

THE VILLAGE OF COAL CITY

GRUNDY & WILL COUNTIES, ILLINOIS

RESOLUTION
NUMBER *15-12*

A RESOLUTION AUTHORIZING THE VILLAGE TO CONTRACT WITH KLF ENTERPRISES, INC. TO DELIVER, REMOVE AND DISPOSE OF CONTENTS OF ROLL-OFF DUMPSTERS AND TRAILERS IN CONNECTION WITH PHASE 2 OF THE VILLAGE'S DISASTER/EMERGENCY DEBRIS REMOVAL PROGRAM

TERRY HALLIDAY, Village President
PAMELA M. NOFFSINGER, Village Clerk

ROSS BRADLEY
TIMOTHY BRADLEY
DANIEL GREGGAIN
NEAL NELSON
DAVID TOGLIATTI
JUSTIN WREN
Village Trustees

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WHEREAS, the Village of Coal City, Grundy and Will Counties, Illinois (the "Village"), is a non-home rule municipal corporation and body politic of the State of Illinois, duly created, organized and existing under the Constitution of the State of Illinois, the Illinois Municipal Code and other laws of the State of Illinois, as amended from time to time, and having the powers, objects and purposes provided thereby; and

WHEREAS, the Village has authority, pursuant to Section 11-19-1(a) of the Illinois Municipal Code, 65 ILCS 5/11-19-1(a) to enter into contracts relating to the collection and disposition of garbage and refuse; and

WHEREAS, the Village has the authority to contract and be contracted with pursuant to 65 ILCS 5/2-3-8; and

WHEREAS, the Village suffered extensive damage as a result of an EF-3 tornado and related severe weather striking the community on June 22, 2015 (the "Storm"); and

WHEREAS, the President (the "President") and Board of Trustees of the Village (collectively, the "Corporate Authorities") hereby find and determine that the Storm has resulted in a surplus of accumulated garbage, refuse, vegetative debris, and construction debris (cumulatively, "the Storm Debris") within the Village that is beyond the scope of the Village's weekly waste collection service and which was not disposed of during the Village's initial post-Storm Phase 1 debris removal response;

WHEREAS, the Corporate Authorities have determined that it is in the public interest to enter into a contract providing for receptacles for Storm Debris and the removal and disposal of

the Storm Debris as set forth herein.

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Coal City, Grundy and Will Counties, as follows:

SECTION 1. RECITALS. That the foregoing recitals shall be and are hereby incorporated into and made a part of this Resolution as if fully set forth in this Section 1.

SECTION 2. APPROVAL AND RATIFICATION.

A. The Corporate Authorities hereby authorize and approve the Village's entry into a contract for services with KLF Enterprises, Inc. to deliver dumpsters of specified sizes to specified locations when and as directed by the Village, pick-up said dumpsters and trailers following loading by third-parties, and the disposal of the Storm Debris deposited in said receptacles, all as more particularly described in the *PHASE 2 STORM DEBRIS REMOVAL DUMPSTER AND TRAILER SERVICE AGREEMENT* (the "Agreement") attached hereto as Exhibit A.

B. The Corporate Authorities hereby authorize and delegate to the Village Administrator the authority to determine the number, size and location of the dumpsters and trailers and to order such services accordingly, as may be necessary or convenient to respond to protect the life, health and safety of the public.

C. The Village President, Village Clerk and Village Administrator are further authorized and directed to execute and attest the Agreement in substantially the form appended hereto following final legal review, and to execute associated work orders, and any and all other documents and to take such other or further action as may be necessary to carry out and give effect to the purpose and intent of this Resolution.

SECTION 3. RESOLUTION OF CONFLICTS.

All resolutions or ordinances in

conflict herewith are hereby repealed to the extent of such conflict.

SECTION 4. SAVING CLAUSE. If any section, paragraph, clause, or provision of this

Resolution shall be held invalid, the invalidity thereof shall not affect any of the other provisions of this

Resolution, which are hereby declared to be separable.

SECTION 5. EFFECTIVE DATE. This Resolution shall be in full force and effect

immediately from and after its passage and approval as provided by law.

SO RESOLVED this 10 day of August, 2015, at Coal City,
Grundy and Will Counties, Illinois.


AYES: 4

ABSENT: 2

NAYS: 0

ABSTAIN: 0

VILLAGE OF COAL CITY


Terry Halliday, President

Attest:


Pamela M. Noffsinger, Clerk

PHASE 2 STORM DEBRIS REMOVAL: DUMPSTER AND TRAILER SERVICE
AGREEMENT

THIS AGREEMENT is entered into by and between KLF ENTERPRISES, INC. (hereafter the "Contractor") and the VILLAGE OF COAL CITY (hereafter "Village").

WHEREAS, Contractor will be performing services and work for the Village as set forth on page PF-2 ("Roll-Off Dumpsters") of Contractor's Proposal Form (hereafter, the "Proposal"), attached hereto and incorporated by reference as Exhibit A and as may be ordered and directed by the Village under that Proposal, with such services and work identified as the delivery, pick-up and disposal of the Roll-Off Dumpsters as specified in the Proposal being known hereinafter as the "Work"; and

WHEREAS, the (i) Proposal, the (ii) Village of Coal City Specifications and Proposal Form Disaster/Emergency Debris Removal Phase 2 Curbside Separated Storm Debris Removal (the "Specifications") attached hereto and incorporated by reference as Exhibit B, and (iii) this Agreement cumulatively comprise the terms of the engagement of the Contractor by the Village and are hereby incorporated into this Agreement, such that any reference to "Agreement" shall be deemed to include the Agreement, Proposal and Specifications; and

WHEREAS, Contractor may have subcontractors, material suppliers and one or more employees engaged in the performance of said Work; and

WHEREAS, Contractor has the training, ability, knowledge, and experience to provide the Work as desired and directed by the Village;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration received and to be received, the parties hereby agree as follows:

1. **Incorporation.** The foregoing Recitals are made a part of this Agreement and the Agreement shall be interpreted and construed in light of those Recitals.
2. **Scope of Services.**
 - A. For a period of one (1) month from the Effective Date (the "Contract Period"), Contractor shall perform the services and work for the Village generally described as delivering dumpsters of specified sizes to specified locations when and as directed by the Village, picking-up said dumpsters following loading by third-parties, and disposing of the materials deposited in said dumpsters, and performing other related services requested by the Village, all as more particularly described on page PF-2 ("Roll-Off Dumpsters") of Contractor's Proposal Form, as such work as may be ordered and directed by the Village.
 - B. The Work shall be furnished and completed in accordance with this Agreement.

3. **Payment.** Contractor shall submit an itemized invoice to the Village detailing the number and size of roll-off dumpster box and/or trailer loads delivered, picked-up and disposed of by date. The Village agrees to abide by the Local Government Prompt Payment Act (50 ILCS 505/1, *et seq.*) when reviewing Contractor's invoices and payment requests. The Village shall pay Contractor in accordance with the pricing schedule set forth on page PF-2 ("Roll-Off Dumpsters") of the Proposal (the "Compensation"). Contractor agrees that the Compensation shall serve as final payment and that there shall be no additional reimbursement for travel, meals, fuel, disposal, labor, equipment, trucks, or other costs or expenses without the Village's prior written authorization.
4. **Conformance with Laws.** Contractor shall comply with all applicable laws, regulations, and rules promulgated by any Federal, State, County, Municipal and or other governmental unit or regulatory body now in effect during the performance of the Work, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement, including without limitation, all forms of Workers Compensation Laws, all terms of the Equal Employment Opportunity Clause of the Illinois Fair Employment Practices Commission, the Illinois Preference Act, the Social Security Act, statutes relating to contracts let by units of government, all applicable Civil Rights and Anti-Discrimination laws and regulations, and traffic and public utility regulations.
5. **Indemnification and Hold Harmless.** To the fullest extent permitted by law, Contractor agrees to waive any and all rights of contribution against the Village and to indemnify and hold harmless the Village and its officers, elected and appointed officials, employees, volunteers and agents from and against all claims, damages, losses and expenses, including, but not limited to, legal fees (attorney's and paralegal's fees, expert fees and court costs) arising out of or resulting from the performance of the Contractor's Work, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or injury to or destruction of property, other than the Work itself, including the loss of use resulting therefrom, or is attributable to misuse or improper use of trademark or copyright protected material or otherwise protected intellectual property, to the extent it is caused in whole or in part by any wrongful or negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right to indemnity which the Village would otherwise have. The Contractor shall similarly, protect, indemnify and hold and save harmless, the Village, its officers, elected and appointed officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses, including, but not limited to, legal fees, incurred by reason of Contractor's breach of any of its obligations hereunder, or Contractor's default of any provisions of the Agreement. The indemnification obligations under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any subcontractor under Workers' Compensation or Disability Benefit Acts or Employee Benefit Acts. The rights and obligations of this Paragraph shall survive the voluntary or involuntary termination of this Agreement.

6. **Insurance.**

A. **Minimum.** Contractor shall procure and keep in force, to the satisfaction of the Village, at all times during the performance of any Work referred to herein, insurance coverage in at least the type and amounts as follows:

1. **Workers' Compensation:**

- a. State: Statutory
- b. Applicable Federal (e.g., Longshoremen's): Statutory
- c. Employer's Liability
 - \$500,000.00 Per Accident
 - \$500,000.00 Disease, Policy Limit
 - \$500,000.00 Disease, Each Employee

2. **Commercial General Liability:**

- a. \$2,000,000.00 General Aggregate
- b. \$1,000,000.00 Products Completed Operations Aggregate
- c. \$1,000,000.00 Personal and Advertising Injury
- d. \$1,000,000.00 Each Occurrence
- e. \$ 50,000.00 Fire Damage (any one fire)
- f. \$ 5,000.00 Medical Expense (any one person)

3. **Business Automobile Liability (including owned, non-owned and hired vehicles):**

- a. **Bodily Injury:**
 - \$1,000,000.00 Per Person
 - \$1,000,000.00 Per Accident
- b. **Property Damage:**
 - \$1,000,000.00 Per Occurrence

4. **Umbrella Excess Liability:**

\$2,000,000.00 over Primary Insurance

B. **Evidence of Insurance**

- i. Prior to beginning work, Contractor shall furnish the Village with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.
- ii. All certificates shall provide for 30 days' written notice to the Village prior to the cancellation or material change of any insurance referred to therein. Written notice to the Village shall be by certified mail, return receipt requested.

- iii. Failure of the Village to demand any certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of the Village to identify a deficiency shall not be construed as a waiver of Contractor's obligation to maintain such insurance. The Contractor agrees that the obligation to provide the insurance required by these documents is solely its responsibility and that this is a requirement which cannot be waived by any conduct, action, inaction or omission by the Village.
- iv. The Village shall have the right, but not the obligation, of prohibiting Contractor from commencing Work until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received by the Village.
- v. Failure to maintain the required insurance may result in termination of this contract at the Village's option.

C. Miscellaneous.

- i. All policies of insurance purchased or maintained in fulfillment of this Agreement shall name the Village as an additional insured thereunder and the Contractor shall provide Certificates of Insurance and Policy Endorsements evidencing the coverages and the addition of the Village as an insured.
- ii. Any deductible or self-insured retentions must be declared to, and approved by, the Village. At the option of the Village, Contractor may be asked to eliminate such deductibles or self-insured retentions as respects the Village, its officers, elected and appointed officials and employees or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.
- iii. All insurance shall be written on an "occurrence" basis rather than a "claims-made" basis.
- iv. Upon request, the Contractor will provide copies of any or all policies of insurance maintained in fulfillment hereof.
- v. Contractor acknowledges and agrees that nothing contained in the insurance requirements of this Agreement is to be construed as limiting the liability of the Contractor, the liability of any Subcontractor or any tier or either of their respective insurance carriers.
- vi. All the insurance required of the Contractor shall state that the coverage afforded to the additional insureds shall be primary insurance of the

additional insureds with respect to claims arising out of operations performed by or on their behalf. If the "additional insureds" have other insurance or self-insured coverage which is applicable to the loss, it shall be on an excess or contingent basis.

- vii. For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the Village has the right to reject insurance written by an insurer it deems unacceptable.
- viii. Nothing contained in this Agreement is to be construed as limiting the liability of the Contractor. The Village does not, in any way, represent that the coverages or limits of insurance specified is sufficient or adequate to protect the Village, or the Contractor, but are merely minimums. The obligations of the Contractor to purchase insurance shall not, in any way, limit its obligations to the Village in the event that the Village should suffer an injury or loss in excess of the amount recoverable through insurance, or any loss or portion of a loss which is not covered by the Contractor's insurance.
- ix. In the event the Contractor fails to furnish and maintain the insurance required by this Agreement, the Village, upon 7 days written notice, may purchase such insurance on behalf of the Contractor, and the Contractor shall pay the cost thereof to the Village upon demand or shall have such cost deducted from any payments due the Contractor.
- x. All insurance provided by the Contractor shall provide that the insurance shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of the insurer's liability.

7. **FOIA Compliance.** Contractor agrees to maintain, without charge to the Village, all records and documents for projects of the Village in compliance with the Freedom of Information Act, 5 ILCS 140/1 *et seq.* In addition, Contractor shall produce records which are responsive to a request received by the Village under the Freedom of Information Act so that the Village may provide records to those requesting them within the time frames required. If additional time is necessary to compile records in response to a request, then Contractor shall so notify the Village and if possible, the Village shall request an extension so as to comply with the Act. In the event that the Village is found to have not complied with the Freedom of Information Act due to Contractor's failure to produce documents or otherwise appropriately respond to a request under the Act, then Contractor shall indemnify and hold the Village harmless, and pay all amounts determined to be due including but not limited to fines, costs, attorneys' fees and penalties.

8. **Prevailing Wages.** To the extent that the Prevailing Wage Act applies, to pay and require every Subcontractor to pay prevailing wages as established by the Illinois Department of Labor for each craft or type of work needed to execute the contract in accordance with 820 ILCS 130/.01 et seq. Contractor shall prominently post the current schedule of prevailing wages at the Contract site and shall notify immediately in writing all of its Subcontractors, of all changes in the schedule of prevailing wages. Any increases in costs to Contractor due to changes in the prevailing rate of wage during the terms of any contract shall be at the expense of Contractor and not at the expense of the Agency. The change order shall be computed using the prevailing wage rates applicable at the time the change order work is scheduled to be performed. Contractor shall be solely responsible to maintain accurate records as required by the prevailing wage statute and to obtain and furnish all such certified records to Agency as required by Statute. Contractor shall be solely liable for paying the difference between prevailing wages and any wages actually received by laborers, workmen and/or mechanics engaged in the Work and in every way defend and indemnify Agency against any claims arising under or related to the payment of wages in accordance with the Prevailing Wage Act. The Illinois Department of Labor publishes the prevailing wage rates on its website at <http://www.state.il.us/agency/idol/rates/rates.HTM>. The Department revises the prevailing wage rates and the Contractor/subcontractor has an obligation to check the Department's web site for revisions to prevailing wage rates. For information regarding current prevailing wage rates, please refer to the Illinois Department of Labor's website.
9. **Independent Contractor.** It is mutually understood and agreed that the Contractor shall have the full control of the ways and means of performing the Work referred to herein and that the Contractor or its employees, representatives or subcontractors are in no sense employees of the Village, it being specifically agreed that the Contractor bears the relationship of an independent contractor to the Village.
10. **Default.** Failure of either party to perform and comply with its respective obligations hereunder, or failure of either party in any way to perform its obligations with promptness, diligence, and in a workmanlike manner, or a party's insolvency, shall constitute a default. In the event of a default, the non-defaulting party shall send written notice of default to the defaulting party, specifying the nature of the default ("Notice of Default"). Upon receipt of the Notice of Default, if the defaulting party fails to cure the identified default within two (2) business days, such failure shall constitute an "Event of Default." Following an Event of Default by the Contractor, the Village shall have right terminate the employment of the Contractor and to employ any other person or persons to perform Contractor's work hereunder. The termination of the Contractor's employment as provided above shall not be deemed a release of Contractor's obligations hereunder. Either party, may, at its sole discretion, excuse the other party's Event of Default if such party has commenced efforts to cure such default to the reasonable satisfaction of the non-defaulting party within two (2) business days of the receipt of the Notice of Default and continues diligently to pursue such cure.
11. **Termination Without Cause.** This Agreement may be terminated by the Village or by

Contractor upon not less than five (5) days prior written notice to the other party.

12. **Notice.** Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) personally, (ii) by a reputable overnight courier, or (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid. Unless otherwise provided in this Agreement, notices shall be deemed received after the first to occur of (a) the date of actual receipt; or (b) the date that is one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (b) the date that is three (3) business days after deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section, each party to this Agreement shall have the right to change the address or the addressee, or both, for all future notices and communications to them, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications to the Village shall be addressed to, and delivered at, the following address:

Village of Coal City
515 S. Broadway
Coal City, IL 60416
ATTN: Village Administrator

With a Copy To: Mark R. Heinle
Ancel Glink
1979 N. Mill Street, Suite 207
Naperville, IL 60563

Notices and communications to Contractor shall be addressed to, and delivered at, the following address:

KLF Enterprises
2044 W. 163rd Street, Suite 2
Markham, IL 60428
ATTN: Sergio Zepeda

With a Copy To:

13. **Governing Law.** This Agreement shall be governed by, and enforced in accordance with, the laws of the State of Illinois, which are incorporated herein. Any suit brought to enforce the provisions of this suit shall be filed in the Thirteenth Judicial Circuit, Grundy County, Illinois, but only after exhausting all possible administrative remedies. In any suit or action arising under this Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees and costs of litigation. No suit or action shall be maintained by the Contractor, its successor or assigns, against the Village on any claim based upon or arising out of this Agreement or out of anything done in connection with this Agreement unless such action shall be commenced within one year of the voluntary or involuntary termination of this Agreement.
14. **Further Assurances.** Contractor agrees to sign, execute and deliver, or cause to be signed, executed and delivered, and to do or make, or cause to be done or made, upon written request of the Village, all agreements, instruments, papers, acts or things, supplemental, confirmatory or otherwise, as may be reasonably required by the Village for the purpose of or in connection with the Work described in this Agreement.
15. **Severability.** It is hereby expressed to be the intent of the Parties that should any provision, covenant, agreement, or portion of this Agreement or its application to any person or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and the validity, enforceability, and application to any person or property shall not be impaired thereby, but the remaining provisions shall be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.
16. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes any and all prior agreements and negotiations between the Parties, whether written or oral, relating to the subject matter of this Agreement.
17. **Amendments & Modifications.** To amendment or modification to this Agreement shall be effective until it is reduced to writing and approved and executed by both parties to this Agreement.
18. **Interpretation.** This Agreement shall be construed without regard to the identity of the Party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all Parties to this Agreement participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting Party shall not be applicable to this Agreement.
19. **Authority to Execute.** The parties each hereby warrant and represent to one another that the persons executing this Agreement on their respective behalves have been properly authorized to do so, and further that each has the full and complete right, power, and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth in this Agreement.

20. **Counterparts.** This Agreement may be executed in counterpart, each of which shall constitute an original document, which together shall constitute one and the same instrument.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, THE PARTIES have executed this Agreement this

10 day of August, 2015.

VILLAGE OF COAL CITY



President Terry Halliday



Village Clerk

Dated: August 10, 2015

KLF ENTERPRISES, INC.

By: _____

Its: _____

Dated: _____

EXHIBIT A

PROPOSAL

[Inserted on following pages]

EXHIBIT B

SPECIFICATIONS

[Inserted on following pages]