



**AGREEMENT
FOR
CDBG-DR ENVIRONMENTAL CONSULTING SERVICES**

Between

THE COUNTY OF VOLUSIA

AND

SWCA ENVIRONMENTAL CONSULTANTS

County of Volusia
Purchasing & Contracts Division
123 West Indiana Avenue, Suite 302
DeLand, Florida 32720-4608
386-736-5935

AGREEMENT FOR CDBG-DR ENVIRONMENTAL CONSULTING SERVICES

This Agreement for CDBG-DR Environmental Consulting Services (hereinafter "Agreement") is made and entered by and between SWCA, Incorporated, dba SWCA Environmental Consultants, which is duly authorized to conduct business in the State of Florida, and whose principal place of business is located at 20 E Thomas Road, Suite 1700, Phoenix, Arizona 85012 ("Contractor") and COUNTY OF VOLUSIA, a body corporate and politic and a subdivision of the State of Florida, whose address is County of Volusia, 123 West Indiana Avenue, DeLand, Florida 32720 ("County").

RECITALS:

WHEREAS, the County desires to retain the services of a competent and qualified Contractor to provide CDBG-DR Environmental Consulting Services; and

WHEREAS, the County issued Request for Proposals 23-P-195KW (the "RFP") seeking a qualified firm to perform CDBG-DR Environmental Consulting Services, and has received responses from various potential vendors; and

WHEREAS, the County has determined that Contractor is fully qualified to render the required service; and

WHEREAS, in reliance on Contractor's response to the RFP, the County determined that the execution of this Agreement is beneficial to the people of County of Volusia, Florida.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein by reference, and other specific consideration set forth in this Agreement, the receipt and sufficiency of which is acknowledged by Contractor and County, the parties agree and stipulate as follows:

1 DEFINITIONS

For this Agreement and any incorporated exhibits, certain terms, phrases, words, and their respective derivations shall have the meaning set forth and defined therein and shall be applicable in both. Definition of terms in the Agreement shall first be governed by this Agreement, second by the incorporated Scope of Services (Exhibit A), and third by the incorporated Fee Schedule (Exhibit B). In the event of any conflict among the foregoing, the conflict shall be resolved in the order of priority set forth in the preceding sentence. If there is no applicable definition as described above, the terms, phrases, and words, and their respective derivations when used in this Agreement and the Scope of Services, shall have the meanings ascribed to them in the following order of precedence: first, in the most current edition of Black's Law Dictionary and last, in the most current edition of the Merriam-Webster Collegiate Dictionary, if a term is not defined in the Agreement or Black's Law Dictionary.

- 1.1. **Agreement:** The document resulting from this solicitation between the County and the awarded Respondent, including the RFP, and the awarded Respondent's response along with any written addenda and other written documents, which are expressly incorporated by reference. May be used interchangeably with Contract.
- 1.2. **Contract:** The document resulting from this solicitation between the County and the awarded Respondent, including the RFP, and the awarded Respondent's response along with any

written addenda and other written documents, which are expressly incorporated by reference. May be used interchangeable with Agreement

- 1.3. **Contract Administrator:** The Director of Purchasing and Contracts or designee shall serve as Contract Administrator. The Contract Administrator shall be responsible for addressing any concerns within the scope of the Contract. Any changes to the resulting Contract shall be done in writing and authorized by the Director of Purchasing and Contracts.
- 1.4. **Contractor:** That person or entity, including employees, servants, partners, principals, agents and assignees of the person or entity that has submitted a Bid or proposal for the purpose of obtaining business with the County to provide the product and/or services set forth herein.
- 1.5. **Contractor's Project Manager:** The Project Manager has responsibility for administering this Contract for the Contractor.
- 1.6. **County:** Shall mean the County of Volusia (a body corporate and politic and a subdivision of the State of Florida) including its districts, authorities, separate units of government established by law (constitutional), ordinance or resolution, partners, elected and non-elected officials, employees, agents, volunteers, and any party with whom the County has agreed by contract to provide additional insured status.
- 1.7. **County's Project Manager(s):** The Project Manager(s) have responsibility for the day-to-day administration of the resulting Agreement for the County and will be designated prior to award of the resulting Master Agreement or Purchase Order.
- 1.8. **Day:** The word "day" means each calendar day or accumulation of calendar days.
- 1.9. **Director:** The Director of Purchasing and Contracts for the County of Volusia, Florida.
- 1.10. **Person or Persons:** An individual, firm, partnership, corporation, association, executor, administrator, trustee, or other legal entity, whether singular or plural, masculine, or feminine, as the context may require.
- 1.11. **Task Assignment:** Specific, detailed services or work placed against an awarded and Agreement memorialized as an Amendment to this Agreement by the parties prior to the commencement of such Work or Services by the Contractor.
- 1.12. **Working Days:** Monday through Friday except for County recognized holidays [Holiday observances \(county offices closed\) \(volusia.org\)](https://www.volusia.org/holidays).

2 EXHIBITS

- 2.1 The exhibits listed below are incorporated into and made a part of this Agreement.
 - 2.1.1 Exhibit A—Scope of Services,
 - 2.1.2 Exhibit B—Fee Schedule
 - 2.1.3 Exhibit C—Insurance Requirements
 - 2.1.4 Exhibit D – Federal Contract Provisions

3 ORDER OF PRECEDENCE

- 3.1 If Contractor finds any potential or possible inconsistency, conflict, error, or discrepancy in the Agreement, the order of precedence, Contractor shall immediately call it to the County Project Manager's attention, in writing, and request the County Project Manager's interpretation and direction before proceeding with the Services affected thereby.

In the event of any conflicts or inconsistencies between any exhibit to the Agreement and the Agreement itself, such conflict or inconsistency shall be resolved by giving precedence in the following order:

- 3.1.1 In the event of any conflicts or inconsistencies between Exhibit A – Scope of Services and any other exhibit of this Agreement in regard to the Scope of Services, Project specifications, performance criteria, or management metrics, Exhibit A – Scope of Services shall be controlling.
- 3.1.2 In the event of any conflicts or inconsistencies between Exhibit B – Fee Schedule and any exhibit in regard to the types of services to be provided under this Agreement, Exhibit B – Fee Schedule shall be controlling.
- 3.1.3 In the event of any conflicts or inconsistencies between the Agreement and any exhibit to the Agreement in regard to all terms and conditions addressed in the Agreement, the Agreement shall be controlling.

- 4 **SCOPE OF SERVICES.** Contractor shall provide Services under this Agreement and act as Contractor to the County in accordance with the Scope of Services as specifically set forth in this Agreement and its exhibits.

- 4.1 Contractor shall provide CDBG-DR Environmental Consulting Services in accordance with the Scope of Services attached as Exhibit A.

- 4.2 Authorization for performance of services by the Contractor may be in the form of written Task Assignments signed by the firm, executed and issued by the County. Each Task Assignment shall describe the services required, state the commencement and completion date of work and establish the amount and method of payment. The Task Assignment will be issued under, and incorporate the terms of, the Agreement. The County makes no covenant or promise as to the number of available projects. Expiration of the term of the Agreement will have no effect upon Task Assignments issued pursuant to the Agreement and prior to the expiration date. Obligations entered therein by both parties shall remain in effect until completion of the work authorized by the Task Assignment.

- 4.3 **Performance Criteria:**

- 4.3.1 All Services shall be performed in accordance with the Agreement and carried out under the direction of the County Project Manager.
- 4.3.2 All labor necessary to complete the Scope of Services shall be performed in a good and competent workmanlike manner, in accordance with industry standards and to the satisfaction of the County.

- 4.3.3 **Changes to Scope of Services.** The County may, at any time, by written Change Order, make changes within the general Scope of Services to be performed under this Agreement; unless otherwise allowed by the County in the written Change Order, such changes to the Scope of Services (or Contractor's claim for adjustment, described below) shall not allow, permit, or excuse any delay in the performance of the Services. Except as otherwise stated herein, if any such change causes an increase or decrease in Contractor's cost of the Services or the time required for performance of the Services, the County may make an equitable adjustment by amending this Agreement and stating the equitable adjustment in such amendment. Determination of whether an increase or decrease in cost was caused by the change to the Scope of Services shall be in the County's sole discretion. Any claim by Contractor for adjustment under this article must be asserted in writing within thirty (30) days from the date of the County's notification to Contractor (whether made orally or in writing) of the change that caused the claim for adjustment; otherwise, the claim shall be deemed waived. Except as otherwise provided in this Agreement, no charge for any extra Services or materials shall be allowed or approved by the County. No additional Services shall be performed or extra materials purchased until a written Change Order has been approved by Contractor and County.
- 4.3.4 **Time is of the Essence.** Time is of the essence for all Services performed under this Agreement and all Projects performed in accordance herewith.
- 4.3.5 **Authority to Act on Behalf of County.** County's Purchasing and Contracts Director, or such other proper authority pursuant to County policies and procedures, shall have the authority to approve, award, and execute all documents or other instruments required to effectuate changes, modifications, or additional service, so long as the then cumulative financial obligation of County for such additional items does not exceed the Director of Purchasing and Contracts' authority under the County Code of Ordinances or policies and procedures. Any change, modification or additional service that causes the cumulative financial obligation of County for such additional items to exceed the Purchasing Director's or County Manager's authority under the Procurement Code shall be presented to the Volusia County Council for approval.

5 RESPONSIBILITY OF CONTRACTOR

- 5.1 Where questions exist as to the Scope of Services to be provided, Contractor shall promptly confer with the County Project Manager to ascertain the functional criteria of the Scope of Services. The Services of Contractor shall also include the following:
- 5.1.1 Contractor shall keep the County informed of any changes or advancements in technology occurring any time prior to or during actual implementation of the Services to the extent that such changes and

advancements may increase efficiency or otherwise allow for better services or reductions in costs to the County.

5.1.2 Contractor covenants and agrees as follows:

5.1.2.1 That its allegations and representations regarding its special talent, training, and experience caused the County to select Contractor to be the prime professional;

5.1.2.2 That Contractor possesses the special skills to recognize material errors or omissions that would result in failures to appropriately perform in accordance with the Scope of Services;

5.1.2.3 That Contractor shall adhere to the standard of care applicable to a contractor with the degree of skills and diligence normally employed by a licensed professional in its field or practice performing the same or similar Services in compliance with all applicable federal, state, and municipal laws, regulations, codes, and ordinances;

5.1.2.4 That Contractor shall provide any Project data, summaries, reports, or studies, pursuant to Subsection this 5.1.2.4, accurately with regard to the information contained therein. County's acceptance, approval, or reliance on any such documentation shall not release Contractor from any liability if such information is incorrect or inaccurate, it being understood that the County is relying on Contractor's status as an industry professional in accepting such documentation.

5.2 **Supervision.** Subject to Subsection 5.1.2.4, Contractor shall direct and supervise competent and qualified personnel and shall devote time and attention to the direction of the operation to ensure performance of obligations and duties as set forth herein. Contractor shall hire, compensate, supervise, and terminate members of its work force, and Contractor shall direct and control the manner in which Services are performed including conditions under which individuals shall be assigned duties, how individuals shall report, and the hours individuals shall perform. Contractor shall be responsible for all income tax, social security and Medicare taxes, federal unemployment taxes, and any other withholdings from the company's employees' and/or subcontractors' wages or salaries. Benefits, if any, for Contractor's employees and/or subcontractors shall be the responsibility of Contractor including, but not limited to, health and life insurance, retirement, liability/risk coverage, and worker's and unemployment compensation. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures in delivering Services pursuant to this Agreement. Further, Contractor shall be responsible for assuring the County that finished or completed Deliverables comply with the requirements of this Agreement and the Scope of Services contained therein.

5.3 **Assurance.** Subject to Subsection 5.1.2.4, Contractor gives the County its assurance that all Services performed under this Agreement shall be timely performed in a

competent and workmanlike manner and in accordance with the specifications and requirements of the Agreement and any approvals required under the Agreement. All Services not conforming to the specifications and requirements of the Scope of Services shall be considered materially defective and constitute a breach of this Agreement.

- 5.4 **Accuracy of Reports / Summaries.** Contractor shall be responsible for the professional and technical accuracy and the coordination of all data, reports, summaries, and any other Services furnished by Contractor under this Agreement. Contractor shall, without additional cost to the County, correct or revise any errors or deficiencies in its Services for which it is responsible.
- 5.5 **Services to Comply with Specifications and Law.** All Services performed by Contractor including all general provisions, special provisions, job specifications, drawings, addendum, amendments to the basic Agreement, written interpretations, and written orders for minor changes in Services, shall comply with the Scope of Services and all applicable local laws, codes, ordinances and statutes.
- 5.6 **Subcontractors.**
- 5.6.1 **Employment or Substitution of Subcontractors.** Contractor shall not employ any Subcontractor, other person, or organization of against whom the County may have reasonable objection, nor shall Contractor be required to employ any Subcontractor against whom it has reasonable objection. Contractor shall not make any substitution for any Subcontractor who has been accepted by the County without the County's approval.
- 5.6.2 **Disapproval of Subcontractors.** County's disapproval or requirement of removal or replacement of Contractor's employee or Subcontractor shall be deemed for lawful reasons if in County's reasonable judgment, such Contractor's employee or Subcontractor poses a threat or causes harm to the health, welfare, or safety, or morale of the County or its agencies, personnel or property or who fails any drug test administered in connection with this Agreement, or who has been convicted of a felony or a misdemeanor involving "moral turpitude" or has been released or dishonorably discharged or separated under conditions other than honorable from any of the Armed Forces of the United States.
- 5.6.3 **Contractor Responsible for Subcontractors.** Contractor shall be fully responsible for all negligent acts and omissions of its Subcontractor and of persons directly or indirectly employed by them and of persons for whose negligent acts any of them may be liable to the same extent that it is responsible for the negligent acts and omissions of persons directly employed by it. Nothing in the Agreement shall create any contractual relationship between any Subcontractor and the County or any obligation on the part of the County to pay or to see to the payment of any monies due any Subcontractor, except as may otherwise be required by law. County may furnish to any Subcontractor to the extent

practicable, evidence of amounts paid to Contractor on account of specific Services done in accordance with the schedule of values.

- 5.6.4 **Subcontractors to Act Pursuant to this Agreement.** Contractor agrees to bind specifically every Subcontractor to the applicable terms and conditions of the Agreement for the benefit of the County, and shall require all Subcontractors or other outside associates employed in connection with this Agreement to comply fully with the terms and conditions of this Agreement as such may apply to the Services being performed for Contractor.

6 TERM OF AGREEMENT

- 6.1 The term of this Agreement shall commence on the Effective Date of this Agreement or when it is fully executed by all parties, whichever is later, and shall terminate five (5) years from the Effective Date, except for those provisions which survive termination of the Agreement. Renewals may be permissible upon mutual written agreement between the parties.
- 6.2 The Services to be rendered by Contractor shall be commenced, as specified in this Agreement or as may be requested by the County and shall be completed within the time specified therein.

7 AGREEMENT PRICE AND COMPENSATION

- 7.1 **Payment Pursuant to Fee Schedule.** Contractor shall be paid Compensation for all Services. The total amount of fees to be paid Contractor under this contract for environmental assessments shall not under any conditions, circumstances, or interpretations thereof exceed the sum of One Million Five Hundred Thousand and No/Dollars (\$1,500,000.00) over the base period of performance, unless the Agreement is modified in writing by County and Contractor. Contractor will only be paid for the time and effort expended to complete the actual requested scope of services required for this program; which may be substantially less than the total amount above. Compensation listed in Exhibit B – Fee Schedule constitutes complete payment for all Services rendered under this Agreement, including the cost of all Projects, materials, equipment, labor, expenses (including reimbursable expenses), all mark-ups for overhead and profit more particularly described in Exhibit B – Fee Schedule. The County agrees to pay Contractor in current funds, as compensation.
- 7.2 **Errors and Omissions in Pricing.** Compensation shall not be adjusted because of errors or omissions not the fault of the County in computing the Services costs which result in an increase in the cost of this Agreement or because the time for completion varies from the original estimate, including completion or substantial completion of this Agreement prior to the scheduled or Agreement completion date or on account of County's election to furnish any of the Services. In addition, Contractor shall certify that the original Agreement price or Compensation for the Scope of Services and any additions thereto shall be adjusted to exclude any significant sums by which the County determines the price or Compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.
- 7.3 **Reimbursable Expenses.** County's payment to Contractor pursuant to the Fee

Schedule, attached hereto and incorporated herein as Exhibit B, shall be full compensation for Services rendered and any expenses incurred in connection therewith, and Contractor shall not be eligible for reimbursement for any expenses incurred in connection with the performance of this Agreement.

7.4 **Payments.** Any payments shall be made in accordance with Exhibit B – Fee Schedule. The rates expressed in Exhibit B shall govern Compensation and provide for payments against specified Deliverables and performance.

7.4.1 **Approval of Payment.** If, on the basis of the County Project Manager's observation and review of Contractor's Services, the County Project Manager is satisfied that the Services has been completed and Contractor has fulfilled all of its obligations under the Agreement, the County Project Manager, after receipt of a proper invoice, shall indicate in writing his or her approval of payment and present the invoice to Accounts Payable for payment. Otherwise, the County Project Manager shall return the invoice to Contractor, indicating in writing the reasons for refusing to approve final payment. Subsequent to receiving a returned invoice, Contractor will make the necessary corrections and resubmit the invoice and, if requested, provide explanation or substantiation for said invoice. Regardless of the foregoing, approval of payment pursuant to this section shall not prevent the County from recovering amounts paid when the County subsequently discovers material defects or deficiencies in the services or work provided by Contractor, which defects or deficiencies would have otherwise caused the County to withhold payment.

7.5 **Invoices.** Invoices or payment requests shall be addressed from Contractor and submitted to the County's Project Manager. All invoicing and payments, including the practices and procedures pertaining thereto, shall be governed by the applicable provisions of Office of Management and Budget 2 CFR Part 1315.

7.5.1 **Invoice Detail.** Contractor shall submit an invoice for which professional Services were rendered to the County upon the completion and acceptance of the Services. Each invoice shall show detailed explanations of the Services accomplished and, if requested, provide substantiation for same. Invoices shall be in accordance with the Agreement prices set forth by labor hours by classification, associated rates, any material or subcontracted costs and any indirect rates or costs in accordance with the Agreement prices set forth hereto. All of the above shall sum to the total amount requested.

7.5.2 Contractor's Invoice(s) shall be accompanied by supporting data as may be required by the County Project Manager. County Project Manager shall review Contractor's Invoice and supporting data and notify Contractor in writing within ten (10) days from receipt of the statement if any amounts requested are disputed or lack adequate support or documentation.

- 7.5.3 **Invoicing Pursuant to Agreement.** Pursuant to Exhibit B, Contractor shall invoice County for all payments due Contractor under this Agreement. County shall pay invoices in accordance with this Agreement. Invoices shall be sent to the address specified by the County.
- 7.5.4 **Withholding.** The County may withhold payment of any specific invoiced charges that it disputes in good faith and pay all undisputed charges on the invoice.
- 7.5.5 **Payment Due.** Within thirty (30) days of acceptance by the County Project Manager of all the Services for which Contractor has submitted an invoice of professional Services, Contractor shall be paid the unpaid balance of any money due for any undisputed Services covered by said invoice.
- 7.5.6 **Taxes.** County is a tax exempt entity and shall not be charged or invoiced for the payment of taxes for Services performed under this Agreement.
- 7.6 **Contractor's Continuing Obligations.** Contractor's obligation to perform Services in accordance with the Agreement shall be absolute. Nothing, including without limitation, the following, shall constitute an acceptance of Services not in accordance with the Agreement: approval of any progress; final payment to Contractor; documentation confirming acceptance of the Services by the County; any payment by the County to Contractor under the Agreement; any act of acceptance by the County or any failure to do so; any correction of defective Services by the County.
- 7.7 **Non-appropriation.** Notwithstanding any other term or provision of this Agreement, the continuation of this Agreement beyond a single fiscal year of County is subject to the appropriation and availability of funds in accordance with Chapter 129, Florida Statutes. Termination by the County due to non-appropriation shall be without a termination charge by Contractor. The County shall not be obligated to pay Contractor under this Agreement beyond the date of termination except as set forth in this Agreement. County's obligation to pay Contractor is limited to the budgeted amount for a fiscal year approved by the Volusia County Council for the then-current fiscal year of this Agreement and is otherwise limited to legally available non-ad valorem tax revenues.
- 7.7.1 Contractor agrees that expenditure of funds by the County in support of this contract is contingent upon receipt by the County of grant funds from the U.S. Department of Housing and Urban Development (HUD) including Community Development Block Grant - Disaster Recovery (CDBG-DR). Work shall not begin prior to the County issuing the task assignment or NTP for each requested task.
- 7.8 **Price Redeterminations**
- Once each year during the term of the Contract, including any extension or renewal periods thereof, the Contractor may, but is not obligated to, petition the Director of

Purchasing and Contracts for one or more price redeterminations where such price redetermination(s) is/are necessitated by documented increases in the cost of wages and fuel. Petitions for price redeterminations shall be made within thirty (30) days of the anniversary date of the Contract (i.e., the calendar day and month when the Contract became effective) and only after the Contract has been in effect for at least one year. Any such petition shall be made pursuant to the provisions of this Section and only for those price redetermination categories specified herein. Unless otherwise expressly set forth in this Agreement, no other price redeterminations shall be allowed. All price redeterminations, once issued, shall be prospective from the date of approval unless otherwise approved by a duly executed amendment to this Agreement.

7.8.1 *Basis for Price Redeterminations.* The Contractor may petition the Director of Purchasing and Contracts for price redetermination based on the increased costs of wages and fuel. Price redeterminations will be based solely upon changes in pricing or costs documented by either the Employment Cost Index (ECI) or Producer Price Index (PPI), whichever is applicable, as published by the Bureau of Labor Statistics. The base index number for the ECI will be for the quarter in which the RFP opens. The base index number for the PPI will be for the month the RFP opens. Any subsequent price redeterminations will use the last price redetermination approved for that price redetermination category as the "base index number." The County shall have the right to audit the Contractor's records, including, but not limited to, payroll, materials, and fuel cost records, to verify or otherwise investigate the validity of any price redetermination request.

7.8.2 *Wage Price Redetermination.* When requesting a price redetermination based upon an increase in wage costs, the Contractor shall refer to and utilize the Employment Cost Index, Total Compensation, Private Industry, Index Number, and Occupational Group as prepared by the Bureau of Labor Statistics in the U.S. Department of Labor <https://stats.bls.gov/data/>. The base figure will be tied to Professional and Related Occupations under the heading Private Industry Workers. Wage price redetermination increases shall be granted only by reason of wage increases associated with the Contractor's employees or subcontractors performing work or services pursuant to the Agreement.

7.8.3 *Minimum Wage Price Redetermination.* If the minimum wage increases during the term of the Agreement, including any renewal or extension period thereunder, the Contractor may petition the Director of Purchasing and Contracts for price redetermination for those job categories where the pay to the Contractor's employee(s) is the current minimum wage. Upon verification of the information provided, the County will grant an increase of exactly the amount of the minimum wage increase (not the percentage increase). The Contractor must increase the pay to the employee(s) by the amount the Contractor has requested, which shall not exceed the amount of the minimum wage increase. The amount paid to the Contractor will be the increase plus any written and documented increase in FICA, Medicare, and Workers' Compensation insurance. The Contractor must supply written documentation of any other increase that is beyond the scope and control of the Contractor. All written documentation must satisfy the reasonable expectations of the Director of Purchasing and Contracts and Internal Auditor.

7.8.3.1 *Example:* Minimum wage increases from \$7.31 to \$7.56 per hour. The Contractor may petition for an increase of \$0.25 per hour to be paid to the affected employee(s) and shall provide written and documented cost increases for FICA, Medicare, and Workers' Compensation. The resulting increase in costs shall be incorporated into fees/rates billed to the County.

7.8.3.2 If the Contractor bills the County at a higher price according to any price redetermination granted by the County, and the Contractor fails to increase the hourly rate paid to the employee for the same period, the Contractor will be considered in Agreement default and the Agreement will be immediately terminated.

7.8.4 *Fuel Price Redetermination.* If/when the price of fuel increases by a minimum of ten (10%) percent, the Contractor may petition the Director of Purchasing and Contracts for a fuel price redetermination. As a condition of petitioning for a fuel price increase, the Contractor shall be required to petition for a fuel price redetermination decrease if/when the price of fuel decreases by a minimum of ten (10%) percent. Failure to make such petition may be grounds for Agreement termination and shall entitle the County to a refund of the cumulative increase in pay to the Contractor due to any prior fuel price redetermination increase(s). Fuel price redetermination must be based solely upon changes as documented by the Producer Price Index (PPI) for the commodities "Unleaded Gasoline - WPU057104" or "#2 diesel fuel - WPU057303," as such may be applicable to the Contractor's operations in connection with the Contractor's performance of the Agreement.

7.8.5 Price Redetermination Calculation. All Price Redeterminations shall be calculated as follows:

7.8.5.1 *Example:* Contractor indicated on the Submittal Form that thirty percent (30%) of the cost to provide the product/service is directly attributed to the redetermination category (wages or fuel).

Current applicable PPI = \$200.50
 Base index PPI = - \$179.20
 PPI increase dollars = \$21.30
 PPI increase percentage ($\$21.30 / \$179.20 = .1189$) 11.9%
 Unit cost of the service is \$100.00
 30% of \$100.00 is directly attributed to the redetermination category.... \$30.00
 $\$30.00 \times 11.9\% = \dots\dots \3.57
 New unit price for the product/service is $(\$100 + \$3.57)\dots \$103.57$

7.8.6 *Expiration Upon Failure to Agree to Price Redetermination.* If the County and the Contractor cannot agree to a price redetermination pursuant to the terms and conditions of this section, then the Agreement will automatically expire without penalty or further expense to either party after a period of six (6) months following the Contractor's initial request for such price redetermination.

Requests for price redeterminations not made in accordance with the provisions of this section shall be deemed null and void and shall not be a valid reason or pretext for expiration or termination of the Agreement. If the Agreement expires pursuant to the terms and conditions of this section, the County reserves the right, at no expense, penalty, or consequence to the County, to award any remaining tasks thereunder to the next available most responsive and responsible Contractor.

7.9 **Unusual Costs**

The Contractor may petition the County at any time for an additional rate adjustment on the basis of extraordinary and unusual changes in the costs of operation that could not reasonably be foreseen by a prudent operator and which, by all reasonable expectations, will continue for at least one (1) year. If the Contractor petitions for such an increase, the Contractor shall also petition for a rate reduction on the basis of extraordinary and unusual changes in the costs of operation that could not reasonably be foreseen by a prudent operator and which, by all reasonable expectations, will continue for at least one (1) year; failure to make such petition may be grounds for Agreement termination.

The Contractor's request shall contain substantial proof and justification to support the need for the rate adjustment. The County may request from the Contractor and the Contractor shall provide such further information as may be reasonably necessary in making its determination. The County shall approve or deny the request, in whole or in part, within sixty (60) days of receipt of the request and all other additional information required by the County. Any price redetermination shall be solely based upon the documentation provided and the County reserves the right to rescind any price relief granted should the circumstances change and prices decrease.

8 **PAYMENT OF SUBCONTRACTORS**

8.1 **Payment.** Contractor shall pay its Subcontractors and suppliers, within thirty (30) days following receipt of payment from the County for such subcontracted Services or supplies. Contractor agrees that if it withholds an amount as retainage from such Subcontractors or suppliers, that it shall release such retainage and pay same within thirty (30) days following receipt of payment of retained amounts from County.

8.2 **Indemnification as to Payment of Subcontractors.** Contractor shall save, defend, and hold the County harmless from any and all claims and actions from Contractor's Subcontractors for payment for Services and Deliverables provided by Subcontractors for Contractor under this Agreement. Regardless of the foregoing, nothing in this Agreement shall create any contractual relationship between any Subcontractor and the County or any obligation on the part of the County to pay or to see the payment of any moneys due any Subcontractor, except as may otherwise be required by law.

9 **LIMITATION OF LIABILITY AND INDEMNIFICATION OF COUNTY**

9.1 **Indemnification.** Contractor shall indemnify, defend and hold harmless the County, including its districts, authorities, separate units of government established by law (constitutional), ordinance or resolution, partners, elected and non-elected officials, employees, agents, volunteers, and any party with whom the County has agreed by

contract to provide additional insured status from and against all claims, damages, losses, and expenses, including, but not limited to, attorney's fees arising out of, resulting from, or incident to Contractor's performance of its obligations in whole or part of this Agreement, unless such injury or damage is occasioned solely by the fault, negligence, or willful misconduct of the County.

- 9.2 In all claims against the County, Contractor's indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or any benefits payable by or for Contractor, or its employees, agents, contractors, or subcontractors.
- 9.3 **Sovereign Immunity**. The County expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, (as amended) Florida Statutes. Notwithstanding anything set forth in any section of this Agreement to the contrary, nothing in this Agreement shall be deemed as a waiver of the County's immunity or limits of liability beyond any statutory limited waiver of immunity or limits of liability that may have been or may be adopted by the Florida Legislature, and the cap on the amount and liability of the County for damages, regardless of the number or nature of claims in tort, equity, or contract, shall not exceed the dollar amount set by the legislature for tort. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the County, which claim would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

10 INSURANCE

Contractor shall provide the required insurance detailed in Exhibit C for the entire term of the Agreement. Regardless of anything submitted as proof of insurance, Contractor shall comply with all requirements of Exhibit C.

11 TERMINATION

- 11.1 County may terminate this Agreement upon at least thirty (30) days prior written notice to Contractor.
- 11.2 Contractor may terminate this Agreement upon at least one-hundred eighty (180) days prior written notice to County.
- 11.3 Upon receipt of notice of termination by the County from Contractor or upon delivery of notice of termination from the County to Contractor, Contractor shall:
- 11.3.1 Stop work under the Agreement on the date and to the extent specified in County's notice of termination.
 - 11.3.2 Inform the County, in writing, of the extent to which performance is completed.
 - 11.3.3 Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the Services under the Agreement that is in progress but not yet completed.

- 11.3.4 Assign to the County, in the manner, at the times, and to the extent directed by the County, all of the right, title and interest of Contractor under the orders and subcontracts so terminated.
- 11.4 For all undisputed outstanding invoices submitted to the County prior to the effective date of the termination and subject to Article 6 - Term of Agreement, Article 7 – Agreement Price and Compensation, and this Article 11 - Termination, the County shall cause payments to be made to Contractor within forty five (45) days of receipt of invoice. Contractor shall invoice the County for any sums Contractor claims to be owed by County under this Agreement for work performed from the last invoice to the effective date of termination. County shall review such invoice for payment and County shall pay any undisputed amount within forty five (45) days.
- 11.5 With the approval of the County and to the extent required by the County, settle all outstanding liabilities and all claims arising out of such termination. County's approval of such settlements shall be final for all the purposes of a termination under this Article 11 - Termination. In addition, Contractor shall transfer title and deliver to the County, in the manner, at the times, and to the extent, if any, directed by the County of Deliverables, work-in-progress, reports, models, studies, and other materials produced as a part of, or acquired in connection with the performance of the Services terminated.
- 11.6 If Contractor fails to cure a breach within ten (10) calendar days after receipt of notice from the County of said breach, the County may take over the Services and complete the Services and Contractor shall be liable to the County for any increased cost of the Services reasonably incurred by the County to complete Contractor's unfinished Services. As such, County may apply unpaid Compensation due and owing to Contractor prior to the default as a set off against the costs incurred by the County for taking over such Services.
- 11.7 The right of termination provided to the County and Contractor herein shall be cumulative of all other remedies available at law.
- 11.8 All provisions of this Agreement that impose or contemplate continuing obligations on a party will survive the expiration or termination of this Agreement.

12 Dispute Resolution

- 12.1 **Good Faith Efforts to Resolve.** The parties to this Agreement shall exercise their best efforts to negotiate and settle promptly any dispute that may arise with respect to this Agreement in accordance with the provisions set forth in this Article 12, Dispute Resolution. Contractor and County Project Manager shall use reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, to address and work toward resolution of issues that arise in performance of this Agreement and any applicable statement of Services. Issues shall be escalated to successive management levels as needed.
- 12.2 **Informal Dispute Resolution.** If a dispute develops between the parties concerning any provision of this Agreement, or the interpretation thereof, or any conduct by the other party under this Agreements, and the parties are unable to resolve such dispute within five (5) business days or longer, that party, known as the Invoking Party, through

its applicable Project Manager, shall promptly bring the disputed matter to the attention of the non-Invoking Party's Project Manager or designated representative, as the case may be, of the other party in writing ("Dispute Notice") in order to resolve such dispute.

- 12.3 **Discovery and Negotiation / Recommended Procedures.** Upon issuance of a Dispute Notice, the Project Managers or designated representatives shall furnish to each other all non-privileged information with respect to the dispute believed by them to be appropriate and germane. The Project Managers shall negotiate in an effort to resolve the dispute without the necessity of any formal proceeding. If such dispute is not resolved by the Project Managers or designated representatives within ten (10) County Work Days (defined as weekdays [i.e. Monday, Tuesday, Wednesday, Thursday and Friday] not designated as holidays by the County) of issuance of the Dispute Notice, or such other time as may be mutually allowed by the Project Managers as being necessary given the scope and complexity of the dispute, the Project Managers may, depending upon the nature, scope, and severity of the dispute, escalate the dispute as indicated below:

County Work Days	Contractor's Representative	County Representative
10	Contractor's Project Manager	County Project Manager
10	Contractor's Sr. Vice President	Director of Purchasing and Contracts
20	Contractor's COO or President	Deputy County Manager

- 12.4 **Formal Dispute Resolution.** At any point after issuance of a Dispute Notice under this section, either party may request and initiate formal non-binding mediation before a single mediator, which mediation shall be completed within thirty (30) days of initiation or such longer time as may be agreed upon by both parties as being necessary for the mutual selection of a mediator and scheduling of such mediation. Any such mediation shall be convened and conducted in accordance with the rules of practice and procedure adopted by the Supreme Court of Florida for court-ordered mediation, Rule 1.700 et seq. of the Florida Rules of Civil Procedure, and Chapter 44, Florida Statutes. If the dispute remains unresolved after conducting such mediation, then either party may proceed to finalize any pending termination remedies and commence litigation in a court of competent jurisdiction. Each party shall bear its own costs and attorney's fees for mediation or arbitration of an issue arising under this Agreement.
- 12.5 **Right to Terminate Reserved.** Regardless of the dispute resolution procedures provided for in this Article 12, Dispute Resolution, nothing herein shall affect, delay, or otherwise preclude a party from terminating this Agreement in accordance with the provisions of Article 11, Termination, it being understood that these dispute resolution procedures are intended as a means of resolving disputes both during the term of this Agreement and after termination or expiration thereof.

13 COUNTY DATA

- 13.1 Contractor agrees and understands that all files and other information and data created in connection with the administration of this Agreement constitute a public

record, except to the extent it is exempt or proprietary under Florida Law (Chapter 119, Florida Statutes) from disclosure or as preempted by federal law. Contractor agrees to maintain for public record access such files and to maintain for public access such files after termination of this Agreement to the extent required by the laws of the State of Florida.

- 13.2 Upon any termination or expiration of this Agreement, Contractor, upon County's written request, shall promptly deliver, but not more than thirty (30) days after County's request, to County an extract of County's data hosted in the System in XML format or such other format as mutually agreed upon by County and Contractor.
- 13.3 THE ABOVE DUTIES AND OBLIGATIONS SHALL SURVIVE THE CANCELLATION OR TERMINATION OF THIS AGREEMENT.

14 LOCAL GOVERNMENT REQUIREMENTS

- 14.1 Public Records Law. Pursuant to section 119.0701(2)(a), Florida Statutes, the County is required to provide Contractor with this statement and establish the following requirements as contractual obligations pursuant to the Agreement:

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 386-736-5935, purchasing@volusia.org, by mail, Purchasing and Contracts Division, Attn: Public Records Custodian, 123 W. Indiana Ave. RM 302 DeLand, FL 32720.

By entering into this Contract, Contractor acknowledges and agrees that any records maintained, generated, received, or kept in connection with, or related to the performance of services provided under, this Contract are public records subject to the public records disclosure requirements of section 119.07(1), Florida Statutes, and Article I, section 24 of the Florida Constitution. Pursuant to section 119.0701, Florida Statutes, any Contractor entering into a contract for services with the County is required to:

- A. Keep and maintain public records required by the County to perform the services and work provided pursuant to this Contract.
- B. Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion or

termination of the Contract if Contractor does not transfer the records to the County.

- D. Upon completion or termination of the Contract, transfer, at no cost, to the County all public records in the possession of Contractor or keep and maintain public records required by the County to perform the service. If Contractor transfers all public records to the County upon completion or termination of the Contract, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion or termination of the Contract, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.

Requests to inspect or copy public records relating to the County's Contract for services must be made directly to the County. If Contractor receives any such request, Contractor shall instruct the requestor to contact the County. If the County does not possess the records requested, the County shall immediately notify Contractor of such request, and Contractor must provide the records to the County or otherwise allow the records to be inspected or copied within a reasonable time.

Contractor acknowledges that failure to provide the public records to the County within a reasonable time may be subject to penalties under section 119.10, Florida Statutes. Contractor further agrees not to release any records that are statutorily confidential or otherwise exempt from disclosure without first receiving prior written authorization from the County. Contractor shall indemnify, defend, and hold the County harmless for and against any and all claims, damage awards, and causes of action arising from Contractor's failure to comply with the public records disclosure requirements of section 119.07(1), Florida Statutes, or by Contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Contractor authorizes County to seek declaratory, injunctive, or other appropriate relief against Contractor from a Circuit Court in Volusia County on an expedited basis to enforce the requirements of this section.

- 14.2 **No Code Violation or Past Due Debt.** Contractor warrants and represents that neither the business, nor any officer or significant stakeholder of the business is in violation of the Volusia County Code of Ordinances, and does not owe the County any past due debt. Any breach of the foregoing warranty and representation shall be a material breach of this Agreement and the County shall have the right to terminate this Agreement as set forth herein.
- 14.3 **Changes Due to Public Welfare.** The County and Contractor agree to enter into good faith negotiations regarding modifications to this Agreement which may be required in order to implement changes in the interest of the public welfare or due to change in law or ordinance.

- 14.4 **Compliance with Applicable Laws.** Contractor shall perform its obligations hereunder in accordance with all applicable federal, state, local laws, ordinances, rules, regulations (including but not limited to the following statutes: Americans with Disabilities Act (ADA), Titles I, II and III of the ADA; Federal Immigration Reform and Control Act of 1986 (as amended); and Title VII of the Civil Rights Act of 1964 (as amended), and all orders and decrees of bodies or tribunals having jurisdiction or authority which in any manner affect the performance of this Agreement. Contractor shall indemnify, defend, and hold harmless the County and all its officers, agents, servants and employees against any claim or liability arising from or based on the violation of any such law, ordinance, rule, regulation, order or decree caused or committed by Contractor, its representatives, subcontractors, professional associates, agents, servants or employees. Additionally, Contractor shall obtain and maintain at its own expense all applicable licenses and permits to conduct business pursuant to this Agreement from the federal government, State of Florida, County of Volusia and municipalities when legally required and maintain same in full force and effect during the term of this Agreement.
- 14.5 **Nondiscrimination and Americans with Disabilities Act.** Contractor shall not unlawfully discriminate against any person in the operations and activities in the use or expenditure of the funds or any portion of the funds provided by this Agreement or in the provision of goods or Services pursuant to this Agreement. Contractor agrees it shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing all goods and Services funded or paid for by County, including Titles I, II and III of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. For internet/web Services: For the purposes of this paragraph, any Services or products offered to public via the internet or online must comply with WCAG 2.0 AA in order to be deemed ADA compliant. The County will provide Contractor with prompt written notice with respect to any ADA deficiencies of which the County is aware and Contractor will promptly correct such deficiencies. If the County, the Department of Justice or other governmental entity tasked with the enforcement of the ADA ("Enforcement Agency") notes any deficiency in the facilities, practices, services, or operations of Contractor furnished or provided in connection with this Agreement, Contractor shall, at no additional charge or cost to the County, immediately cure any such deficiencies without delay to the satisfaction of such Enforcement Agency. Contractor further agrees that it shall, to the extent permitted by law, indemnify, defend, and hold harmless the County against any and all claims, sanctions, or penalties assessed against the County, which claims, sanctions, or penalties arise or otherwise result from Contractor's failure to comply with the ADA or WCAG 2.0 AA, for online or internet Services or products. In performing under this Agreement, Contractor agrees that it shall not commit an unfair employment practice in violation of any state or federal law and that it shall not discriminate against any member of the public, employee or applicant for employment for work under this Agreement because of race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability.
- 14.6 **Drug-Free Workplace.** The County of Volusia is a drug-free and smoke-free workplace. Contractor agrees that it shall provide a drug-free environment to its personnel during the term of this Agreement and will comply, subject to the prior

receipt thereof, with the County's policies on drug-free and smoke-free work place, as amended from time to time, during the term of this Agreement.

14.7 **Employment of Illegal Aliens.** Contractor certifies that it does not knowingly or willingly and will not during the performance of the Agreement employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986, as amended.

14.8 **Equal Opportunity; Disadvantaged Business Enterprises.**

Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, gender, sexual orientation, age, national origin, political affiliation, disability, or family status. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

14.9 **Compliance with FEMA 2 CFR 200.318-326 and Appendix II Contract Provisions.**

Contractor shall comply with the applicable sections of Exhibit D, Federal Contract Provisions.

14.10 **Compliance with Federal E-Verify Regulations.**

Contractor covenants and agrees to the following provisions, as required by law:

- A. If and to the extent the Agreement meets the criteria set forth at 48 C.F.R. § 52.222-54(e), the criteria of 48 C.F.R. § 52.222-54 are hereby incorporated by reference into this Agreement as if fully set forth herein.
- B. Contractor and any of Contractor's Subcontractors shall register with and utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility and work authorization status of all new employees hired by Contractor (or Contractor's Subcontractors) on or after the effective date of this Agreement and thereafter during the remaining term of the Agreement.
- C. In the event Contractor enters into a subcontract, Contractor shall require, via written contract, the Subcontractor agree to: (i) register with and utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired on or after the effective date of the subcontract and thereafter during the remaining term of the subcontract; and (ii) provide Contractor with an affidavit stating that the Subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Contractor shall maintain a copy of such affidavit for the duration of this Agreement or the subcontract, whichever is longer. Contractor shall provide a copy of such affidavit to the County before the Subcontractor begins any work associated with the Agreement. If the County has a good faith belief that a subcontractor knowingly violated the requirements set forth in this Section 14.10 or Sections 446.09(1) or 446.095 of the Florida Statutes, but also has a good faith belief

Contractor otherwise complied with this Section 14.10 and applicable law, the County shall promptly notify Contractor and order Contractor to immediately terminate its contract with the Subcontractor. Failure to comply with said order shall constitute a material breach of this Agreement.

- D. If the County has a good faith belief Contractor has knowingly violated, or if Contractor is found to have violated, this Section 14.10; Section 446.09(1), Florida Statutes; Section 446.095, Florida Statutes; or the presidential Executive order and subsequent Federal Acquisition Regulation (FAR) rule requiring federal contractors to use E-Verify, if applicable, then the following shall be true: (i) such violation shall be a material breach of this Agreement by Contractor; (ii) Contractor shall indemnify, defend, and hold harmless the County from any resulting costs or expenses, including fines or penalties levied by a government agency and the County's loss or repayment of grant funds; (iii) the County may terminate this Agreement immediately and without penalty and such termination shall not be or be considered a breach of this Agreement; and (iv) Contractor shall be liable for any additional costs incurred by the County as a result of the termination of the Agreement. Contractor acknowledges and understands that if the County terminates this Agreement in accordance with this Section 14.10, Contractor shall be ineligible for award of a public contract for at least 1 year after the date on which the Agreement was terminated.

14.11 Scrutinized Companies-FL Statutes Sections 287.135 and 215.473.

Contractor certifies that neither the undersigned entity, nor any of its wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for the purpose of making profit have been placed on the Scrutinized Companies that Boycott Israel List created pursuant to s. 215.4725 of the Florida Statutes, or are engaged in a boycott of Israel.

In addition, if this Agreement amount equals or exceeds one million dollars, Contractor certifies that neither the undersigned entity, nor any of its wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for the purpose of making profit are on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s.215.473 of the Florida Statutes, or are engaged in business operations in Cuba or Syria as defined in said statute.

Contractor understands and agrees that the County may immediately terminate this Agreement upon written notice if the undersigned entity (or any of those related entities of the Contractor as defined above by Florida law) are found to have certified falsely or if any of the following occur with respect to the company or a related entity: (i) it has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, or (ii) for any contract for goods or services of one million dollars or more, it has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or it is found to have been engaged in business operations in Cuba or Syria.

- 14.12 Discriminatory Vendors.** Pursuant to paragraph 287.133(2)(a), Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a

contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

By entering into this Agreement, the Contractor represents and warrants that it is not on the convicted vendor list and not under investigation for violation of any state or federal law relating to public entity crimes. The Contractor further represents and warrants that its subcontractors and implementer, if any, are not on the convicted vendor list and not under investigation for violation of any state or federal law relating to public entity crimes.

- 14.13 **Inspector General.** The Contractor agrees to comply with subsection 20.055(5), Florida Statutes, and to include in all subcontracts the obligation to comply with subsection 20.055(5), Florida Statutes: "It is the duty of every state officer, employee, agency, special district, board, commission, contractor, and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to this section."

15 MISCELLANEOUS PROVISIONS

- 15.1 **Independent Contractor.** Contractor shall provide the services required herein strictly in an independent contractor relationship with the County and, except as otherwise expressly set forth herein, is not, nor shall be, construed to be an agent or employee of the County. Nothing herein shall create any association, partnership, joint venture or agency relationship between Contractor and the County. The County shall not provide vehicles or equipment to Contractor to perform the duties required under this Agreement nor will the County pay for any business, travel, office, or training expense or any other Agreement performance expense not specifically set forth in the Scope of Services of this Agreement. Contractor is not exclusively bound to the County and may provide Services to other private and public entities, but agrees and covenants that any such services provided by Contractor or for such entities will not conflict or otherwise interfere with Contractor's provision of Services to the County under this Agreement.
- 15.2 **Other Agencies.** Contractor may, upon mutual agreement, permit any municipality or other governmental agency to participate in the Agreement under the same prices, terms, and conditions.

It is understood that at no time will any city or municipality or other agency be obligated for placing an order for any other city, municipality, or agency, nor will any city, municipality, or agency be obligated for any bills incurred by any other city, municipality, or agency. Further it is understood that each agency will issue its own purchase order to Contractor.

- 15.3 **Third Party Beneficiaries.** Neither Contractor nor County intends to directly or substantially benefit a third party by this Agreement. The Parties expressly

acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement. Therefore, the Parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement, except as otherwise provided in this Agreement.

- 15.4 **Waiver of Claims.** Once the Agreement expires, or final payment has been made, Contractor shall have no more than thirty (30) calendar days to present or file any claims against the County concerning the Agreement. After that period, the County will consider Contractor to have waived any right to claims against the County concerning the Agreement.
- 15.5 **Safety.** Contractor shall take the necessary precautions and bear the sole responsibility for the safety of the methods employed in performing the work. Contractor shall at all times comply with the regulations set forth by federal, state, and local laws, rules, and regulations concerning "OSHA" and all applicable state labor laws, regulations, and standards. Contractor shall indemnify and hold harmless the County from and against all liabilities, suits, damages, costs, and expenses (including attorney's fees and court costs) which may be imposed on the County because of Contractor, Subcontractor, or supplier's failure to comply with the regulations.
- 15.6 **Notice.** All notice required under this Agreement shall be in writing and shall be sent by certified United States Mail or national parcel service, postage prepaid, return receipt requested, or by hand-delivery with a written receipt of delivery, addressed to the party for whom it is intended at the place last specified. When sent in accordance with the foregoing, notice shall be deemed delivered the sooner of (i) when received by the addressee or (ii) five (5) days after being deposited in the mail or with the parcel service. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

In the case of County:

County of Volusia
Attn: Director of Purchasing and Contracts
Address: 123 W. Indiana Ave., Room 302
DeLand, Florida 32720
Phone: (386) 736-5935

with copies of legal notices to:

County of Volusia
Attn: County Attorney
Address: 123 W. Indiana Ave., Room 301
DeLand, Florida 32720
Phone: (386) 736-5950

In the case of Contractor:

SWCA Environmental Consultants
Attn: Denis Henry, Chief Financial Officer
Address: 404 East Jackson Street Suite 3300
Tampa, Florida 33602
Phone: 281-475-0132

15.7 **Assignment.**

Contractor may not assign or otherwise convey Contractor's rights and/or obligations under this Agreement without obtaining the County's prior written consent, which consent the County may withhold, limit and/or condition in the County's sole discretion, including, but not limited to, requiring Contractor or his/her proposed successor in interest to post a performance bond. Any consent by the County under this section shall be by written Amendment to the Agreement in a form and substance specified by the County in its sole discretion. If Contractor desires to assign or otherwise convey its rights and/or obligations under this Agreement, Contractor shall provide the County with a written request for County's consent no less than thirty (30) days prior to the assignment's proposed effective date. Failure to provide such notice may result in the County assessing a processing fee of Five Hundred Dollars (US \$500.00); however, payment of such fee shall not entitle Contractor to the County's acceptance or approval of its request for assignment.

Nothing herein shall preclude the right of the County to waive its rights under this Section but no waiver shall be granted by the County without a written and duly executed amendment to the Agreement.

15.8 **Conflicts.** Neither Contractor nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment related to its performance under this Agreement. Contractor further agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against County in any legal or administrative proceeding in which he, she, or Contractor is not a party, unless compelled by court process. Further, Contractor agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of County in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Contractor or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding. In the event Contractor is permitted pursuant to this Agreement to utilize Subcontractors to perform any Services required by this Agreement, Contractor agrees to require such Subcontractors, by written Agreement, to comply with the provisions of this section to the same extent as Contractor.

15.9 **Audit Right and Retention of Records.** The County shall have the right to audit the books, records, and accounts of Contractor and its subcontractors that are related to this Agreement. Contractor and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Agreement. Contractor shall preserve and make available, at reasonable times

for examination and audit by the County, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for a retention period of five (5) years after completion or termination of this Agreement, and any renewals, as required by Item 65, General Records Schedule GS1-SL for State and Local Government Agencies, effective February 19, 2015 and the Florida Public Records Act (Chapter 119, Florida Statutes). Contractor shall, by written Agreement, require its subcontractors to agree; (i) to the requirements and obligations of this Article 15.9 – Audit Right and Retention of Records (ii) to be subject to applicable privacy and confidentiality laws and regulations and (iii) Contractor's privacy and confidentiality policies and procedures. All audits must be performed at Contractor's home office in Phoenix, Arizona. Nothing in this Article 15.9 – Audit Right and Retention of Records shall require Contractor to violate any laws applicable to Contractor as a provider of CDBG-DR ENVIRONMENTAL CONSULTING SERVICES.

- 15.10 **Location of County Data.** Contractor shall not out-source any development and/or support for this Agreement or transfer any County Data outside the territorial limits of the United States of America, without the written approval of the Contract Administrator.
- 15.11 **Key Personnel.** The initial key personnel and any changes or substitutions in the key personnel must be made known to County or specified in the Scope of Services, and County must grant approval before any such initial personnel or change or substitution can become effective. County agrees not to unreasonably withhold any such approval. Contractor shall, except as agreed by the parties, provide the key personnel as long as said staff are in Contractor's employment. In the event of injury, illness, or death of Contractor's key personnel, or if such key personnel leave Contractor's employ, Contractor shall replace such individual within thirty (30) County work Days after such injury or illness, or from the date of departure from employment or of death. Contractor shall obtain prior written approval of the County Project Manager to replace key personnel, such approval not to be unreasonably withheld. Contractor shall provide the County Project Manager with such information as necessary for County to evaluate the new key personnel. In the event the County Project Manager has reasonable objections to any replacement of key personnel, County shall notify Contractor in writing regarding such objections. Promptly after its receipt of such objections, Contractor shall investigate the matters stated and discuss its findings with County. If County thereafter requests in good faith replacement of the key personnel, Contractor shall use its reasonable best efforts to replace the employee with a person of suitable ability and qualification. Contractor shall use its best efforts to avoid replacing or reassigning any key personnel under this Agreement. If, notwithstanding this commitment, it becomes necessary for Contractor to replace any key personnel under this Agreement, Contractor shall give County as much reasonable detail as possible concerning the proposed replacement. At a minimum, Contractor agrees, where reasonably possible, to provide County with at least thirty (30) days' notice of changes to Contractor's Project team participants. Contractor agrees to provide County with resumes of new Project team participants and County may choose to interview new Project team members.
- 15.12 **References to County or Contractor.** Contractor agrees that during the term of this Agreement, except as provided herein, Contractor may not reference County in Contractor's website, and/or press releases, and, may not place County's name or logo on Contractor's website or in collateral marketing materials relating to Contractor's

products and Services without prior review and written approval by County. Further, Contractor agrees that it may not use County's name, logo or any trademarks (including in any press releases, customer "case studies," and the like) without County's prior written consent. Termination or expiration of this Agreement shall not affect Contractor's obligation in this regard and such obligation shall survive the termination or cancellation of this Agreement.

15.13 **Force Majeure.** Neither party shall be liable for any failure or delay in the performance of its obligations under the Agreement to the extent such failure or delay necessarily results from the occurrence of a Force Majeure Event beyond the control or reasonable anticipation of either party, including, but not limited to, compliance with any unanticipated government law or regulation not otherwise in effect at the time of execution of this Agreement, acts of God, acts of domestic or international terrorism, any virus, bacterium, or other microorganism capable of inducing physical distress, illness, or disease, whether due to a pandemic or otherwise, unforeseeable governmental acts or omissions, fires, strikes, natural disasters, wars, riots, transportation problems, and/or any other unforeseeable cause whatsoever beyond the reasonable control of the parties (and such cause being referred to as a "Force Majeure Event"). Accordingly, the parties further agree that:

15.13.1 Upon the occurrence of a Force Majeure Event, the non-performing party shall be excused from any further performance of those obligations under this Agreement that are affected by the Force Majeure Event for as long as (a) the Force Majeure Event continues; and (b) the non-performing party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

15.13.2 Upon the occurrence of a Force Majeure Event, the non-performing party shall notify the other party of the occurrence of such event and describe in reasonable detail the effect(s) of such event upon the party's performance of its obligations and duties pursuant to this Agreement. Such notice shall be delivered or otherwise communicated to the other party within three (3) business days following the failure or delay caused by the Force Majeure Event, or as soon as possible after such failure or delay if the Force Majeure Event precludes the non-performing party from providing notice within such time period.

15.13.3 In the event of a Force Majeure Event, the time for performance by the parties under the applicable Statement of Services shall be extended for a period of time equal to the time lost by reason of such cause through execution of a Change Order pursuant to the terms of the Agreement.

15.14 **Bankruptcy Rights of County.** All rights and licenses granted under or pursuant to this Agreement or any attachments hereto by Contractor to County are, and shall otherwise be deemed to be, for purposes of Section 365 (n) of the United States Bankruptcy Code (the "Code"), or replacement provision therefore, licenses to rights to "intellectual property" as defined in the Code. The parties agree that County, as licensee of such rights under this Agreement, shall retain and may fully exercise all of its rights and elections under the Code. The parties further agree that, in the event of the commencement of a bankruptcy proceeding by or against Contractor under the

Code, County shall be entitled to retain all of its rights under this Agreement.

- 15.15 **Waiver of Breach and Materiality.** Failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.
- 15.16 **Severance.** In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective to the extent practicable unless County or Contractor elects to terminate this Agreement.
- 15.17 **Entire Agreement.** This Agreement contains the entire agreement between Contractor and County. Any modifications to this Agreement shall not be binding unless in writing and signed by both parties.
- 15.18 **Applicable Law, Venue and Waiver of Jury Trial.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Jurisdiction over and venue for any controversies or legal issues arising out of this Agreement shall, if in state court, be exclusively in the 7th Judicial Circuit in and for the County of Volusia, Florida, or, if in federal court, be exclusively in the Middle District of Florida, Orlando Division. By entering into this Agreement, Contractor and the County hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to this Agreement, and, unless otherwise expressly provided herein, each agrees to bear its own costs and attorney's fees relating to any dispute arising under this Agreement.
- 15.19 **Prior Agreements.** This document represents the final and complete understanding of the Parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The Parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

16 ELECTRONIC SIGNATURES

The Contractor acknowledges that Denis henry, Chief Financial Officer (the "Authorized Signatory") is authorized to execute contracts/agreements with the County of Volusia and any affixed electronic or conformed signature of the Authorized Signatory shall be the act of and attributable to the Authorized Signatory. By signing this Agreement electronically, the Authorized Signatory does thereby adopt the electronic or conformed signature as his or her own and designates a copy of same for use as an official record by the County of Volusia.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties have made and executed this Agreement for CDBG-DR Environmental Consulting Services on the date last written below.

ATTEST:

By: DocuSigned by:
Sondra Johnson
90979535415649A...
Sondra Johnson
Associate Operations Administrator

Date: 1/4/2024 | 17:19:27 EST

SWCA ENVIRONMENTAL CONSULTANTS

BY: DocuSigned by:
Denis Henry
444577E88EE642B...
Denis Henry
Chief Financial Officer

Date: 1/4/2024 | 14:08:14 PST

ATTEST:

Attest: DocuSigned by:
George Recktenwald
2265F6E1E09043E...
George Recktenwald
County Manager

Date: 1/22/2024 | 08:19:17 EST

**COUNTY OF VOLUSIA FLORIDA
COUNTY COUNCIL**

BY: DocuSigned by:
Jeffrey S. Brower
FFF5438688FD439...
Jeffrey S. Brower
County Chair

Date: 1/18/2024 | 13:00:25 EST

County Council Approval Date: January 16, 2024

Exhibit A - Scope of Services

Contractor shall provide professional quality environmental consulting services and perform all necessary tasks to complete Environmental Review Records (ERR) as required to achieve HUD environmental compliance and have access to the HUD Environmental Review Online System (HEROS). Compliance features may include, but are not limited to, the following:

- National Environmental Policy Act of 1969
- 40 CFR Parts 312 and 1500-1508
- 24 CFR Parts 50, 55, and 58
- 36 CFR Part 800
- Executive Orders 11988, 11990, 13690, and 12898

Services will be provided on an as-needed basis. The services provided may include, but are not limited to, the following:

- Developing a county-wide broad level tiered review (Tier 1 Assessment),
- Completing a site-specific tiered review when applicable,
- Preparing Environmental Review Records (ERR),
- Performing site visits/evaluations,
- *Obtaining home inspection reports,
- *Obtaining lead paint test reports and/or risk assessments,
- *Obtaining asbestos test reports,
- Establishing the proper level of review based on the proposed project,
- Reviewing, researching, and documenting findings for all applicable laws and authorities related to the specific environmental review,
- Consulting with appropriate environmental agencies, State, Federal and non-Federal entities as necessary,
- Conducting and preparing an 8-step or 5-step process for flood zone and/or wetlands,
- Advertising for Flood Zone, Wetlands, Finding of No Significant Impact, and/or Intent to Request for Release of Funds,
- Preparing Phase I, II and III Environmental Assessments,
- Preparing Mitigation Plan and Design, and
- Preparing Contamination Assessment reports and remedial action plans

**Note: These are included as a possible option to help streamline the process; the basic intent of work to be done for a project is needed to accurately complete an ER, having this done professionally at this stage may also assist later when the time comes for the final scope of work development*

Below is a general outline of the steps in an environmental review process for all projects. Based on funding source, timing and other circumstances, these steps may vary by project.

- County staff will notify the Contractor of the need for an environmental review process for a specific project.
- Within five (5) business days of the notification from the County, the Contractor shall submit an estimated timeline, scope, and fee for the referenced project to the requestor.
- Within five (5) business days of receipt by County, the Contractor will be notified in writing of either the acceptance or refusal of the provided estimate. Should the estimate be approved, notification will be in the form of a written task assignment.
- Within five (5) business days of receipt of the executed task assignment, the Contractor will begin researching, consulting, and compiling required data for the preparation of an ERR.

- The Contractor shall complete the review and compile a draft environmental review report, which shall include a list of required mitigation measures, and provide to County staff for review and comment.
 - An invoice for work to date may be submitted for consideration at this time.
- Within ten (10) business days of receipt of the draft environmental review report the Contractor will be advised in writing of any questions, concerns, or necessary revisions/reconsiderations.
- Within twenty (20) business days of the receipt of the draft environmental review report the Contractor will be advised in writing if a final environmental review report can be completed as applicable.
- The Contractor shall complete the final environmental review report, including entry into HEROS when applicable.
- The Contractor shall submit a final invoice for work within ten (10) business days of final completion.

23-P-195KW
 CDBG-DR Environmental Consulting Services
 Exhibit B- Fee Schedule



Description	SWCA Environmental Consultants
County-wide broad level tiered review (Tier 1 Assessment)	\$15,930.00
Environmental Assessment - single family home	\$1,150.00
Environmental Assessment - multi-family home	\$1,350.00
Environmental Assessment - large parcels	\$1,387.50
Home Inspection - single family home	\$945.00
Home Inspection - multi-family home	\$1,210.00
Lead-based Paint Inspection/Risk Assessment - single family home	\$970.00
Lead-based Paint Inspection/Risk Assessment - multi-family home	\$945.00
Asbestos Inspection - single family home	\$950.00
Asbestos Inspection - multi-family home	\$900.00

3.52. Insurance Requirements

Required Types of Insurance

The Contractor shall purchase and maintain at its own expense, during the term of the Agreement, the types and amounts of insurance with limits no less than those shown in the Required Types and Limits of Insurance Chart associated with this solicitation, in the form and from companies satisfactory to the County. The Required Types and Limits of Insurance Chart is a listing and general summary of insurance policies required and is not intended to be comprehensive as to the requirements of each specific policy. Contractors shall review the additional requirements in this section and ensure that the insurance policies comply with the specific terms and conditions therein.

For the purposes of indemnification of the County or an endorsement or insurance coverage under this Agreement/Contract under which the County is a “named insured”, “additional named insured”, or “additional insured”, the term “County” includes the County of Volusia (a body corporate and politic and a subdivision of the State of Florida), including its districts, authorities, separate units of government established by law, ordinance or resolution, partners, elected and non-elected officials, employees, agents, volunteers, and any party with whom the County has agreed by contract to provide additional insured status.

3.53. Subcontractors and Independent Contractors

All subcontractors & independent contractors utilized by Contractor to provide services to County and its employees under this Agreement/Contract shall be required to maintain all insurance policies with the same terms, conditions, and requirements required of the Contractor in the Required Types and Limits of Insurance Chart and described below in this Exhibit.

3.54. Claims Made Basis Insurance Policies

All insurance policies written on a Claims Made Form shall maintain a retroactive date prior to or equal to the effective date of the Agreement. The Contractor shall purchase a Supplemental Extended Reporting Period (“SERP”) with a minimum reporting period of not less than three (3) years in the event the policy is canceled, not renewed, switched to occurrence form, or any other event which requires the purchase of a SERP to cover a gap in insurance for claims which may arise under or related to the Agreement. The Contractor’s purchase of the SERP shall not relieve the Contractor of the obligation to provide replacement coverage. In addition, the Contractor shall

require the carrier immediately inform the Contractor, the County Risk Manager, and the Purchasing and Contracts Division of any contractual obligations that may alter its professional liability coverage under the Agreement.

3.55. Risk Retention Groups and Pools

Contractor shall not obtain an insurance policy required under this Agreement from a Risk Retention Group or Pool.

3.56. Minimum Required Policies and Limits

Minimum underlying policies, coverages, and limits shall include all policies listed in the Required Types and Limits of Insurance Chart.

3.57. Additional Insured, Policies, Coverages, Limits, Primary and Non-Contributory Basis

Under all insurance policies where the County is required to be an additional insured, the coverage and limits provided to the County under Contractor's insurance policies shall be that listed in the Required Types and Limits of Insurance Chart or the Contractor's actual limits, whichever is higher. All coverage provided to the County as an additional insured by said policies shall be primary and shall not be additional to or contributing with any other insurance carried by or for the benefit of the County with any other insurance available to the County. The Contractor shall utilize ISO Form CG 20 38 04 13 and CG 20 37 04 13 or equivalent to provide additional insured status to the County and any party to whom the County is contractually bound to provide additional insured status under a commercial general liability policy.

3.58. Workers' Compensation

Workers' Compensation insurance is required for all employees of the Contractor, employed or hired to perform or provide work or services under the Agreement or that is in any way connected with work or services performed under the Agreement, without exclusion for any class of employee, and shall comply fully with the Florida Workers' Compensation Law (Chapter 440, Florida Statutes, Workers' Compensation Insurance) and include Employers' Liability Insurance with limits no less than the statutory. Policy shall include a waiver of subrogation in favor of the County. If Contractor is using a "leased employee" or an employee obtained through a professional employer organization ("PEO"), Contractor is required to have such employees covered by worker's compensation

insurance in accordance with Florida Worker's Compensation law and the insurance carrier of the PEO execute a waiver of subrogation in favor of the County, its employees and insurers.

(1) Contractor and its Subcontractors, or any associated or subsidiary company doing work on County property or under the Agreement must be named in the Workers' Compensation coverage or provide proof of their own Workers' Compensation coverage, without exclusion of any class of employee, and with a minimum of the statutory limits per occurrence for Employer's liability coverage. Further, if the Contractor's Subcontractors fail to obtain Workers' Compensation insurance and a claim is made against the County by the uncovered employee of said Subcontractor of the Contractor, the Contractor shall indemnify, defend, and hold harmless the County from all claims for all costs including attorney's fees and costs arising under said employee(s) Workers' Compensation insurance claim(s).

3.59. Motor Vehicle Liability

The Contractor shall secure and maintain during the term of the Agreement motor vehicle coverage in the split limit amounts of no less than the amounts shown in the Required Types and Limits of Insurance Chart, per person, per occurrence for bodily injury and for property damage or a combined single limit of the amount shown above with "Any Auto", Coverage Symbol 1, providing coverage for all autos operated regardless of ownership, and protecting itself, its employees, agents or lessees, or subsidiaries and their employees or agents against claims arising from the ownership, maintenance, or use of a motor vehicle. The County shall be an additional insured under this policy when required in the Required Types and Limits of Insurance Chart.

3.60. Professional Liability

The Contractor shall ensure that it secures and maintains, during the term of the Agreement, Professional Liability insurance with limits of no less than the amount shown in the Required Types and Limits of Insurance Chart in respect only to the project(s) contemplated by the Agreement. Such policy shall cover all the Contractor's or its Subcontractor's professional liabilities whether occasioned by the Contractor or its Subcontractors, or its agents or employees [and broad enough to include errors and omissions specific to Contractor's professional liability for direct and contingent design errors and Architect's/Engineers professional liability with no exclusions for design-build

work]. The County shall be an additional insured under this policy when required in the Required Types and Limits of Insurance Chart.

If the Contractor fails to secure and maintain the professional liability insurance coverage required herein, the Contractor shall be liable to the County and agrees to indemnify, defend, and hold harmless the County against all claims, actions, losses or damages that would have been covered by such insurance.

3.61. Primary and Excess Coverage

Any insurance required may be provided by primary and excess insurance policies.

3.62. Insurance Requirements

A. General Insurance Requirements:

(1) All insurance policies shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of A- and a Financial category size of VIII or greater in the "Best Key Rating Guide" published by A.M. Best & Company, Inc.

(2) Approval by County of any policy of insurance shall not relieve Contractor from its responsibility to maintain the insurance coverage required herein for the performance of work or services by the Contractor or its Subcontractors for the entire term of the Agreement and for such longer periods of time as may be required under other clauses of the Agreement.

(3) Waiver of Subrogation. The Contractor hereby waives all rights against the County and its Subcontractors for damages by reason of any claim, demand, suit or settlement (including workers' compensation) for any claim for injuries or illness of anyone, or perils arising out of the Agreement. The Contractor shall require similar waivers from all its Subcontractors. Contractor's insurance policies shall include a waiver of subrogation in favor of the County. This provision applies to all policies of insurance required under the Agreement (including Workers' Compensation, and general liability).

(4) County Not Liable for Paying Deductibles. For all insurance required by Contractor, the County shall not be responsible or liable for paying deductibles for any claim arising out of or related to the

Contractor's business or any Subcontractor performing work or services on behalf of the Contractor or for the Contractor's benefit under the Agreement.

(5) Cancellation Notices. During the term of the Agreement, Contractor shall be responsible for promptly advising and providing the County Risk Manager and the Purchasing and Contracts divisions with copies of notices of cancellation or any other changes in the terms and conditions of the original insurance policies approved by the County under the Agreement within two (2) business days of receipt of such notice or change.

(6) Deductibles. Contractors that maintain and administer a self-insured retention or a large deductible program exceeding the insurance requirements listed in this solicitation using a formal program to fund either program may submit an exception in accordance with the solicitation section detailing Questions, Exceptions, and Addenda, to be considered for this solicitation.

The request must include a summary of the program's design, funding method, and the program's supporting financial information. If additional information is necessary, the County will request more specific information, which must be provided by the Contractor. The County Risk Manager will review the information submitted and determine whether the program is acceptable to the County. Contractors with no formal risk management program in place to manage and fund deductibles or self-insured retentions may not be considered. Subject to County approval, Contractor may obtain a letter of credit in the amount equivalent to the deductible, which shall remain in effect during the term of the Agreement at no additional cost to the County.

(7) Contractor's obligations or services shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity or insurance defense of additional or named insureds which would otherwise exhaust or be unavailable as to a party or person described in this Contract.

3.63. Proof of Insurance

1. The Contractor shall be required to furnish evidence of all required insurance in the form of certificates of insurance, which shall clearly outline all hazards covered as itemized herein, the amounts of insurance applicable to each hazard and the expiration dates.
2. The Contractor shall furnish proof of insurance acceptable to the County prior to or at the time of execution of the Agreement and the Contractor shall not commence work or provide any service until the Contractor has obtained all the insurance required under the Agreement and such insurance has been filed with and approved by the County. Upon request from the County, the Contractor shall furnish copies of all requested policies and any changes or

amendments thereto, immediately, to the County, the County Risk Manager, and Purchasing and Contracts Divisions, prior to the commencement of any contractual obligations. The Agreement may be terminated by the County, without penalty or expense to County, if at any time during the term of the Agreement proof of any insurance required hereunder is not provided to the County.

3. All certificates of insurance shall clearly indicate that the Contractor has obtained insurance of the type, amount and classification required by this Section. No work or services by Contractor or its Subcontractors shall be commenced until County has approved these policies or certificates of insurance. Further, the Contractor agrees that the County shall make no payments pursuant to the terms of the Agreement until all required proof or evidence of insurance has been provided to the County. The Agreement may be terminated by the County, without penalty or expense, if proof of any insurance required hereunder is not provided to the County.
4. The Contractor shall file replacement certificates with the County at the time of expiration or termination of the required insurance occurring during the term of the Agreement. In the event such insurance lapses, the County expressly reserves the right to renew the insurance policies at the Contractor's expense or terminate the Agreement but County has no obligation to renew any policies.
5. The provisions of this section, Required Types of Insurance, shall survive the cancellation or termination of the Agreement.

FEDERAL CONTRACT PROVISIONS

Contractor agrees to comply with all requirements checked below



Equal Employment Opportunity – for all contracts for construction work which is defined as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

This requirement applies to all FEMA/Federal grant and cooperative agreement programs.

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.



Davis Bacon Act Equal Employment Opportunity – applies to all contracts for construction work as defined above.

The Davis-Bacon Act only applies to the Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. It DOES NOT apply to other FEMA/Federal grant and cooperative agreement programs, including the Public Assistance Program.

- a. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- c. Additionally, contractors are required to pay wages not less than once a week.



Copeland Anti-Kickback Act

This requirement applies to all contracts for construction or repair work above \$2,000 in situations where the Davis-Bacon Act also applies. It DOES NOT apply to the FEMA Public Assistance Program.

Exhibit D

ITB 23-P-195KW

- a. Contractor. The contractor shall comply with 18 U.S.C. §874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- b. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. §5.12.”

**Contract Work Hours and Safety Standards Act**

This requirement applies to all FEMA/Federal contracts awarded by the non- federal entity in excess of \$100,000 under grant and cooperative agreement programs that involve the employment of mechanics or laborers. It is applicable to construction work. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Compliance with the Contract Work Hours and Safety Standards Act.

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The County of Volusia or State of Florida shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

**Rights to Inventions Made Under a Contract or Agreement**

If the FEMA award meets the definition of “funding agreement” under 37C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non- Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative

Agreements), and any implementing regulations issued by FEMA. See 2 C.F.R. Part 200, Appendix II(F)

This requirement applies to “funding agreements,” but it DOES NOT apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”



Clean Air Act and the Federal Water Pollution Control Act

This requirement applies to contracts awarded by a non-federal entity of amounts in excess of \$150,000 under a federal grant.

Clean Air Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to the County of Volusia (County) and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to the County of Volusia (County) and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.



Debarment and Suspension

This requirement applies to all FEMA/Federal grant and cooperative agreement programs.

Suspension and Debarment

1. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
3. This certification is a material representation of fact relied upon by State of Florida and County of Volusia. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to State of Florida and County of Volusia, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
4. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R.

pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

If applicable, contractors must sign and submit to the non-federal entity the certification in Appendix A.



Byrd Anti-Lobbying Amendment

This requirement applies to all FEMA/Federal grant and cooperative agreement programs. Contractors that apply or bid for a contract of \$100,000 or more under a federal grant must file the required certification. See 2 C.F.R. Part 200, Appendix II(I); 31 U.S.C. § 1352; and 44 C.F.R. Part 18.

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

If applicable, contractors must sign and submit to the non-federal entity the certification in Appendix B.



Procurement Of Recovered Materials

This requirement applies to all contracts awarded by a non- federal entity under FEMA/Federal grant and cooperative agreement programs.

In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

1. Competitively within a timeframe providing for compliance with the contract performance schedule;
2. Meeting contract performance requirements; or
3. At a reasonable price.

Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.



Access to Records

The following access to records requirements apply to this contract:

1. The Contractor agrees to provide State of Florida, County of Volusia, the FEMA (Federal grant) Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
2. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. The Contractor agrees to provide the FEMA (Federal grant) Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

4. In compliance with the Disaster Recovery Act of 2018, the State of Florida, County of Volusia, and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA (Federal grant) Administrator or the Comptroller General of the United States.

Changes

To be eligible for FEMA assistance under the non-Federal entity's FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope.

FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

Department of Homeland Security (DHS) Seal, Logo, and Flags

Recipients must obtain permission prior to using the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials. See DHS Standard Terms and Conditions: Version 8.1 (2018).

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

Compliance with Federal Law, Regulations, and Executive Orders

This is an acknowledgement that FEMA/Federal financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA/Federal policies, procedures, and directives.”

No Obligation by Federal Government

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

Domestic Preferences for Procurements

The Contractor acknowledges that they, as appropriate and to the extent consistent with law, shall, when practicable purchase, acquire, or use goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). [See 2 C.F.R. Part 200.322.](#)

(b) For purposes of this section:

(1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Exhibit D


ITB 23-P-195KW

**Prohibition on certain telecommunications and video surveillance services or equipment.**

1. Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
 - (a) Procure or obtain;
 - (b) Extend or renew a contract to procure or obtain; or
 - (c) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
 - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
2. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
3. See Public Law 115-232, section 889 for additional information.
4. See also 2 CFR §200.471. Telecommunication costs and video surveillance costs.
 - (a) Costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, cloud servers are allowable except for the following circumstances:
 - (b) Obligating or expending covered telecommunications and video surveillance services or equipment or services as described in §200.216 to:
 - (1) Procure or obtain, extend or renew a contract to procure or obtain;
 - (2) Enter into a contract (or extend or renew a contract) to procure; or
 - (3) Obtain the equipment, services, or systems.

I hereby certify that I have read and understand the requirements of these Federal Contract Provisions and that I, as the Respondent, will comply with all requirements.

x


 Authorized Signature
 Rob Lackowicz

Printed Name
 Client Services Director

10/20/2023

Title
 SWCA, Inc.

Date

Company Name
 401 East Jackson Street, Suite 3300, Tampa, Florida, 33602

Full Address
 (210) 776-0602

rlackowicz@swca.com

Telephone

Fax

E-mail Address

APPENDIX A, CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION-

LOWER TIER COVERED TRANSACTIONS FOR FEDERAL AID CONTRACTS

It is certified that neither the below identified firm nor its principals are presently suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

Name of Consultant/Contractor: SWCA, Inc.

By: Rob Lackowicz

Date: 10/20/2023

Title: Client Services Director

Instructions for Certification

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

- a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or sub-grantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or sub-grantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

Exhibit D

ITB 23-P-195KW

- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

APPENDIX B, CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, SWCA, Inc., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.



Signature of Contractor's Authorized Official

CFO/EVP/Corporate Secretary

Name and Title of Contractor's Authorized Official

10/20/2023

Date

AMENDMENT No. 1
TO
CONTRACT BETWEEN
COUNTY OF VOLUSIA, FLORIDA
AND
SWCA ENVIRONMENTAL CONSULTANTS

This Amendment No. 1 to the contract between County of Volusia, Florida and SWCA, Incorporated, dba SWCA Environmental Consultants, for the CDBG-DR Environmental Consulting Services is hereby made and entered into by and between the County of Volusia, a body corporate and politic and a political subdivision of the State of Florida ("County"), and SWCA, Incorporated, dba SWCA Environmental Consultants, 20 E Thomas Road, Suite 1700, Phoenix, Arizona 85012 ("Contractor").

Recitals

WHEREAS, on January 22, 2024, the County and the Contractor entered into a contract under which Contractor agreed to provide CDBG-DR environmental consulting services with an initial term of five years, with an option to renew upon mutual written agreement between the parties ("Contract"); and

WHEREAS, the County and the Contractor desire to modify Exhibit B – Fee Schedule thus modifying the price list to reflect pricing for expedited lead-based paint testing.

NOW THEREFORE, in consideration of the foregoing recitals which are incorporated herein by reference, and other specific consideration set forth in this Amendment No. 1, the receipt and sufficiency of which is acknowledged by Contractor and County, the parties agree to amend the Contract as follows:

1. The parties agree that the foregoing recitals are true, correct and material to this Amendment No. 1.
2. The parties agree to replace Exhibit B – Fee Schedule presently attached to the contract, with Exhibit B – Fee Schedule, REVISION 1, which modifies the price list to include pricing for expedited lead-based paint testing. A copy of such Exhibit B – Fee Schedule, REVISION 1 is attached hereto and incorporated herein.
3. This Amendment No. 1, including any exhibits, sets forth the entire modification to the Contract with respect to the products and services provided under this Amendment No. 1, unless the Contract is otherwise amended or modified in writing by the parties.
4. This Amendment No. 1 is incorporated by reference into the Contract as if fully set forth therein. Except as provided herein, all other terms and conditions of the Contract shall

remain unchanged and in full force and effect and are hereby ratified and reaffirmed by the parties hereto. In the event of any conflict or inconsistency between the provisions set forth in this Amendment No. 1 and the Contract, this Amendment No. 1 shall govern and control.

5. Contractor acknowledges that Denis Henry (the “Authorized Signatory”) is authorized to execute contracts/agreements with the County of Volusia and any affixed electronic or conformed signature of the Authorized Signatory shall be the act of and attributable to the Authorized Signatory. By signing this Amendment electronically, the Authorized Signatory does thereby adopt the electronic or conformed signature as his or her own and designates a copy of same for use as an official record by the County of Volusia.

THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK

IN WITNESS WHEREOF, the parties have made and executed this Amendment No. 1 to Contract between County of Volusia, Florida and SWCA, Incorporated, dba SWCA Environmental Consultants on the respective dates under each signature.

CONTRACTOR: SWCA, INCORPORATED, DBA SWCA ENVIRONMENTAL CONSULTANTS

DocuSigned by:
Denis Henry
444577E88FE642B...
Signature

Denis Henry

Print Name

CFO

Title
Date: 11/20/2024 | 15:29:28 PST

ATTEST:
Signed by:
Sondra Johnson
90979535415649A...
Signature

Sondra Johnson

Print Name

Associate Operations Administrator

Title
Date: 11/20/2024 | 18:40:29 EST

COUNTY OF VOLUSIA:

BY: DIRECTOR OF PURCHASING AND CONTRACTS OF VOLUSIA COUNTY, FLORIDA
Per Ordinance No. 2009-07, Section 2-272(a) and Section 2-273(a)

DocuSigned by:
Pamela Wilsky
F6F72DB46FB528A...
BY: Pamela Wilsky, NIGP-CPP, CPPO, CPPB
Director of Purchasing & Contracts

Date: 11/21/2024 | 08:43:21 EST

ATTEST:
Signed by:
Kathy Williams
B7162F422BFC4C2...
Kathy Williams, NIGP-CPP, CPPO,
CPPB Procurement Manager
Date: 11/21/2024 | 08:44:34 EST

23-P-195KW
 CDBG-DR Environmental Consulting Services
 Exhibit B- Fee Schedule - **REVISION 1**



Description	SWCA Environmental Consultants
County-wide broad level tiered review (Tier 1 Assessment)	\$15,930.00
Environmental Assessment - single family home	\$1,150.00
Environmental Assessment - multi-family home	\$1,350.00
Environmental Assessment - large parcels	\$1,387.50
Home Inspection - single family home	\$945.00
Home Inspection - multi-family home	\$1,210.00
Lead-based Paint Inspection/Risk Assessment - single family home	\$970.00
Lead-based Paint Inspection/Risk Assessment - multi-family home	\$945.00
Additional cost for expedited Lead Based Paint results	\$150.00
Asbestos Inspection - single family home	\$950.00
Asbestos Inspection - multi-family home	\$900.00

Certificate Of Completion

Envelope Id: 2D3C0244-C6CD-429B-9AA1-B7B7FC3603DF

Status: Completed

Subject: Complete with DocuSign: SWCA - Amendment No. 1 - 23-P-195KW, CDBG-DR Environmental Consulting

Source Envelope:

Document Pages: 4

Signatures: 4

Envelope Originator:

Certificate Pages: 5

Initials: 0

Kathy Williams

AutoNav: Enabled

119 W. Indiana Ave.

Envelopeld Stamping: Enabled

DeLand, FL 32720

Time Zone: (UTC-05:00) Eastern Time (US & Canada)

kwilliams@volusia.org

IP Address: 74.191.71.218

Record Tracking

Status: Original

Holder: Kathy Williams

Location: DocuSign

11/20/2024 3:20:32 PM

kwilliams@volusia.org

Security Appliance Status: Connected

Pool: StateLocal

Storage Appliance Status: Connected

Pool: County of Volusia

Location: DocuSign

Signer Events

Signature

Timestamp

Denis Henry

dhenry@swca.com

CFO

SWCA, Incorporated

Security Level: Email, Account Authentication (None)

DocuSigned by:

Denis Henry
444577E88EE642B...

Sent: 11/20/2024 3:32:59 PM

Viewed: 11/20/2024 6:29:16 PM

Signed: 11/20/2024 6:29:28 PM

Signature Adoption: Pre-selected Style

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Electronic Record and Signature Disclosure:

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ID: e1cded98-5537-4f36-8e81-bbc366d8b636

Sondra Johnson

sojohnson@swca.com

Associate Operations Administrator

Security Level: Email, Account Authentication (None)

Signed by:

Sondra Johnson
90979535415649A...

Sent: 11/20/2024 6:29:30 PM

Viewed: 11/20/2024 6:39:39 PM

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Electronic Record and Signature Disclosure:

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ID: f40731ec-c89b-4fe0-bf24-f3743fe3a7a2

Pamela Wilsky

pwilsky@volusia.org

Purchasing Director

Volusia County Purchasing Division

Security Level: Email, Account Authentication (None)

DocuSigned by:

Pamela Wilsky
F6F72DB46FB548A...

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Signed: 11/21/2024 8:43:21 AM

Signature Adoption: Pre-selected Style

Using IP Address: 74.191.71.218

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Kathy Williams

kwilliams@volusia.org

Procurement Manager

Volusia County Purchasing Division

Security Level: Email, Account Authentication (None)

Signed by:

Kathy Williams
B7162F432BFC4C2...

Sent: 11/21/2024 8:43:23 AM

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Signed: 11/21/2024 8:44:34 AM

Signature Adoption: Pre-selected Style

Using IP Address: 74.191.71.218

Electronic Record and Signature Disclosure:

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In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Sarah Nolan snolan@volusia.org Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 11/21/2024 8:44:36 AM Viewed: 11/21/2024 8:57:19 AM
David Crawley David.Crawley@swca.com Director - Pensacola & Tampa Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 6/18/2024 3:45:20 PM ID: b5d96a84-7914-408c-94d5-79f505d7e762	COPIED	Sent: 11/21/2024 8:44:38 AM Viewed: 11/21/2024 8:45:54 AM
Matthew Zoss Matthew.Zoss@swca.com VP - Southeast Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 9/20/2024 8:55:37 AM ID: 2bf39674-c48e-4533-b715-902e07624c19	COPIED	Sent: 11/21/2024 8:44:38 AM
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Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
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Certified Delivered	Security Checked	11/21/2024 8:44:28 AM
Signing Complete	Security Checked	11/21/2024 8:44:34 AM
Completed	Security Checked	11/21/2024 8:44:38 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, County of Volusia (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact County of Volusia:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by phone call: 386-736-5922

To contact us by email send messages to: cbarber@volusia.org

To contact us by paper mail, please send correspondence to:

County of Volusia
119 W. Indiana Ave.
c/o Christine Barber
DeLand, FL 32720

To advise County of Volusia of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at cbarber@volusia.org and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from County of Volusia

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to cbarber@volusia.org and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with County of Volusia

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to cbarber@volusia.org and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

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