

**FIRST AMENDMENT TO AGREEMENT NO. 10045 BETWEEN ALACHUA COUNTY
AND WITT O'BRIEN'S, INC., FOR MONITORING OF DISASTER DEBRIS
RECOVERY ACTIVITIES**

THIS FIRST AMENDMENT TO AGREEMENT, made and entered into upon execution, by and between Alachua County, a charter county and political subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as "County", and Witt O' Brien's, LLC, a Foreign for Profit Corporation, with a principle business address of 818 TOWN & COUNTRY BLVD. SUITE 200 HOUSTON, TX 77024, hereinafter referred to as "Contractor". Collectively the County and the Contractor are hereinafter referred to as the "Parties".

WITNESSETH:

WHEREAS, pursuant to Bid/RFP No. 17-74, the Parties hereto previously entered into the *Agreement for Contractual Services between Alachua County and Witt O' Brien's, LLC for Monitoring of Disaster Debris Recovery Activities*, dated October 4, 2016, (the "Agreement"), identified by No. 10045; and

WHEREAS, the County has elected its option to renew the term of the original Agreement to allow the Contractor to furnish the goods or service to Alachua County; and

WHEREAS, the Parties also wish to amend the Agreement to reflect the increase to the Alachua County Minimum Wage as mandated by the Alachua County Code of Ordinances, to also make a corresponding amendment to the Contractor's compensation necessitated by the increase to the County's minimum wage and to reflect a requested rate increase by the Contractor, to add a clause which defines and allows electronic signatures, to add a clause which acknowledges the employment eligibility requirements via the U.S. Department of Homeland Security E-Verify System, to add a clause which acknowledges the Alachua County COVID-19 Procedure, and to add a clause and Attachment pertaining to FHWA-1273, Required Contract Provisions Federal-Aid Construction Contracts, to the Agreement, as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties hereby agree to amend the Agreement as follows:

1. Amendment: Section #1 of the Agreement, Term, is hereby amended in its entirety to read as follows:

Term. This agreement is renewed for a term commencing October 1, 2023 and continuing through September 30, 2029 unless earlier terminated as provided herein. The County has the option of renewing this Agreement for 1 additional 6 year period at the same terms and conditions outlined herein.

The County's performance and obligation to pay under this Agreement is contingent upon a specific annual appropriation by the Alachua County Board of County Commissioners ("Board"). The Parties hereto understand that this Agreement is not a commitment of future appropriations. Therefore, the continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Chapter 129, Florida Statutes, and that the failure of the Board to do so shall not constitute a breach or default of this Agreement.

2. Amendment: **Attachment A** of the Agreement, Scope of Service, referenced in Section 2 of the Agreement, Duties of the Contractor, and in Section 4 of the Agreement, Method of Payment, is deleted in its entirety and replaced with an updated Attachment A, attached to this Amendment, which amends the Note on the last page of Attachment A and adds the rate of pay for the position of Administrative Assistant.
3. Amendment: Section #5 of the Agreement, Alachua County Minimum Wage, the reference to the Alachua County Code of Ordinances, Chapter 22, Article III Minimum Wage Ordinance is hereby amended to reference Alachua County Code, Chapter 22, Article XII.
4. Amendment: Section #5 of the Agreement, Alachua County Minimum Wage sub-sections 5.1 and 5.2 are hereby amended and replaced in their entirety to read:

5.1 The current required Alachua County Government Minimum Wage is \$16.00 per hour when health Benefits are provided at the equivalent value of \$2.00 per hour and \$18.00 when health benefits are not provided (collectively, the "Minimum Wage").

5.2 The County may amend the applicable Minimum Wage on or before October 1st of each year.

5. Amendment: Section #7 of the Agreement, Notice is amended to reflect the new Point of Contact for the County:

County:

Gus Olmos, Director Solid Waste and
Resource Recovery 5620 N.W. 120th
Lane Gainesville, Florida 32653
gus@alachuacounty.us

6. Amendment: Section #12 of the Agreement, Laws & Regulations, is hereby amended to read as follows

12. Laws & Regulations.

12.1 The Contractor will comply with all laws, ordinances, regulations, and building code requirements applicable to the work required by this Agreement.

12.2 The Contractor is presumed to be familiar with all federal, state and local laws, ordinances, code rules and regulations that may in any way affect the work outlined in this Agreement. This includes complying with adopted Alachua County COVID-19 Procedure, as amended, concerning masking and social distancing as applicable to employees while working or providing services inside a Covered Alachua County Facility.

12.3 If the Contractor is not familiar with federal, state and local laws, ordinances, code rules and regulations, the Contractor remains liable for any violation and all subsequent damages or fines.

7. Amendment: Section #29 of the Agreement, Electronic Signatures, is added to read:

29. Electronic Signatures.

The Parties agree that an electronic version of this Agreement shall have the same legal effect and enforceability as a paper version. The Parties further agree that this Agreement, regardless of whether in electronic or paper form, may be executed by use of electronic signatures. Electronic signatures shall have the same legal effect and enforceability as manually written signatures. The County shall determine the means and methods by which electronic signatures may be used to execute this Agreement and shall provide the Contractor with instructions on how to use said method. Delivery of this Agreement or any other document contemplated hereby bearing an manually written or electronic signature by facsimile transmission (whether directly from one facsimile device to another by means of a dial-up connection or whether mediated by the worldwide web), by electronic mail in “portable document format” (“.pdf”) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing an original or electronic signature.

8. Amendment: Section #30 of the Agreement, U.S. Department of Homeland Security E-Verify System, is added to read:

30 U.S. Department of Homeland Security E-Verify System

30.1 The Contractor/Professional shall utilize the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of all new employees hired by the Contractor/Professional during the term of the Agreement. The E-Verify system is located at <https://www.uscis.gov/E-Verify>.

30.2 The Contractor/Professional shall expressly require any subcontractors performing work or providing services pursuant to the County's Agreement to utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of the Agreement. The E-Verify system is located at <https://www.uscis.gov/E-Verify>.

9. Amendment: Section #31 of the Agreement, 2 CFR 200, Appendix II, Contract Provisions for Non-Federal Entity Contracts under Federal Awards, is added to the Agreement to read:

31. While working for the County under the terms the Agreement, the Contractor shall comply with required 2 CFR 200, Appendix II Federal Contract Provisions, **Attachment E** attached to this Amendment, which is incorporated and made part of the Agreement.

10. This First Amendment shall take effect on October 1, 2023.

11. Original Agreement. Unless expressly amended herein, all other terms and provisions of the original Agreement between the Parties shall be and remain in full force and effect.

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IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed on the day and year below written.

ALACHUA COUNTY, FLORIDA

By: _____

Anna Prizzia, Chair
Board of County Commissioners

Date: _____

ATTEST

APPROVED AS TO FORM

J.K. "Jess" Irby, Esq., Clerk
(SEAL)

Alachua County Attorney's Office

Contractor

By: Cheryl Joiner

Print: Cheryl Joiner

Title: Director Contracts & Compliance

Date: 8/24/2023

IF THE CONTRACTOR IS NOT A NATURAL PERSON, PLEASE PROVIDE A CERTIFICATE OF INCUMBENCY AND AUTHORITY, OR A CORPORATE RESOLUTION, LISTING THOSE AUTHORIZED TO EXECUTE AGREEMENTS ON BEHALF OF YOUR ORGANIZATION. IF ARE A NATURAL PERSON, THEN YOUR SIGNATURE MUST BE NOTARIZED.

ATTACHMENT A: SCOPE OF SERVICES

1.1 General

- 1.1.1 Provider shall provide all trained labor, materials, equipment, tools, traffic control, signage and any other incidental items to accomplish the monitoring of the debris removal contractor and his subcontractors as directed by the County. This task of the scope of service shall be commenced within the first twenty-four (+/-) hours after post-event mobilization.
- 1.1.2 Provider shall provide all trained labor, materials, equipment, tools, traffic control, signage and any other incidental items to accomplish the operation of any and all sites designated by the County as temporary storage sites. This task of the scope of service shall be commenced within the first twenty-four (+/-) hours after post-event mobilization or when deemed necessary by the County.
- 1.1.3 At a minimum, Provider's team shall consist of the following positions:
 - 1.1.3.1 Project Manager: primary point-of-contact to the County and overall responsible for all provider services and personnel.
 - 1.1.3.2 Operations Manager: responsible for field monitoring operations.
 - 1.1.3.3 Field Supervisor: responsible for crews of Field Monitors.
 - 1.1.3.4 Field Monitor: responsible for overseeing debris recovery contractor's compliance and issuing load tickets.
 - 1.1.3.5 Tower Monitor: responsible for recording the volume of debris brought to a debris disposal site by a debris recovery contractor.
 - 1.1.3.6 Drop-off Site Monitor: responsible for determining the eligibility of participants at drop-off sites and issuing load tickets to the debris recovery contractor.
 - 1.1.3.7 Billing/Invoice/Data Entry Tracking: verification and entering of load tickets.
 - 1.1.3.8 Debris Site Security: provides security at debris disposal and public drop-off sites when sites are not open.
 - 1.1.3.9 All members of the provider's team shall have obtained the appropriate level of the Federal Emergency Management Agency's National Incident Management Certification and copies of all certifications shall be supplied to the County.
- 1.1.4 Provider shall equip all members of their team with cellular phones with Global Positioning System capabilities such that:
 - 1.1.4.1 All members of the contractor's assigned staff can be located real time via an online GIS application provided to the County by the Provider.
 - 1.1.4.2 County will be automatically updated by the online GIS application if any members of the Provider's team and contractor's staff cross into pre-set areas not under the purview of the County.
 - 1.1.4.3 Provider team members' location for each day can be traced and saved into an electronic report provided to or accessible by the County at least daily.
 - 1.1.4.4 All members of the team can use their provided cellular phone to obtain present time coordinates for reports and ticket writing.
- 1.1.5 Provider shall be responsible for scheduling all work for all their personnel on a daily basis. Provider shall also assist County in coordinating the work assignments for the debris recovery contractors.
- 1.1.6 Provider shall assign an Operations Manager to oversee each debris recovery contractor that is employed by the County.
- 1.1.7 Any FEMA reimbursements for eligible expenses normally due to County that are denied by FEMA due to documented errors or omissions by the Provider or for which the Provider is responsible related to the debris removal process and any related operational or administrative functions will be reimbursed by Provider to the County at the rate that FEMA would have reimbursed the County had such errors or omissions not occurred.
- 1.1.8 Should the Provider fail to respond within the specified time frame Provider shall be responsible for any increase in costs incurred by the County in securing services with the specified time frame from alternate providers.
- 1.1.9 Provider's Project Manager shall assist the County in developing a Debris Management

- Action Plan for the specific occurrence.
- 1.1.10 Provider shall prepare and submit operational reports throughout the duration of the recovery operations. Daily reports shall document the activities and progress from the previous day and shall be distributed at a daily briefing and to the designated County representative. Provider shall also communicate any short or long term problems. Weekly reports shall document the review and validation of debris recovery contractors' load tickets; these reports shall be submitted to the designated County representative prior to submitting invoices for payment.
 - 1.1.11 Provider shall prepare a final report to be submitted to a distribution list as established by the County within 30 days of completion of the debris recovery operation. Electronic copies in a format acceptable to the County will be provided. At a minimum, the following information will be included in the final report:
 - 1.1.11.1 A summary and discussion of disaster response requirements and results.
 - 1.1.11.2 Copies of manifests, certificates, and related documents.
 - 1.1.11.3 Copies of all load tickets, log books, photographs.
 - 1.1.11.4 Copies of all correspondence, conversations and meeting notes.
 - 1.1.12 As specified in section 200.318(j) of the Code of Federal Regulations, this contract shall have a ceiling price of one million two hundred thousand (1,200,000) dollars per week. Provider shall be responsible for all weekly expenses that exceed the ceiling amount.
 - 1.1.13 The County Contract Manager shall be the Solid Waste and Resource Recovery Director or his/her designee.

1.2

Field Monitoring

- 1.2.1 Upon issuance of a Notice to Proceed by the County, the contractor shall provide the following debris management services, primarily on a dawn-to-dusk, 7 day per week basis, as directed by the County. Note: the Project Manager or his/her designee must be reachable 24 hours a day. The provider shall be available to conduct debris monitoring activities at any time that debris removal is taking place.
- 1.2.2 Provider shall provide all labor, materials, equipment, tools, traffic control, signage and any other incidental items to accomplish the monitoring of the debris removal contractor and his subcontractors as directed by the County. This is to include sets of vehicle scales with a minimum capacity of 20,000 pounds per pad (each scale must be able to handle 20,000 pounds) and/or towers at each disposal site for personnel to verify volume contained in each arriving vehicle.
- 1.2.3 Provider shall issue weight and/or volume based tickets to all debris removal contractor and sub-contractor vehicles at the collection site. Debris removal contractor and sub-contractor shall take two copies to the disposal site while Provider shall keep two copies as well, one of which is to be handed over to the County within twenty-four hours of issuance. All tickets shall contain the following information: FEMA disaster number, if applicable source and location of waste collected, date and time weighed, material collected, gross weight of vehicle or estimated net volume of material hauled by the vehicle, name of driver operating vehicle, name of monitor weighing or estimating vehicle cargo, debris removal fleet number of vehicle hauling debris as assigned by the County. All tickets issued at the collection site shall have a unique number between 1 and 99,999 and shall be issued in sequential order starting at 1. Tickets must meet minimum FEMA requirements.
- 1.2.4 Contractor shall issue different colored tickets for recognized ineligible debris collected at the request of the County.
- 1.2.5 Provider shall ensure that only debris qualifying for emergency funding under the Federal Emergency Management Agency is collected.
- 1.2.6 Provider shall ensure that the collection crew(s) assigned to specific area(s) remain confined to that assigned area until all collections are completed to the satisfaction of the County.
- 1.2.7 Provider shall ensure collection completion of each assigned area prior to providing a crew a new area as assigned by the County.
- 1.2.8 Provider shall keep accurate records of areas collected, dates of each collection pass,

identity of crew(s) that collected in the area. All records of collected areas shall also be plotted on a map provided by the County.

- 1.2.9 Provider shall survey assigned areas for special needs and record information to be provided to the County on the following: location and size of tree stumps, hazardous trees, and other potential problems.
- 1.2.10 Provider shall ensure that the same crew from the debris removal contractor or his subcontractors collects debris in the same area each collection pass if possible.
- 1.2.11 Provider shall ensure that debris removal contractor and his sub-contractors do not exceed the daily start and stop times imposed by the County.
- 1.2.12 Provider shall ensure that the debris recovery contractors or their subcontractors have not substituted or modified debris recovery equipment.
- 1.2.13 Provider shall be responsible for verifying the proper loading and compaction of debris into the debris recovery contractor's equipment.
- 1.2.14 Provider shall document all physical (property, personal or vehicle) damages reported, be they alleged or confirmed, and notify County within one business day of occurrence or discovery.

1.3 Temporary Storage Sites

- 1.3.1 Provider shall provide all trained and qualified labor, materials, equipment, tools, traffic control, signage and any other incidental items to accomplish the operation of all sites designated by the County as temporary storage sites. This is to include vehicle scales with a minimum maximum capacity of 120,000 lbs. at all designated temporary storage sites and/or towers for volume estimation.
- 1.3.2 Provider shall issue weight and/or volume based tickets to all contractor and sub-contractor vehicles disposing at all temporary storage sites. A copy shall be provided to the driver of the vehicle who in turn shall provide a copy of the ticket issued at the collection site. The ticket issued at the disposal site shall contain the following information: FEMA disaster number, name of temporary disposal site as assigned by County (if applicable), date and time weighed, gross weight of vehicle or estimated cargo volume, name of driver operating vehicle, type of debris, number of the ticket given at collection site, debris removal fleet number of vehicle hauling debris as assigned by the County. All tickets issued at the collection site shall have a unique number between 1 and 99,999 and shall be issued in sequential order starting at 1. All tickets disbursed shall meet FEMA ticket requirements. All measurements must comply with FEMA standards.
- 1.3.3 Provider shall be responsible for end of day activities such as closing and securing debris disposal and public debris drop-off sites as directed by the County.
- 1.3.4 Provider shall be responsible for assuring that all debris recovery contractors have unloaded all their vehicles of debris and ceased operations for the day by the cessation time designated by the County.
- 1.3.5 Provider shall ensure that at each and every site designated as a temporary storage site by County all debris is pushed and compacted into safe manageable piles by equipment deemed appropriate for the job as designated by County. Provider shall make a good faith effort to keep accumulated debris at temporary storage sites free of dirt and other contaminants.
- 1.3.6 All fleet vehicles of debris removal Contractor and sub-contractors shall be initially assigned a unique fleet number which shall be matched with the Vehicle Identification number (VIN) along with either
 - 1.3.6.1 Tare weight measured with the fuel tank at 50% capacity, or
 - 1.3.6.2 Volume of cargo space rounded out to the nearest cubic yard
 - 1.3.6.3 All removable devices such as trailers shall be included in the tare weight or cargo volume and the fleet number shall be followed by the letter 'T' to indicate that tare weight or cargo volume includes a trailer or other removable device. This is so the monitors can verify the presence of said removable device prior to the assignment of a final gross weight or cargo volume percentage estimate on tickets.

- 1.3.7 Provider shall ensure that all vehicles disposing of waste at all temporary sites designated by County are eligible to do so in that they not only belong to the debris removal contractor or his sub-contractors but that they have been properly registered (see section 4). It shall be the responsibility of Provider to inform vehicles of ineligible status and inform them of how to manage their debris.
- 1.3.8 Provider shall ensure that all drivers, whether employed by Provider or debris collection Contractor and/or sub-contractors, possess a valid, current Driver's License for the type or types of vehicles operated.
- 1.3.9 Provider shall provide a minimum of two debris site monitors per public debris drop-off site who shall be responsible for verifying the eligibility of the debris, recording on load ticket the address of the origin of the eligible load, recording the type and quantity of debris, license plate of the vehicle.
- 1.3.10 Provider shall provide a minimum of two debris site tower monitors per debris disposal or public debris drop-off site. All tower monitors shall record the volume or weight of debris brought to the site by the debris recovery contractors on tickets as specified in section 4.2 above. Tower monitors shall also provide photographic records of incoming loads if and as suggested and directed by the County. Tower monitors shall be responsible for collecting all load tickets at the end of the day and providing them to County designated personnel. Tower monitors shall also be responsible for verifying that all debris contractors' equipment has been completely emptied prior to leaving disposal facility.
- 1.3.11 Provider shall ensure that no unauthorized vehicles dispose of waste at any temporary site designated by County. Authorizing any ineligible vehicle to dispose of any waste at a temporary site designated by County shall result in penalties for each incident:
 - 1.3.11.1 In the case of weighed loads, that penalty shall be calculated at a rate of \$11.50/ton.
 - 1.3.11.2 In the case of volume measured loads, that penalty shall be calculated using a ratio of 125 pounds per cubic yard.
- 1.3.12 Provider shall maintain on a current basis, and report at least weekly to the County, the debris removal contractor and sub-contractor fleet vehicle database which shall include the following information: unique fleet number, VIN, vehicle make and type, vehicle color, license plate, tare weight and/or maximum cargo volume.
- 1.3.13 Provider shall ensure that all temporary disposal sites open and close at the times designated by County.
- 1.3.14 Provider shall provide 24/7 security for all temporary staging and disposal sites to ensure that
 - 1.3.14.1 All stored equipment is protected from theft, vandalism or any other harm.
 - 1.3.14.2 No vehicle dumps any material at the facility outside of operating hours.
 - 1.3.14.3 No individual(s), authorized or not, other than authorized County personnel may access the facility outside of operating hours.
 - 1.3.14.4 Protect all property and individuals on site.
 - 1.3.14.5 No material is hauled from the facility without proper authorization.
 - 1.3.14.6 Stored materials are protected from elements natural and/or human, including but not exclusive to combustion.
 - 1.3.14.7 Any other duties as assigned by the County.

POSITION	\$/hr	\$/10 hr day	\$/12 hr day
Project Manager	\$69.00	\$690.00	\$828.00
Operations Manager	\$55.00	\$550.00	\$660.00
Field Supervisor	\$48.00	\$480.00	\$576.00
Field Monitor	\$32.50	\$325.00	\$390.00
Tower Monitor	\$32.50	\$325.00	\$390.00
Drop-off Site Monitor	\$32.50	\$325.00	\$390.00
Billing/Invoice/Data Entry Tracking	\$55.00	\$550.00	\$660.00
Debris Site Security	\$48.00	\$480.00	\$576.00

EQUIPMENT	\$/day	\$/week	\$/month
Lift tower	\$129.00	\$299.00	\$449.00
Portable scale (20,000lb min. capacity)	(note 1)	(note 1)	(note 1)
Monitoring vehicle (Midsized or smaller per Avis)	\$52.00	\$299.00	\$749.00
Portable generator with lights	\$105.00	\$385.00	\$780.00
Digital camera	\$0.00	\$0.00	\$0.00
Laptop computer	\$0.00	\$0.00	\$0.00

	\$/day	\$/month
Cellular phone with GPS capabilities	\$0.00	\$0.00
Staff lodging per person per diem per FS 112.061	\$80.00	\$2,400.00
Food per diem per person per diem per FS 112.61	\$36.00	\$1,080.00
	\$/unit	
Operating license for GIS application (per County computer)	\$0.00	
Load ticket (box of 10,000)	\$0.00	

Note 1: Equipment rates are estimated based on an initial survey of local area rental rates and may change. Witt O'Brien's will pursue the lowest price and bill the County directly with no markup for equipment to include lift tower, portable scale, monitoring vehicle(s), and portable generator with lights.

ADDITIONAL RECOMMENDED POSITION:

Administrative Assistant \$30/hr \$300/10 hr day \$360/12 hr day

ATTACHMENT E: Required Federal Provisions

The Parties shall comply with all federal laws and regulations whether specifically identified herein and/or are in effect as of the date of contract award that are applicable to the receipt of Federal grants, including, but not limited to the contractual procedures set forth in Title 2 of the Code of Federal Regulations, Part 200 (“2 CFR 200”), including Appendix II to such Part (“Appendix II”).

In addition, the Parties agrees as follows:

1. The Parties agree that the County is entitled to exercise all administrative, contractual, or other remedies permitted by law to enforce Contractor’s compliance with the terms of this Agreement, except to the extent expressly provided otherwise by this Agreement.
2. The Parties agree that the County may terminate this Agreement for cause or convenience in accordance with the procedures set forth in this Agreement.
3. Compliance with the Davis-Bacon Act and Copeland Anti-Kickback Act as applicable to the Services. (When required by federal program legislation, prime construction contracts over \$2,000 awarded, not applicable to FEMA Grant and cooperative agreement programs, including the PA Program)
 - a. Contractor shall comply with 18 U.S.C. §874, 40 U.S.C. § 3145, and the requirements of 29 CFR Part 3 as may be applicable, which are incorporated by reference into this Agreement.
 - b. Subcontracts. Contractor and any subcontractors to Contractor 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 subcontractors. The prime Contractor shall be responsible for 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 CFR §5.12.
4. Compliance with the Clean Air Act and the Federal Water Pollution Control Act.
 - a. Clean Air Act
 - (i) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. §7401 et seq.

- (ii) Contractor agrees to report each violation to COUNTY and understands and agrees that County will, in turn, report each violation as required to assure notification to Federal and the appropriate Environmental Protection Agency Regional Office.
 - (iii) Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by Federal grants.
 - b. Federal Water Pollution Control Act
 - (i) 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.
 - (ii) Contractor agrees to report each violation to County and understands and agrees that County will, in turn, report each violation as required to assure notification to Federal and appropriate Environmental Protection Agency Regional Office.
 - (iii) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by Federal funds.”
- 5. Suspension and Debarment
 - a. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, Contractor is required to verify that none of Contractor, its 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).
 - b. 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.
 - c. This certification is a material representation of fact relied upon by County. If it is later determined that 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 County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
 - d. 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.

6. Compliance with Byrd Anti-Lobbying Amendment

- a. Contractor hereby certifies to the best of its knowledge that:
 - (i) No Federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, 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.
 - (ii) 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, Contractor shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- b. Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. 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.
- c. 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 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

- d. By executing this Agreement, Contractor hereby certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

7. Procurement of Recovered Materials

- a. In the performance of this contract, Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired
 - (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
 - (ii) Meeting contract performance requirements; or
 - (iii) At a reasonable price.
- b. Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

8. Access to Records

The following access to records requirements apply to this Agreement:

- a. Contractor agrees to provide County, the FEMA 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.
- b. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

9. Use of DHS Seal

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.

10. Compliance with Federal Law

This is an acknowledgement that Federal financial assistance will be used to fund the Agreement only. Contractor will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

11. Non-Obligation of Federal Government

The Federal Government is not a party to this Agreement 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.

12. Program Fraud and False or Fraudulent Statements or Related Acts

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.

13. Prohibition on Contracting for Covered Telecommunications Equipment or Services:

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the Contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

(i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system,

or

service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service 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.

(c) Exceptions.

(1) This clause does not prohibit Contractor from providing—

(i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or Contract Provisions Guide 28

(ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

(i) Covered telecommunications equipment or services that:

i. Are not used as a substantial or essential component of any system; and

ii. Are not used as critical technology of any system.

(ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.”

14. “Domestic Preference for Procurements

As appropriate, and to the extent consistent with law, the Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

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.

Manufactured products mean 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.”

15. Affirmative Socioeconomic Steps

If subcontracts are to be let, the prime Contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

16. Copyright and Data Rights - License and Delivery of Works Subject to Copyright and Data Rights

The Contractor grants to the County, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the County or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the County data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the County.

17. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT (as applicable)

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR 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 the Federal Government.

18. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (Applicable to construction contracts exceeding \$2,000 and contracts exceeding \$100,000 that involve the employment of mechanics or laborers)(These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market or contracts for the transportation or transmission of intelligence)

The Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-330) as supplemented by Department of Labor regulations (29 C.F.R. part 5).

All laborers and mechanics employed by Contractors or subcontractors shall receive

overtime compensation in accordance with and subject to the provisions of the Contract Work Hours and Safety Standards Act, and the Contractor and subcontractors shall comply with all regulations issued pursuant to that act and with other applicable Federal laws and regulations pertaining to labor standards.

19. EQUAL EMPLOYMENT OPPORTUNITY (as applicable, Any contract that uses federal funds to pay for construction work is a “federally assisted construction contract” and must include the equal opportunity clause found in 2 C.F.R. Part 200, unless otherwise stated in 41 C.F.R. Part 60, which are incorporated by reference into this Agreement)

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.

20. Safeguarding of Sensitive Information and Information Technology Security and Privacy Training (Applicable when contractor has access to sensitive information or contractor IT system as defined in the agreement that are used to input, store, process, output and/or transmit sensitive data)

(a) Applicability. This clause applies to the Contractor, its subcontractors, and Contractor employees (hereafter referred to collectively as “Contractor”). The Contractor shall insert the substance of this clause in all subcontracts.

(b) Definitions. As used in this clause—

“Personally Identifiable Information (PII)” means information that can be used to distinguish or trace an individual's identity, such as name, social security number, or biometric records, either alone, or when combined with other personal or identifying information that is linked or linkable to a specific individual, such as date and place of birth, or mother's maiden name. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. In performing this assessment, it is important for an agency to recognize that non-personally identifiable information can become personally identifiable information whenever additional information is made publicly available—in any medium and from any source—that, combined with other available information, could be used to identify an individual.

PII is a subset of sensitive information. Examples of PII include, but are not limited to: name, date of birth, mailing address, telephone number, Social Security number (SSN), email address, zip code, account numbers, certificate/license numbers, vehicle identifiers including license plates, uniform resource locators (URLs), static Internet protocol addresses, biometric identifiers such as fingerprint, voiceprint, iris scan, photographic facial images, or any other unique identifying number or characteristic, and any information where it is reasonably foreseeable that the information will be linked with other information to identify the individual.

(a) *Sensitive Information*, as used in this clause, means any information, which if lost,

misused, disclosed, or, without authorization is accessed, or modified, could adversely affect the national or homeland security interest, the conduct of Federal programs, or the privacy to which individuals are entitled under section 552a of title 5, United States Code (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense, homeland security or foreign policy. This definition includes the following categories of information:

(1) Protected Critical Infrastructure Information (PCII) as set out in the Critical Infrastructure Information Act of 2002 (Title II, Subtitle B, of the Homeland Security Act, Pub. L. 107-296, 196 Stat. 2135), as amended, the implementing regulations thereto (Title 6, Code of Federal Regulations, part 29) as amended, the applicable PCII Procedures Manual, as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the PCII Program Manager or his/her designee);

(2) Sensitive Security Information (SSI), as defined in Title 49, Code of Federal Regulations, part 1520, as amended, "Policies and Procedures of Safeguarding and Control of SSI," as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the Assistant Secretary for the Transportation Security Administration or his/her designee);

(3) Information designated as "For Official Use Only," which is unclassified information of a sensitive nature and the unauthorized disclosure of which could adversely impact a person's privacy or welfare, the conduct of Federal programs, or other programs or operations essential to the national or homeland security interest; and

(4) Any information that is designated "sensitive" or subject to other controls, safeguards or protections in accordance with subsequently adopted homeland security information handling procedures.

(b) "Information Technology Resources" include, but are not limited to, computer equipment, networking equipment, telecommunications equipment, cabling, network drives, computer drives, network software, computer software, software programs, intranet sites, and internet sites.

(c) Contractor employees working on this contract must complete such forms as may be necessary for security or other reasons, including the conduct of background investigations to determine suitability. Completed forms shall be submitted as directed by the Contracting Officer. Upon the Contracting Officer's request, the Contractor's employees shall be fingerprinted, or subject to other investigations as required. All Contractor employees requiring recurring access to Government facilities or access to sensitive information or IT resources are required to have a favorably adjudicated background investigation prior to commencing work on this contract unless this requirement is waived under Departmental procedures.

(d) The Contracting Officer may require the Contractor to prohibit individuals from working on the contract if the Government deems their initial or continued employment contrary to the public interest for any reason, including, but not limited to, carelessness, insubordination, incompetence, or security concerns.

(e) Work under this contract may involve access to sensitive information. Therefore,

the Contractor shall not disclose, orally or in writing, any sensitive information to any person unless authorized in writing by the Contracting Officer. For those Contractor employees authorized access to sensitive information, the Contractor shall ensure that these persons receive training concerning the protection and disclosure of sensitive information both during and after contract performance.

(f) The Contractor shall include the substance of this clause in all subcontracts at any tier where the subcontractor may have access to Government facilities, sensitive information, or resources.