



OFFICE OF THE ATTORNEY GENERAL  
STATE OF FLORIDA  
DEPARTMENT OF LEGAL AFFAIRS

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CONSUMER PROTECTION  
SUBPOENA DUCES TECUM

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**IN THE INVESTIGATION OF:**                      **Disaster Debris Removal Services**  
**AG Case No. L17-3-1152**

**TO: AshBritt, Inc.**  
**565 E. Hillsboro Blvd.**  
**Deerfield Beach, FL 33411**  
**c/o Michael W. Moskowitz, Registered Agent**  
**800 Corporate Drive, Suite 500**  
**Fort Lauderdale, FL 33334**

**THIS INVESTIGATIVE SUBPOENA DUCES TECUM** is issued pursuant to Florida's Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes, and Section 501.160, Florida Statutes, Rental or Sale of Essential Commodities During a Declared State of Emergency: Prohibition Against Unconscionable Prices, in the course and authority of an official investigation. Your attention is directed to Sections 501.204, 501.206, and 501.160, Florida Statutes (2017), printed and attached hereto.

**YOU ARE HEREBY COMMANDED** to produce all documentary material and other tangible evidence as described herein, that is in your possession, custody, or control, or in the possession, custody, or control of your agents or employees, and to make it available for inspection and copying or reproduction before Assistant Chief Assistant Attorney General Julia A. Harris and/or other Assistant Attorney(s) General on Friday, October 13, 2017 at 9:00 a.m. at the following location:

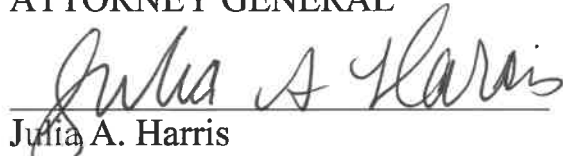
Office of the Attorney General  
Consumer Protection Division  
3507 East Frontage Road, Suite 325  
Tampa, Florida 33607

**ALTERNATIVELY**, this subpoena may be complied with by delivering copies of all of the requested materials, prior to the date set forth above to c/o Assistant Chief Assistant Attorney General Julia A. Harris at Julia.Harris@myfloridalegal.com. The production of material in response to this demand shall include the following:

**SEE ATTACHED ADDENDUM**

**WITNESS**, the Department of Legal Affairs at Tampa, Florida, this 2<sup>nd</sup> day of October, 2017.

PAMELA JO BONDI  
ATTORNEY GENERAL

A handwritten signature in cursive script that reads "Julia A. Harris". The signature is written in black ink and is positioned above a horizontal line.

Julia A. Harris  
Assistant Chief Assistant Attorney General  
Florida Bar No. 884235  
Office of the Attorney General  
Department of Legal Affairs  
3507 East Frontage Road, Suite 325  
Tampa, Florida 33607  
Phone: (813) 287-7950  
Facsimile: (813) 281-5515

**501.204 Unlawful acts and practices.**

- (1) Unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.
- (2) It is the intent of the Legislature that, in construing subsection (1), due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to s. 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1) as of July 1, 2017.

**501.206 Investigative powers of enforcing authority.**

- (1) If, by his or her own inquiry or as a result of complaints, the enforcing authority has reason to believe that a person has engaged in, or is engaging in, an act or practice that violates this part, he or she may administer oaths and affirmations, subpoena witnesses or matter, and collect evidence. Within 5 days, excluding weekends and legal holidays, after the service of a subpoena or at any time before the return date specified therein, whichever is longer, the party served may file in the circuit court in the county in which he or she resides or in which he or she transacts business and

serve upon the enforcing authority a petition for an order modifying or setting aside the subpoena. The petitioner may raise any objection or privilege which would be available under this chapter or upon service of such subpoena in a civil action. The subpoena shall inform the party served of his or her rights under this subsection.

- (2) If matter that the enforcing authority seeks to obtain by subpoena is located outside the state, the person subpoenaed may make it available to the enforcing authority or his or her representative to examine the matter at the place where it is located. The enforcing authority may designate representatives, including officials of the state in which the matter is located, to inspect the matter on his or her behalf, and he or she may respond to similar requests from officials of other states.
- (3) Upon failure of a person without lawful excuse to obey a subpoena and upon reasonable notice to all persons affected, the enforcing authority may apply to the circuit court for an order compelling compliance.
- (4) The enforcing authority may request that an individual who refuses to comply with a subpoena on the ground that testimony or matter may incriminate him or her be ordered by the court to provide the testimony or matter. Except in a prosecution for

perjury, an individual who complies with a court order to provide testimony or matter after asserting a privilege against self-incrimination to which he or she is entitled by law shall not have the testimony or matter so provided, or evidence derived therefrom, received against him or her in any criminal investigation or proceeding.

(5) Any person upon whom a subpoena is served pursuant to this section shall comply with the terms thereof unless otherwise provided by order of the court. Any person who fails to appear with the intent to avoid, evade, or prevent compliance in whole or in part with any investigation under this part or who removes from any place, conceals, withholds, mutilates, alters, or destroys, or by any other means falsifies any documentary material in the possession, custody, or control of any person subject to any such subpoena, or knowingly conceals any relevant information with the intent to avoid, evade, or prevent compliance shall be liable for a civil penalty of not more than \$5,000, reasonable attorney's fees, and costs.

**501.160. Rental or sale of essential commodities during a declared state**

**of emergency; prohibition against unconscionable prices.**

(1) As used in this section:

(a) "Commodity" means any goods, services, materials, merchandise, supplies, equipment, resources, or other article of commerce, and includes, without limitation, food, water, ice, chemicals, petroleum products, and lumber necessary for consumption or use as a direct result of the emergency.

(b) It is prima facie evidence that a price is unconscionable if:

1. The amount charged represents a gross disparity between the price of the commodity or rental or lease of any dwelling unit or self-storage facility that is the subject of the offer or transaction and the average price at which that commodity or dwelling unit or self-storage facility was rented, leased, sold, or offered for rent or sale in the usual course of business during the 30 days immediately prior to a declaration of a state of emergency, unless the increase in the amount charged is attributable to additional costs incurred in connection with the rental or sale of the commodity or rental or lease of any dwelling unit or self-storage facility, or regional, national, or international market trends; or

2. The amount charged grossly exceeds the average price at which the

same or similar commodity was readily obtainable in the trade area during the 30 days immediately prior to a declaration of a state of emergency, unless the increase in the amount charged is attributable to additional costs incurred in connection with the rental or sale of the commodity or rental or lease of any dwelling unit or self-storage facility, or regional, national, or international market trends.

(2) Upon a declaration of a state of emergency by the Governor, it is unlawful and a violation of s. 501.204 for a person or her or his agent or employee to rent or sell or offer to rent or sell at an unconscionable price within the area for which the state of emergency is declared, any essential commodity including, but not limited to, supplies, services, provisions, or equipment that is necessary for consumption or use as a direct result of the emergency. This prohibition is effective not to exceed 60 days under the initial declared state of emergency as defined in s. 252.36(2) and shall be renewed by statement in any subsequent renewals of the declared state of emergency by the Governor.

(3) It is unlawful and a violation of s. 501.204 for any person to impose unconscionable prices for the rental or lease of any dwelling unit or self-storage facility during a period of declared state of emergency.

(4) A price increase approved by an appropriate government agency shall not be a violation of this section.

(5) This section shall not apply to sales by growers, producers, or processors of raw or processed food products, except for retail sales of such products to the ultimate consumer within the area of the declared state of emergency.

(6) Nothing herein shall be interpreted to preempt the powers of local government except that the evidentiary standards and defenses contained in this section shall be the only evidentiary standards and defenses used in any ordinance adopted by local government to restrict price gouging during a declared state of emergency.

(7) Section 501.211 notwithstanding, nothing in this section creates a private cause of action in favor of any person damaged by a violation of this section.

(8) Any violation of this section may be enforced by the office of the state attorney or the Department of Legal Affairs.

(9) Upon a declaration of a state of emergency by the Governor, in order to protect the health, safety, and welfare of residents, any person who offers goods and services for sale to the public during the duration of the emergency and who does not possess a business tax receipt under s. 205.032 or s. 205.042 commits a misdemeanor

of the second degree, punishable as provided in s. 775.082 or s. 775.083. During a declared emergency, this subsection does not apply to religious, charitable, fraternal, civic, educational, or social organizations. During a declared emergency and when there is an allegation of price gouging against the person, failure to

possess a license constitutes reasonable cause to detain the person, provided that the detention shall only be made in a reasonable manner and only for a reasonable period of time sufficient for an inquiry into the circumstances surrounding the failure to possess a license.

## ADDENDUM

### Definitions

A. The word “Contractor” as used herein means the addressee/recipients of this subpoena, their parents, branches, departments, divisions, affiliates, subsidiaries, retail outlets, stores, franchises, successors, or predecessors, whether wholly owned or not, including, without limitation, any organization or entity in which said addressees have a management or controlling interest, together with all present and former officers, directors, agents, employees, sales people, brokers, agents, representatives or anyone else acting or purporting to act, on behalf of the above-identified persons or entities.

B. The word “document” means all documents, records and writings of any kind, and all communication (as defined below in Paragraph E) which are stored or retrievable or recorded in any manner, including originals and all non-identical copies whether different from the originals by notation made on such copies or otherwise, all drafts, alterations, modifications, changes, and amendments, graphic or any electronic or mechanical records or representations of any kind. The term “documents” includes, but is not limited to, the original and any non-identical copy (which is different from the original because of notation on such copy or otherwise) of all correspondence, E-mail, telegrams, teletype messages, contracts (including drafts, proposals, and any and all exhibits thereto), drafts, minutes and agendas, memoranda (including inter- and intra-office memoranda, memoranda for file, pencil jottings, diary entries, desk calendar entries, reported recollections, and any other written form of notation of events or intentions), transcripts and recordings of conversations and telephone calls, books of account, ledgers, publications, professional journals, invoices, financial statements, purchase orders, receipts, canceled checks and all other documentary material of any nature whatever, together with any attachments thereto or enclosures therewith.

C. The term “any” shall be construed as synonymous with “all” and shall be all inclusive.

D. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside of its scope.

E. The word “communication” means any act, action, oral speech, written correspondence, contact, expression of words, thoughts, or ideas, or transmission or

exchange of data or other information to another person, whether orally, person to person, in a group, by telephone, letter, personal delivery, intercom, telex, fax, e-mail, compact or floppy disc, or any other process, electric, electronic or otherwise in any medium. All such communications in writing shall include, without limitation, printed, typed, handwritten or other readable documents.

F. The word “person” means any individual and all entities, and, without limiting the generality of the foregoing, includes natural persons, employees, contractors, agents, consultants, vendors, telemarketers, consumers, customers, officers, directors, successors, assigns, joint owners, associations, partnerships, companies, joint ventures, corporations, affiliates, trusts, trustees, escrow agents and estates, and all groups or associations of persons.

G. “Related to” or “relating to” means in whole or in part constituting, containing, concerning, embodying, reflecting, describing, analyzing, identifying, stating, referring to, setting forth, or dealing with, or in any way pertaining to.

H. “Disaster Debris Removal Contract” means a contract entered into by Contractor with a Contracting Governmental Entity for disaster debris removal services, which may also include debris recovery, processing, separation recycling, reduction, hauling, and lawful disposal, and management support and/or operations and reporting in response to an emergency event such as, but not limited to, a hurricane.

I. “Contracting Governmental Entity or Entities” means a county, municipality, or political subdivision of the State of Florida that entered into a Disaster Debris Removal Contract with Contractor.

J. “Subcontractor” or “Subcontractors” means a person or entity engaged by Contractor to perform subcontract services and which may include services in Florida for Disaster Debris Removal Contract services.

### **Instructions**

K. The documents to be produced pursuant to each request should be segregated and specifically identified to indicate clearly the particular numbered or lettered request to which they are responsive.

L. For each request, or part thereof, which is not fully responded to pursuant to any privilege, the nature of the privilege and grounds in support thereof should be fully stated.



M. If you possess, control, or have custody of no documents responsive to any numbered request set forth below, state this fact by so specifying in your response to said request.

N. The use of the singular form of a word includes the plural and vice versa. In addition, the use of any tense of any verb includes all other tenses of the verb.

O. Unless otherwise specified, original documents must be produced. If your “original” is a photocopy, then the photocopy would be and should be produced as the original. Said copy shall be legible and bound or stapled in the same manner as the original.

P. This Subpoena is for the production of all responsive documents and information in your possession, custody or control regardless of whether such documents or information is possessed directly by you or your directors, officers, agents, employees, representatives, subsidiaries, managing agents, affiliates, investigators, or by your attorneys or their agents, employees, representatives or investigators.

Q. If any responsive document or information cannot be produced in full, you are to produce it to the extent possible, indicating which document, or portion of that document, is being withheld, and the reason that document is being withheld.

R. Documents not otherwise responsive to this subpoena shall be produced if such documents mention, discuss, refer to, or explain the documents that are called for by this subpoena, or if such documents are attached to documents called for by the subpoena and constitute routing slips, transmittal memoranda, or letters, comments, evaluations or similar materials.

S. If a document once existed and has subsequently been lost, destroyed, or is otherwise missing, please provide sufficient information to identify the document and state the details concerning its loss or destruction.

T. ***Electronically Stored Information*** (ESI) is to be produced in the form in which it is ordinarily maintained. For example, native files would include email, spreadsheets and word processing files. Responsive documents that exist in electronic format shall be provided in native format (e.g., Microsoft Word files (.doc) or Outlook (.pst), emails, spreadsheets and word processing documents) with standard Metadata intact, as outlined below. Prior to any production of responsive data from a structured database (e.g., Oracle, SAP, SQL, MySQL, QuickBooks, etc.), the producing party shall first provide the database dictionary and a list of all

reports that can be generated from the structured database. The list of reports shall be provided in native Excel (.xls) format. The database format will be requested for production after both parties agree on the format. Please include sufficient identification of the applicable software program to permit access to, and use of, each document. All attachments must be linked to their electronic documents. Native files should be provided in directories which are identifiable as responsive to a specific document request. All documents produced in native form should be produced on CDROM, DVDROM, or External USB drive media of a type that can be read by any standard computer. Unless otherwise agreed to, standard Metadata in electronically stored information shall be preserved and produced, such as: Custodian, To, From, CC, BCC, Dates and Times (Sent, Received and Modified), Attachments, Links and Document types. A more complete list can be provided upon request. Questions regarding electronic production should be directed to the Assistant Attorney General whose name appears on the subpoena. Arrangements will be made for the communication with the appropriate in-house technical expert.

U. If you claim the attorney-client privilege, work-product privilege, or any other privilege, for any document, provide a detailed privilege log that contains at least the following information for each document that you have withheld:

- 1) The name of each author, writer, sender or initiator of such document or thing, if any;
- 2) The name of each recipient, addressee or party for whom such document or thing was intended, if any;
- 3) The date of such document, if any, or an estimate thereof so indicated if no date appears on the document;
- 4) The general subject-matter as described on such document; if no such description appears, then such other description sufficient to identify said document; and
- 5) The claimed grounds for withholding the document, including, but not limited to, the nature of any claimed privilege and grounds in support thereof.

V. In the event that you seek to assert trade secret protection under Florida Statutes Section 688.002(4)(b), Section 812.081(1)(c), Section 815.04, and/or Section 815.045, for each document for which trade secret protection is claimed:

- 1) Provide prior to or simultaneous with production of the document at issue, a sworn affidavit from a person with knowledge as to the basis for the trade secret claim, which complies with the following:

a. The affidavit should specify the bates range of the claimed trade secret documents at issue, generally describe the documents at issue, and provide “substantial, competent evidence” of the application of the trade secret exemption.

b. The affidavit should attach a certification (similar in form to a traditional privilege log) that identifies for each separate claimed trade secret document (i) the bates range of the document, (ii) a description of the document sufficient to determine the application of the trade secret exemption, and (iii) the specific element(s) or provision(s) of Section 688.002(4) or Section 812.081(c) that render the document at issue a trade secret exempted from public records.

2) Segregate and separately label the documents claimed as trade secrets: documents produced electronically should be produced on separate CD or electronic media clearly-labeled “Trade Secret” on the physical media as well in the title of the electronic folder or file; documents produced in hard copy should be separated and each clearly labeled “Trade Secret.”

3) Any challenge to the application of the trade secret exemption shall be rebutted, if at all, only by you and not by the Office of the Attorney General, whose involvement shall be limited solely to providing notice to you of any challenge to your claim of trade secret protection. To the extent you seek to assert a trade secret exemption in connection with a public records request to the Office of the Attorney General, you shall be obligated to seek an appropriate protective order or otherwise establish the applicability of the trade secret claim and exemption. Failure to do so shall render the documents subject to production under any applicable public records requirements and not protected by a trade secret claim.

W. All document destruction or retention policies and practices and electronic file deletion or disk management policies and practices (including but not limited to reformatting practices) that could have the effect of altering or deleting information requested by this subpoena should be suspended until you produce a complete response to this subpoena or you are excused from this subpoena.

## **WHEREFORE YOU ARE HEREBY COMMANDED TO PRODUCE**

**For the period September 4, 2017, unless otherwise specified, through your complete response (“Relevant Period”):**

1. Documents sufficient to identify or, in the alternative, a summary report\* that identifies for each Contracting Governmental Entity which provided a notice to proceed to Contractor, or otherwise requested that performance begin, pursuant to a Disaster Debris Removal Contract:
  - a. current performance status, including but not limited to the number of trucks and other debris removal equipment deployed onsite,
  - b. the estimated amount of debris removed by Contractor,
  - c. the estimated amount of uncollected disaster debris remaining for removal and related services, and
  - d. the estimated amount of time to complete remaining services.
2. For each Disaster Debris Removal Contract, documents that identify or a summary report\* that identifies the following:
  - a. the contract rate(s) for vegetative debris removal before September 4, 2017,
  - b. whether Contractor is or is not performing at that contract rate(s) for vegetative debris removal,
  - c. any amended contract rate(s) for vegetative debris removal on or after September 4, 2017,
  - d. the existence of any other disaster debris removal contractors performing similar services for the same Contracting Governmental Entity, and
  - e. the project manager for the contract.
3. All Disaster Debris Removal Contracts with Contracting Governmental Entities effective during the Relevant Period, including any amendments and attachments thereto.
4. All requests for proposal that resulted in an executed Disaster Debris Removal Contract effective during the Relevant Period with a Contracting

- Governmental Entity, and all Contractor responses to each such request for proposal, including all attachments thereto.
5. All communications with each Contracting Governmental Entity relating to a Disaster Debris Removal Contract.
  6. Documents identifying the number of Subcontractors contacted by Contractor to perform each Disaster Debris Removal Contract.
  7. All communications with Subcontractors.
  8. Documents identifying rates for vegetative debris removal that were offered to Subcontractors by Contractor, including Subcontractor name, address and contact information.
  9. Documents identifying rates for vegetative debris removal requested by Subcontractors.
  10. Documents identifying rates for vegetative debris removal that were agreed to by Subcontractors.
  11. Documents identifying the Subcontractors by name, address, and contact information that refused to perform at the rate offered and the date of the Subcontractor's refusal, regardless of whether the Subcontractor later agreed to perform at the same or higher rate.
  12. Documents identifying requests, demands, or suggestions for increased payment rates by Subcontractors to induce performance for disaster debris removal services.
  13. Copies of financial statements or supplemental financial information provided to any Contracting Governmental Entity, at any time related to any Disaster Debris Removal Contract.
  14. Documents identifying all Subcontractors by name, address, and contact information that Contractor engaged to perform disaster debris removal services pursuant to a Disaster Debris Removal Contract and the payment rate.
  15. All invoices received from Subcontractors, relating to services provided under the Disaster Debris Removal Contract.

16. Documentation of all payments to Subcontractors relating to services provided under the Disaster Debris Removal Contract.
17. Documentation of all losses sustained by Contractor regarding each Subcontractor, relating to services provided under the Disaster Debris Removal Contract.
18. Documentation of all invoices submitted to each Contracting Governmental Entity, relating to services provided under the Disaster Debris Removal Contract.
19. For each Contracting Governmental Entity, provide documents identifying all rates charged by contractors for disaster vegetative debris removal services in that area.
20. For each Contracting Governmental Entity, provide documents identifying all rates charged by subcontractors for disaster vegetative debris removal services in that area.
21. All communications with FEMA or other federal governmental entities relating to Disaster Debris Removal Contracts or performance thereunder.
22. Copies of policies and procedures or communications relating to retention of subcontractors to meet the needs of Disaster Debris Removal Contracts after a hurricane affecting the State of Florida.
23. An organizational chart or documents that identify the functional and reporting structure of Contractor, including for each person the respective title(s), area of responsibility, identification of each person who is an owner, officer, or manager, and the percentage of ownership held.
24. Any documents that identify Subcontractors and indicate rates paid to those subcontractors in 2016 for vegetative debris removal services provided in Florida relating to Tropical Storm Colin, Hurricane Hermine, Tropical Storm Julia, and Hurricane Matthew.

\*A summary report is an option to facilitate the providing of a response. The Attorney General does not waive its right to review the documents supporting any summary report.