipt of such notice, immediately inform the COUNTY authorized agent of proposed corrective action, and take such action as may be approved. If the Contractor fails or refuses to comply promptly, the COUNTY authorized agent may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop orders shall be made the subject of a claim for extension of time, or for excess costs or damages by the Contractor.

17.0 NOTICES

17.1. At the time of award, the CONTRACTOR shall designate, in writing, a CR to receive any Notice required hereunder and who shall be available at the local work site in Jefferson County, Alabama during all times that the Contractor is performing work in accordance herewith. A copy of said designation shall be provided to the COUNTY authorized agent at the time of award.

17.2. The only COUNTY personnel authorized to receive any Notice required hereunder are the COUNTY authorized agent. Said Notice must be hand delivered during normal business hours to the location designated by the COUNTY.

18.0 OTHER CONTRACTS.

The COUNTY reserves the right to issue other contracts or direct other contractors to work within the area included in this contract.

19.0 ACCEPTANCE OF CONTRACT

The Contractor shall provide all the documentation required as per SECTION BONDING AND INSURANCE of this contract within the specified time limit, and providing a list of all Sub-Contracts and Proof of Insurance of all Sub-Contractors being used under this contract.

The Contractor shall provide the Jefferson County Commission the required insurance certificate(s) with a clause that shows Indemnity and Hold Harmless from injuries, damages, or losses caused by the negligent actions of the Contractor or its Employees or its subcontractors or the subcontractor's employees to Jefferson County.

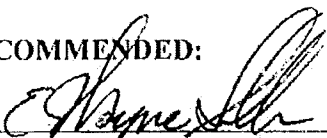
The CONTRACTOR shall provide proof of Workman's Compensation as required by the State of Alabama. As agreed upon by the Jefferson County and Contractor, local sub-contractors and individuals will be used, to the extent possible, during this debris removal project.

The Contractor agrees to complete the work in a professional, workmanlike manner and within the scope of work guidelines set forth above based on the unit pricing .

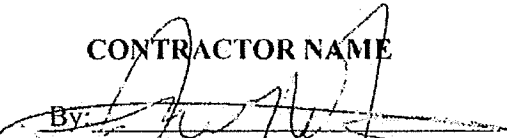
Contractor acknowledges that their services qualify for the County to seek reimbursement for payment of the Contractor's services under all applicable Federal Public Assistance Debris Removal Regulations. See Attachment A.

IN WITNESS WHEREOF, the parties have agreed to the above requirements and have entered into the above contract this 4th day of May, 2011.


RECOMMENDED:

By: 
E. Wayne Sullivan, P.E./P.L.S.
Director/County Engineer

CONTRACTOR NAME

By: 
Troy Garrett, President
Ceres Environmental Services, Inc.

JEFFERSON COUNTY, ALABAMA

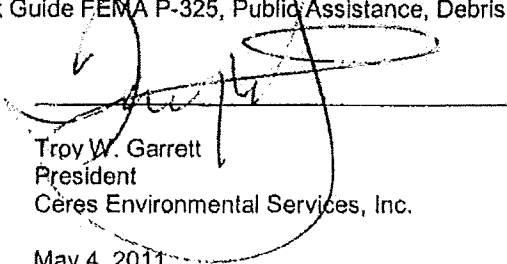
By: 
W. D. Carrington, President
Jefferson County Commission

State of Alabama
Jefferson County
Contract No. 00002603

Attachment A: Certification

I, Troy Garrett, President of Ceres Environmental Services, Inc., hereby certify that Ceres and its professional employees are trained and/or are knowledgeable regarding FEMA Debris Management policies and that our operations in Jefferson County, Alabama will substantially conform with the Debris Management Guide FEMA P-325, Public Assistance, Debris Management dated July 2007.

Certified:



Troy W. Garrett
President
Ceres Environmental Services, Inc.

Date: May 4, 2011



Tab 8 Additional Information
2 Alabama License

Jefferson County, Alabama
RFP 133-11 Debris Removal and Disposal for Jefferson County

Note to All Offerors

**Pricing MUST be extended to ALL Purchasing Association of Central Alabama (PACA) Members
as allowed by FEMA (See Exhibit C)**

Fee Schedule			
Item No.	Description	Unit	Price
1	Removal and hauling of eligible vegetative debris to a debris management site (DMS) within the City, including limbs and trees placed on ROW under pay items 10 and 11 below, and hauled to a DMS provided by the Owner.		
		0-10 miles	CY \$7.24
		11-20 miles	CY \$7.49
		21-30 miles	CY \$7.87
2	Site management of a debris management site (DMS) selected and provided by Owner including traffic control at site and providing inspection tower.	CY	\$0.98
3	Grinding of eligible vegetative debris at a DMS provided by the Owner. Eligible disaster related debris delivered to the DMS by the contractor, Owner, or others.	CY	\$2.98
4	Air curtain burning of eligible vegetative debris at a DMS provided by the Owner. Eligible disaster related debris delivered to the DMS by the contractor, Owner, or others.	CY	\$2.49
5	Hauling of eligible vegetative debris reduced by grinding from DMS to an approved disposal site as directed by the Owner .		
		0-10 miles	CY \$3.25
		11-20 miles	CY \$3.98
6	Hauling of eligible vegetative debris reduced by burning from DMS to an approved disposal site as directed by the Owner.		
		0-10 miles	CY \$4.98
		11-20 miles	CY \$4.98
7	Removal of eligible Construction & Demolition (C&D) Debris and hauling to a state approved landfill or disposal site as directed by the Owner.		
		0-10 miles	CY \$7.98
		11-20 miles	CY \$7.98
8	Removal of hazardous Limbs over 2" in diameter and place them on Public ROW. Payment for hauling, reduction, and/or disposal shall be included in pay item #1 above.		
		21-30 miles	CY \$7.98
			Each \$12.00
9	Removal of Hazardous Trees over 6" and up to 12" and placed on ROW. Payment for hauling, reduction, and/or disposal shall be included in pay item #1 above.	Tree	\$19.98
10	Removal of Hazardous Trees over 12" and up to 24" in diameter and placed on ROW. Payment for hauling, reduction, and/or disposal shall be included in pay item #1 above.		
		Tree	\$49.87

7.29
7.47
7.47

See

See

See

See

See

See

See

7.09
7.87
7.95

See

See

See

Fee Schedule			
Item No.	Description	Unit	Price
11	Removal of Hazardous Trees over 24" and up to 36" in diameter and placed on ROW. Payment for hauling, reduction, and/or disposal shall be included in pay item #1 above.	Tree	\$98.87
12	Removal of Hazardous Trees over 36" in diameter and placed on ROW. Payment for hauling, reduction, and/or disposal shall be included in pay item #1 above.	Tree	\$198.87
13	Removal, Hauling and Disposal of Asbestos Containing Material (ACM) and dispose at facility approved by state approved landfill to accept such items.	CY	\$29.95
14	Removal, hauling and disposal of White Goods. Contractor shall remove, decontaminate, transport and recycle or dispose approved white goods (within 20 miles).	Each	\$68.87
15	Removal, hauling and disposal of Electronic Waste - Contractor will load, transport and dispose at a facility approved by the State to accept such items.	Each	\$12.98
16	Removal, Hauling and Disposal of Household Hazardous Wastes (HHW). The contractor shall collect and transport HHW to a central collection site identified by the Owner (within 20 miles).	CY	\$12.98
17	Removal, Hauling and Disposal of Lawnmowers and Equipment with Small Engines at Owner approved site.	Each	\$12.98
18	Removal, Hauling and Disposal of Abandoned Tires. - The Contractor shall segregate, load, and haul eligible abandoned tires to a collection site as designated by the Owner (within 20 miles)	Each	\$4.98
19	Removal of hazardous Stumps 24" to 36" in diameter and placed on ROW. Payment for hauling shall be included in pay item #1 above. (Based on FEMA Stump Conversion Table)	CY	\$149.98
20	Removal of hazardous Stumps 36" to 48" in diameter and placed on ROW. Payment for hauling shall be included in pay item #1 above. (Based on FEMA Stump Conversion Table)	CY	\$249.98
21	Removal of hazardous Stumps greater than 48" in diameter and placed on ROW. Payment for hauling shall be included in pay item #1 above. (Based on FEMA Stump Conversion Table)	CY	\$298.98

Handwritten notes:
 229.00
 229.00
 279.00

NOTE: Tipping Fees paid by County or reimbursed to Ceres at cost

AGREED MAY 4, 2014

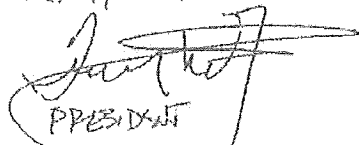

 PRESIDENT

EXHIBIT C



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.11

I. TITLE: Hazardous Stump Extraction and Removal Eligibility

II. DATE: MAY 15 2007

III. PURPOSE:

Establish criteria used to reimburse applicants for removing eligible hazardous stumps from public or, where authorized, private property.

IV. SCOPE AND AUDIENCE:

The policy is applicable to all major disasters and emergencies declared on or after the date of publication. It is intended for all personnel involved in the administration and execution of the Public Assistance Program, including applicants.

V. AUTHORITY:

Sections 403 and 407 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206, as amended.

VI. BACKGROUND:

Public Assistance regulations authorize reimbursement for the removal of debris from public and private land when it is in the public interest. Such removal is in the public interest when it is necessary to: eliminate immediate threats to life, public health and safety, or eliminate immediate threats of significant damage to improved public or private property; or to ensure economic recovery of the affected community to the benefit of the community at large. Trees that are uprooted during a disaster event such that all or part of their roots are exposed may pose an immediate threat to public health and safety.

VII. POLICY:

A. When a disaster event uproots a tree or stump (i.e., 50% or more of root ball is exposed) on a public right-of-way, improved public property or improved property owned by certain private nonprofit organizations, and the exposed root ball poses an immediate threat to life, public health and safety, FEMA may provide supplemental assistance to remove, transport, dispose, and provide fill for the root cavity of an eligible uprooted tree or stump. The Federal Emergency Management Agency (FEMA) will reimburse applicants reasonable costs for this type of work only when uprooted stumps are more than 24 inches in diameter (measured two feet from the ground), with the consensus of the Applicant and the State, and is approved in



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.11

advance by FEMA, using the attached Hazardous Stump Worksheet.

1. If it is necessary to remove an uprooted stump before it can be inspected by FEMA because it poses a threat that must be dealt with immediately, the applicant must submit documentation, to FEMA including photographs, that establishes its location on public property, specifics on the threat, stump diameter measured two feet up the trunk from the ground, quantity of material to fill the hole, and any special circumstances.

2. FEMA will reimburse applicants for extraction, transport and disposal of stumps with a diameter of 24 inches or smaller at the unit cost rate for regular vegetative debris, using the attached Stump Conversion Table, as such stumps do not require special equipment.

3. FEMA will reimburse applicants at the unit cost rate (usually cubic yards) for normal debris removal for all stumps, regardless of size, placed on the rights-of-way by others (i.e., contractors did not extract them from public property or property of eligible Private Non Profit organization). In such instances, applicants do not incur additional cost to remove these stumps because the same equipment that is used to pick up "regular" debris can be used to pick-up these stumps.

4. If an applicant incurs additional costs in picking up large stumps (over 24 inches in diameter) from rights-of-way, it should complete the Hazardous Stump Worksheet and present documentation to FEMA in advance for consideration.

5. Stumps with less than 50% of their root ball exposed should be cut flush at ground level and the cut portion included with regular vegetative debris.

6. Straightening or bracing of trees is eligible for reimbursement if it is less costly than removal and disposal. Applicant must provide a cost analysis showing cost effectiveness.

VIII. ORIGINATING OFFICE: Disaster Assistance Directorate (Public Assistance Division)

IX. SUPERSESSION: This policy supersedes Recovery Policy Number 9523.11, Hazard Stump Removal and Extraction Eligibility dated May 6, 2006.

X. REVIEW DATE: Three years from the date of publication.

David Garratt
Acting Assistant Administrator
Disaster Assistance Directorate

Hazardous Stump Worksheet

Applicant: _____

Date: _____

Applicant Representative: _____

Signature: _____

FEMA Representative (if available) _____

Signature: _____

State Representative (if available): _____

Signature: _____

	Physical Location (i.e., Street address, road, cross streets, etc.)	Description of Facility (ROW, Park, City Hall, etc.)	Hazard		GPS (decimal degrees, 00.000000)		Tree Size (Diameter)	Eligible		Fill For Debris Stumps CY	Comments (See attached sketch, photo, etc.)
			Yes	No	Latitude (N)	Longitude (W)		Yes	No		
1											
2											
3											
4											
5											
6											
7											
8											
9											
10											

Stump Conversion Table

Diameter to Volume Capacity

The quantification of the cubic yards of debris for each size of stump in the following table was derived from FEMA field studies conducted throughout the State of Florida during the debris removal operations following Hurricanes 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 cubic 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)	Debris Volume (Cubic Yards)	Stump Diameter (Inches)	Debris Volume (Cubic Yards)
6	0.3	46	15.2
7	0.4	47	15.8
8	0.5	48	16.5
9	0.6	49	17.2
10	0.7	50	17.9
11	0.9	51	18.6
12	1	52	19.4
13	1.2	53	20.1
14	1.4	54	20.9
15	1.6	55	21.7
16	1.8	56	22.5
17	2.1	57	23.3
18	2.3	58	24.1
19	2.6	59	24.9
20	2.9	60	25.8
21	3.2	61	26.7
22	3.5	62	27.6
23	3.8	63	28.4
24	4.1	64	29.4
25	4.5	65	30.3
26	4.8	66	31.2
27	5.2	67	32.2
28	5.6	68	33.1
29	6	69	34.1
30	6.5	70	35.1
31	6.9	71	36.1
32	7.3	72	37.2
33	7.8	73	38.2
34	8.3	74	39.2
35	8.8	75	40.3
36	9.3	76	41.4
37	9.8	77	42.5
38	10.3	78	43.6
39	10.9	79	44.7
40	11.5	80	45.9
41	12	81	47
42	12.6	82	48.2
43	13.3	83	49.4
44	13.9	84	50.6
45	14.5		