

**AGREEMENT FOR
DISASTER COST RECOVERY AND RELATED GRANT
AND PROJECT MANAGEMENT SERVICES
BETWEEN
CITY OF FORT LAUDERDALE
AND
THOMPSON CONSULTING SERVICES, LLC**

THIS AGREEMENT, made and entered into this _____ day of _____, 2019, is by and between the City of Fort Lauderdale, a Florida municipality, ("City"), whose address is 100 North Andrews Avenue, Fort Lauderdale, Florida, 33301, and **THOMPSON CONSULTING SERVICES, LLC, a Delaware corporation authorized to transact business in the State of Florida, ("Contractor")** whose address is **1135 Townpark Avenue, Suite 2101, Lake Mary, Florida 32746; Phone: 407-792-0018; Email: khoyle@thompsoncs.net.**

WHEREAS, the City and the Contractor wish to enter into an agreement for **purchase of DISASTER COST RECOVERY AND RELATED GRANT AND PROJECT MANAGEMENT SERVICES** based on an agreement between the Contractor and **Volusia County, Florida.**

For and in consideration of the mutual promises and covenants set forth herein and other good and valuable consideration, the City and the Contractor covenant and agree as follows:

1. The Contractor agrees to provide to the City with **DISASTER COST RECOVERY AND RELATED GRANT AND PROJECT MANAGEMENT SERVICES** at the price and terms set forth in **Volusia County Contract No. 17-SQ-43BB dated June 15, 2017** ("Master Agreement"), as amended (Exhibit 1).
2. Except with regard to the bidding process, the term "**Volusia County**" and "**County**" as set forth in the Master Agreement, where context permits, means City.
3. The term of this Agreement shall be coterminous with **the Master Agreement**, which commenced on **June 15, 2017, and expires on June 14, 2022, plus two annual renewal options.**
4. The City's Insurance Requirements (Exhibit 2) and General Conditions (Exhibit 3), which are attached hereto, are incorporated herein.
6. In the event of a conflict between the City's General Conditions and the Master Agreement, the City's General Conditions shall control.

IN WITNESS WHEREOF, the City and the Contractor execute this Contract as follows:

ATTEST:

CITY OF FORT LAUDERDALE

Jeffrey A. Modarelli, City Clerk

By: _____
Christopher J. Lagerbloom, ICMA-CM
City Manager

Approved as to form:

Assistant City Attorney

WITNESSES:

THOMPSON CONSULTING SERVICES, LLC

Signature

By: _____
Jon M. Hoyle, Manager

Print Name

Signature

Print Name

(Corporate Seal)

STATE OF _____:
COUNTY OF _____:

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by **Jon M. Hoyle as Manager for THOMPSON CONSULTING SERVICES, LLC, a Delaware corporation authorized to transact business in the State of Florida.**

(SEAL)

Notary Public, State of _____
(Signature of Notary Public)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known ____OR Produced Identification ____
Type of Identification Produced _____



BUDGET AND ADMINISTRATIVE SERVICES

Purchasing and Contracts

123 West Indiana Avenue • Room 302 • DeLand, FL 32720-4608

(386) 736-5935 • Fax (386) 736-5972

e-mail: purchasing@volusia.org

www.volusia.org

November 6, 2017

PR-L-18-058

Jon Hoyle

THOMPSON CONSULTING SERVICES, LLC

1135 Townpark Avenue, Suite 2101

Lake Mary, FL 32746

RE: Amendment No. 1

**RSQ No. 17-SQ-43BB Disaster Cost Recovery and Related Grant and Project
Management Services**

Dear Mr. Hoyle:

Enclosed please find the executed Amendment No. 1 contract document for the above-named project as approved by the Director of Purchasing and Contracts on November 3, 2017.

If you need any further information or assistance, please contact our office at 386-822-5764 or rbishop@volusia.org.

Sincerely,

A handwritten signature in blue ink that reads "Rebecca Bishop".

Rebecca Bishop, C.P.M.

Senior Procurement Analyst

Enclosure

cc: Ryan Ossowski, Accounting
File

AMENDMENT NO. 1
TO
AGREEMENT BETWEEN
COUNTY OF VOLUSIA, FLORIDA
AND
THOMPSON CONSULTING SERVICES, LLC

THIS AMENDMENT No. 1, made and entered into by and between the **COUNTY OF VOLUSIA**, located at 123 West Indiana Avenue, DeLand, FL 32720, a body corporate and politic and a political subdivision of the State of Florida (hereinafter "County"), and **THOMPSON CONSULTING SERVICES, LLC**, duly authorized to conduct business in the State of Florida, whose principal place of business is located at 1135 Townpark Avenue, Suite 2101, Lake Mary, FL 32746 (hereinafter the "Contractor").

RECITALS

WHEREAS, the County and Contractor entered into an Agreement for Disaster Cost Recovery and Related Grant and Project Management Services under which Contractor agreed to provide services to the County commencing on June 15, 2017, and terminating on June 14, 2022, with two (2) one (1) year extensions (hereinafter "Agreement") permissible upon mutual written agreement and Volusia County Council approval; and

WHEREAS, through this Amendment No. 1, the County and Contractor desire to amend replace the definition of County throughout the Agreement, including in the indemnification section and the insurance section underneath the schedule of insurance; and

WHEREAS, through this Amendment No. 1, the County and the Contractor desire to amend **Section 4 SCOPE OF SERVICES** by adding Section 4.2.6 Compliance with FEMA 200.318-326 and Appendix II Contract Provisions to the Scope of Services Clause.

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 to renew and to amend the Agreement 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 the definition of County throughout the Agreement, including but not limited to in the definition, indemnification and insurance sections with the following:

"The County of Volusia, its employees, officers, elected and appointed officials, agents, attorneys, representatives, volunteers, divisions, departments, districts, authorities, and associated entities."

3. The parties agree to insert in the insurance section underneath the schedule in Exhibit C, Insurance Requirements, the following statement:

“For the purposes of indemnification of the County or an endorsement or insurance coverage under this Agreement 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 employees, officers, elected and appointed officials, agents, attorneys, representatives, volunteers, divisions, departments, districts, authorities and associated entities.”

4. The parties agree to amend **Section 4.2, SCOPE OF SERVICES** by adding Sections 4.2.6, to read as follows:

4.2.6 Compliance with FEMA 2 CFR 200.318-326 and Appendix II Contract Provisions

This Agreement and the products/services provided may be utilized in the event of declared State/Federal Emergency and Contractors shall comply with the requirements of the FEMA Super Circular CFR 200.318-326 and Appendix II Contract Provisions as amended. These documents can be found on the Internet at:

<https://www.gpo.gov/fdsys/granule/CFR-2014-title2-vol1/CFR-2014-title2-vol1-sec200-318>

4.2.6.1 Clean Air Act and the Federal Water Pollution Control Act

Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

4.2.6.2 Anti-Lobbying Clause

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. **The Certification Form is attached as Exhibit E; complete and return to the County.**

- 5 This Amendment No. 1, including any exhibits, sets forth the entire modification to the Agreement with respect to the products and services provided under this Amendment No. 1, unless the Agreement is otherwise amended or modified in writing by the parties, and supersedes all prior proposals, contracts, and communications, both written and oral.
- 6 This Amendment No. 1 is incorporated by reference into the Agreement as if fully set forth therein. Except as provided above, all other terms and conditions of the Agreement 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 Agreement, this Amendment No. 1 shall govern and control.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have made and executed this Amendment No. 1 to the Agreement for Disaster Cost Recovery and Related Grant and Project Management Services on the respective dates under each signature.

Attest:

Denise Lewis
Denise Lewis
Senior Staff Assistant

Date: 11/3/17

COUNTY OF VOLUSIA

BY: Jeanene Jennings
Jeanene Jennings
Director Purchasing & Contracts

Date: 11/3/17

Attest:

Lydia Peña
Signature

Lydia Peña, Accounting Coordinator
Name and Title

Date: 10/31/17

THOMPSON CONSULTING
SERVICES, LLC

BY: Jon Hoyle
Jon Hoyle
President

Date: 10/31/17

EXHIBIT E

CERTIFICATION REGARDING LOBBYING

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 any 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 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 of Lobbying Activities," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents of 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, United States 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.

Organization: Thompson Consulting Services, LLC

Street address: 1135 Townpark Avenue, Suite 2101

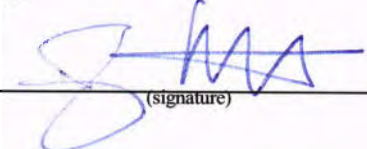
City, State, Zip: Lake Mary, FL 32746

Jon Hoyle

CERTIFIED BY: (type or print)

President

TITLE:


(signature)

10/31/2017

(date)

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

(See reverse for public burden disclosure)

1. Type of Federal Action: a. contract _____ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: a. bid/offer/application _____ b. initial award c. post-award	3. Report Type: a. initial filing _____ b. material change For material change only: Year _____ quarter _____ Date of last report _____
4. Name and Address of Reporting Entity: _____ Prime _____ Subawardee Tier _____, if Known: Congressional District, if known:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known:	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$	
10. a. Name and Address of Lobbying Registrant <i>(if individual, last name, first name, MI):</i>	b. Individuals Performing Services <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only	Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity 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 a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503



**AGREEMENT
FOR
DISASTER COST RECOVERY AND RELATED GRANT AND
PROJECT MANAGEMENT SERVICES**

Between

THE COUNTY OF VOLUSIA

AND

THOMPSON CONSULTING SERVICES, LLC

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

AGREEMENT FOR DISASTER COST RECOVERY AND RELATED GRANT AND PROJECT MANAGEMENT SERVICES

This Agreement For Professional Disaster Cost Recovery and Related Grant and Project Management Services (hereinafter "Agreement") made and entered into by and between Thompson Consulting Services, LLC., duly authorized to conduct business in the State of Florida, whose principal place of business is located at 1135 Townpark Avenue, Suite 2101, Lake Mary, FL 32746 (hereinafter the "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 (hereinafter the "County").

RECITALS:

Whereas, the County desires to retain the services of a competent and qualified Contractor to provide Disaster Cost Recovery and Related Grant and Project Management Services; and

Whereas, the County has published a Request for Statement of Qualifications 17-SQ-43BB (the "RSQ") seeking a qualified firm to perform Disaster Cost Recovery and Related Grant and Project Management Services, and has received responses from various potential vendors; and

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

Whereas, it has been 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 the 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 CFR 200 Contract Provisions (Exhibit B), third by the incorporated Scope of Services (Exhibit A), and fourth by the incorporated Fee Schedule (Exhibit D). 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 Service, shall have the meanings ascribed to them in Webster's New Collegiate Dictionary (G & C Merriam Co., 11th ed., July 2003, or any subsequent edition).

- 1.1. **Agreement:** This Agreement or Contract, including its articles, exhibits, and attachments.

- 1.2. **Amendment:** An amendment to this Agreement in writing by the County, approved by the Director of Purchasing and Contracts, and signed by the County authorizing an addition, deletion, or revision in the Scope of Services, or modifications of this Agreement.
- 1.3. **Change Order:** A written order signed by the County and Contractor authorizing an addition, deletion, or revision in the SOW, or an adjustment in the Agreement price or time, without change to any other substantive terms or conditions of the Agreement.
- 1.4. **Compensation:** The amount paid by the County to Contractor for Services regardless of whether stated as compensation or stated as hourly rates, overhead rates, or other figures or formulas from which compensation can be calculated including the total monies payable to the Contractor inclusive of all Services, labor, materials, supplies, training, profit, overhead, costs, expenses, and any other costs necessary to complete work under the Scope of Services.
- 1.5. **Contractor:** Thompson Consulting Services, LLC
- 1.6. **Contractor's Services:** Those Services within the Scope of Services of this Agreement or any exhibit, attachment or addendum thereto which relates to the General Scope of Services in Section 4.1 to be performed by Contractor in connection with Contractor's employment or practice.
- 1.7. **Conventional Rounding:** Bill to the closest quarter hour (e.g. if a meeting runs until 4:07, round to 4:00; if until 4:08, round to 4:15).
- 1.8. **County:** The County of Volusia, Florida, and shall be synonymous with the term "County."
- 1.9. **County Data:** Documentation, worksheets, reports or correspondence, whether electronically or in paper format.
- 1.10. **County Project Manager:** Also known as the person designated by the County to review, approve and make decisions regarding the Scope of Services in this Agreement.
- 1.11. **Contract Administrator:** The Director of Purchasing and Contracts or his/her designee responsible for addressing any concerns within this Agreement.
- 1.12. **Deliverable:** The result(s) or end products or services of that meet the requirements and functional parameters articulated in the Scope of Services for this Agreement including but not limited to: services, reports, written documentation, or forms.
- 1.13. **Documentation:** All paperwork necessary to fulfill Florida Emergency Management Agency ("FEMA"), Florida Division of Emergency Management ("FDEM"), and County requirements.
- 1.14. **Effective Date:** The date that this Agreement is fully executed by Contractor and the County.
- 1.15. **Fees:** The applicable consulting, support and services fees payable pursuant to this

Agreement, including as set forth in any attachment or compensation summary and the billing schedule in Exhibit D.

- 1.16. **Key Personnel:** Contractor's personnel, designated by Contractor, who are responsible for Contractor's day-to-day Project operations as described in the Contractor's Proposal.
- 1.17. **Project:** The project that is described in Exhibits A of this Agreement.
- 1.18. **Proposal:** The document submitted by the Contractor in response to a formal solicitation (RSQ No. 17-SQ-43BB) used to determine if the Contractor is highly qualified.
- 1.19. **Run-out Period:** Upon expiration of the Agreement, the Run-out Period shall begin upon the expiration date and expire upon completion of Services for the declared disaster event/project.
- 1.20. **Scope of Services:** The Services, herein defined in this Agreement under the Scope of Services (e.g., Exhibit A) that is agreed to by the parties in writing, which includes responsibility for performing and complying with all incidental matters pertaining thereto.
- 1.21. **Services:** Those services defined in the Scope of Services to be performed by the Contractor pursuant to this Agreement and its attached exhibits, including: the work, duties and obligations to be carried out and performed by Contractor under the Agreement and pursuant to Exhibits A – D, attached hereto and made a part of this Agreement.
- 1.22. **State:** State of Florida.
- 1.23. **Subcontractor:** A third party performing services covered under the Scope of Services through a contract with the Contractor.
- 1.24. **Warranty:** The warranty's as set forth in this Agreement including any warranties required by State Law or regulation.

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 – CFR 200 Contract Provisions
 - 2.1.3 Exhibit C – Insurance Requirements
 - 2.1.4 Exhibit D – Fee Schedule

3 ORDER OF PRECEDENCE

- 3.1 If Contractor finds a conflict, error or discrepancy in the Agreement, it shall call it to the

4

County Project Manager's attention, in writing and request the County Project Manager's interpretation and direction before proceeding with the work affected thereby. Such notice shall be provided by the Contractor to the County's Project Manager in a timely fashion so as not to cause additional costs due to delay. In resolving such conflicts, errors and discrepancies, the documents shall be given precedence in the following order:

3.1.1 In the event of any conflicts or inconsistencies between provisions of the exhibits or attachments to this Agreement, the following order of precedence shall govern.

3.1.1.1 In the event of any conflict or inconsistencies between this Agreement and any attached exhibit or addendum regarding general terms and conditions in the main body of this Agreement shall control. Exhibit C and the other exhibits hereto shall be considered as part of the Agreement.

3.1.1.2 In the event of any conflicts or inconsistencies between Exhibit B and any other exhibit or addendum attached to this Agreement regarding the CFR 200 Contract provisions, Exhibit B shall be controlling.

3.1.1.3 In the event of any conflicts or inconsistencies between Exhibit A and any other exhibit or addendum attached to this Agreement regarding the Scope of Services, Exhibit A shall be controlling.

3.1.1.4 In the event of any conflicts or inconsistencies between Exhibits D and any other exhibit or addendum attached to this Agreement regarding the rates for compensation, Exhibit D shall be controlling.

4 **SCOPE OF SERVICES.** The Contractor shall provide Disaster Cost Recovery and Related Grant and Project Management Services under this Agreement and act as Contractor to the County in accordance to the Scope of Services as specifically set forth in this Agreement and its exhibits.

4.1 Contractor shall provide Disaster Cost Recovery and Related Grant and Project Management in accordance with the Scope of Services attached as Exhibit A.

4.2 **Performance Criteria:**

4.2.1 All Services shall be performed in accordance with the Agreement and carried out under the direction of the County's Project Manager.

4.2.2 All labor necessary to complete the Scope of Services shall be performed in a professional manner pursuant to Section 5.13.

4.2.3 **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. Except as provided in this Agreement otherwise, if any such change causes an increase or decrease in the Contractor's cost of, or the time required for performance of the Project

Services, an equitable adjustment shall be made and this Agreement shall be amended in writing, signed by authorized representatives of the parties, stating the equitable adjustment. Unless the County grants, in writing, an additional period of time before the completion of the Agreement, any claim by the Contractor for adjustment under this Section must be asserted in writing within thirty (30) days from the date of receipt by the Contractor of the notification of change; otherwise, the claim shall be deemed waived. The Contractor shall then proceed with the prosecution of the Service as changed. 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.

4.2.4 **Time is of the Essence.** Time is of the essence for all Services performed under this Agreement and all Projects performed in accordance herewith.

4.2.5 **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 confer with the Project Manager to ascertain the functional criteria of the Scope of Services. The Services of the Contractor shall also include of the following:

5.1.1 There are no obligations, commitments, or impediments of any kind that shall limit or prevent Contractor's performance of the Services.

5.1.2 Contractor shall keep the County informed of any changes or advancements in technology occurring any time prior to or during actual performance 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.

5.1.3 Contractor covenants and agrees as follows:

5.1.3.1 That Contractor recognizes that its special talent, training, and experience caused the County to select Contractor;

- 5.1.3.2 That Contractor comprehends the specifications and requirements of the Scope of Services and the use of the same in their entirety to provide Deliverables;
 - 5.1.3.3 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; and
 - 5.1.3.4 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 his field or practice performing the same or similar Services in compliance with all applicable federal, state, and municipal laws, regulations, codes, and ordinances.
- 5.1.4 **Accuracy of Documentation.** Contractor covenants and agrees that any Project data, summaries, or reports submitted by the Contractor to the County shall be competently drafted and accurate 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 the Contractor's status as an industry professional in accepting such documentation.
- 5.1.5 **Notification of Errors or Defects.** Contractor covenants and agrees to call or notify the County if it discovers or has knowledge of anything of any nature in any reports, bulletins, schedules, documentation, requirements or instructions prepared by Contractor or data or instructions supplied to Contractor by the County or any other party, Contractor regards in Contractor's professional opinion as unsuitable, improper, or inaccurate.
- 5.1.6 **Administration.** Contractor covenants and agrees to efficiently administer and perform all Services economically and expeditiously in a competent and professional manner.
- 5.2 **Supervision.** The 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. The Contractor shall hire, compensate, supervise, and terminate members of its work force, and the Contractor shall direct and control the manner in which work is performed including conditions under which individuals shall be assigned duties, how individuals shall report, and the hours individuals shall perform. The 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 the Contractor's employees and/or subcontractors shall be the responsibility of the 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 accurately comply with the requirements of this

Agreement and the Scope of Services contained therein.

- 5.3 **Assurance.** Contractor gives County its assurance that all Services performed under this Agreement shall be timely performed in a competent and professional 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.** The Contractor shall be responsible for the professional and technical accuracy and the coordination of all data, reports, summaries, and any other Services furnished by the Contractor under this Agreement. The 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 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 prior written 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 under other than honorable conditions 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 moneys 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 the Contractor.

6 TERM OF AGREEMENT

The Term of this Agreement shall commence on the Effective Date of this Agreement or when it is fully executed by all parties and shall terminate five (5) years from the Effective Date. The parties may renew for two (2) subsequent one (1) year renewals, subject to the mutual written agreement between the parties and County Council approval.

- 6.1 The Services to be rendered by the 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.
- 6.2 **Effect of Expiration of Agreement.** Upon expiration of the Agreement (1) no new Services shall begin; (2) Services started prior to the expiration of the Agreement that cannot be completed until after the expiration of the Agreement shall expire on the completion date of said Services, and after all work or Services associated with said event/project have been approved and accepted by the County's Project Manager. As such the obligations entered therein by both parties under this Agreement and said Services shall remain in full force and effect until completion of all work or Services performed under this Agreement during the Run-out period; and (3) County shall have the ability to access and download its records and reports until expiration of the Run-out period.

7 AGREEMENT PRICE AND COMPENSATION

- 7.1 **Payment Pursuant to Fee Schedule.** The Contractor shall be paid Compensation for all Services. Total Compensation for this Agreement shall be comprised of the total cost of all materials, equipment, labor, expenses (including reimbursable expenses), all mark-ups for overhead and profit more particularly described in Exhibit "D" – Fee Schedule attached hereto and incorporated herein. The County agrees to pay the Contractor in current funds, as compensation for its Services.
- 7.2 **Errors and Omissions in Pricing.** Compensation shall not be adjusted because of errors or omissions that are 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 the Contractor pursuant to the Fee Schedule, attached hereto and incorporated herein as Exhibit D, 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 other than those specifically detailed herein. If travel is required and approved in writing in advance by the County, travel will be reimbursed in accordance with the County's Travel and Training Policy, which is available at <http://www.volusia.org/services/financial-and-administrative-services/purchasing/> Click on Volusia County Travel and Training Policy.

- 7.4 **Retainage.** The County shall have the right to withhold retainage from Compensation paid to a Contractor. Should the County decide that retainage shall be withheld from Compensation, the amount to be retained from each payment to the Contractor shall be {*check the appropriate box*}:

- 7.4.1 **Retainage.** The County shall have the right to withhold retainage from Compensation paid to a Contractor. Should the County decide that retainage shall be withheld from Compensation, the amount to be retained from each payment to the Contractor shall be:

- A. ☐ 10% of the total contract price.
- B. ☒ 10% of each payment of a milestone payment based on a Project milestone schedule.
- C. ☐ No retainage will be taken.

The retainage shall be included with the final payment after all Services have been approved and accepted by the County and all disputed invoices have been resolved by the parties. The County shall never be required to pay an amount that would leave unpaid from the contract price or Compensation an amount less than the amount County would need to have in order to pay another contractor to complete the Services should the Contractor fail to complete the Services as of that date. The County shall not be obligated to pay retainage or make a final payment in connection with a project sign-off milestone or documentation to the Contractor until all work to be performed as set forth in the Scope of Services is completed and all outstanding issues arising and relating to the Scope of Services in this Agreement are resolved. In addition, payment by County of this retainage amount to the Contractor shall be contingent upon final acceptance of all the work in the Scope of Services.

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

- 7.5.1 **Approval of Payment.** If, on the basis of the County Project Manager's observation and review of Contractor's Services, the County Project Manager has confirmed that the work has been completed and the 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 the Contractor within ten (10) business days of receipt of the invoice, indicating in writing the reasons for refusing to approve final payment in which case the Contractor will make the necessary corrections and resubmit the 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 provided by the Contractor, which defects or deficiencies would have otherwise caused the County to withhold payment. This right to recover extends five (5) years after the final expiration or termination date hereof, or as long as FEMA or FDEM take to determine if any clawback of reimbursements paid is necessary or appropriate, which is later.
- 7.5.2 **Invoice Detail.** The 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 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.
- 7.6 **Invoices.** Invoices or payment requests shall be addressed from the 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 Part VII of Chapter 218, Florida Statutes.
- 7.6.1 **Documentation.** The Contractor's Invoice(s) shall be accompanied by supporting data as may be required by the County Project Manager. County Project Manager shall review the Contractor's Invoice and supporting data and notify the Contractor in writing within twenty (20) days from receipt of the statement if any amounts requested are disputed or lack adequate support or documentation.
- 7.6.2 **Invoicing Pursuant to Agreement.** Pursuant to Exhibit D, the 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.
- 7.6.3 **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.
- 7.6.4 **Payment Due.** Within forty-five (45) days of acceptance by the County Project Manager of all the Services for which Contractor has submitted an

invoice of professional Services, the Contractor shall be paid the unpaid balance of any money due for any undisputed Services covered by said statement.

7.6.5 **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.

7.7 **Contractor's Continuing Obligations.** Contractor's obligation to perform Services in accordance with the Agreement shall be absolute. Neither approval of any progress nor final payment to Contractor nor documentation confirming acceptance of the Services by the County, nor any payment by County to Contractor under the Agreement nor any act of acceptance by the County nor any failure to do so, nor any correction of defective work by County shall constitute an acceptance of Services not in accordance with the Agreement

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, its employees and officials, divisions, districts and authorities 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.

9 LIMITATION OF LIABILITY AND INDEMNIFICATION OF COUNTY

9.1 **General Indemnification.** The Contractor shall indemnify, defend, and hold harmless the County and its officials, agents, employees, districts, and authorities from and against all claims, damages, losses, and expenses, including, but not limited to, attorney's fees, arising out of or resulting from the performance of this Agreement, to the extent that any such claim, damage, loss, or expense is caused by any acts or omissions of the Contractor or anyone directly or indirectly employed by Contractor.

9.2 **Sovereign Immunity.** The County expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, 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 which 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 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 two hundred ten (210) days prior written notice to County.
- 11.3 After Contractor's receipt of a notice of termination pursuant to this Section 11 - Termination, and except as otherwise directed in writing by the County, the 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 County 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 work under the Agreement as is not terminated.
 - 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 the 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 6 - 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 Project reasonably incurred by the County to complete the Contractor's unfinished Services. As such, County may apply unpaid Compensation due and owing to the 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 the Contractor herein shall be cumulative of all other remedies available at law.
- 11.8 All provisions of this Agreement which 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 Section 12, Dispute Resolution. The 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 Scope 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 these 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 representative 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 representative within five (5) County work Days 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:

12.3.1

County Work Days	Contractor's Representative	County Representative
10	Contractor's Project Manager	County's Project Manager
10	Contractor's Vice President	Director of Purchasing and Contracts
20	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 Section 12, Dispute Resolution, nothing herein shall affect, delay, or otherwise preclude a party from terminating this Agreement in accordance with the provisions of Section 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 Contract 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 Contract to the extent required by the laws of the State of Florida.

13.2 Upon any termination or expiration of this Contract, or following the Run-out Period of this Contract, 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 CONTRACT.

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 THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE 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:

- 14.1.1 Keep and maintain public records required by the County to perform the services and work provided pursuant to this Contract.
- 14.1.2 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.
- 14.1.3 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 of the Contract if the Contractor does not transfer the records to the County.
- 14.1.4 Upon completion of the Contract, transfer, at no cost, to the County all public records in the possession of the Contractor or keep and maintain public records required by the County to perform the service. If the Contractor

transfers all public records to the County upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the 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.

- 14.1.5 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 the Contractor of such request, and the 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 the 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 constitute 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 and local laws, ordinances, rules, regulations, 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 protect and indemnify 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 or 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. Contractor agrees it shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing all Services funded 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. 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 the 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. 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 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 **Prohibition Against Contingent Fees.**
- 14.8.1 The Contractor warrants that he or she or it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this Agreement and that he or she or it has not paid or agreed to pay any person, company, corporation, individual, or

firm, other than a bona fide employee working solely for the Contractor any fee, commission, compensation, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the County shall have the right to terminate this Agreement without liability and, at its sole discretion, to deduct from the Agreement price or compensation, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

14.8.2 Contractor understands and acknowledges that any individual, corporation, partnership, firm, or company, other than a bona fide employee working solely for the Contractor, who offers, agrees, or contracts to solicit or secure County contracts for professional Services for any other individual, company, corporation, partnership, or firm and to be paid, or is paid, any fee, commission, percentage, gift, or other consideration contingent upon, or resulting from, the award or the making of an agreement for professional Services shall, upon conviction in a competent court of this State, be found guilty of a first degree misdemeanor, punishable as provided in Sections 775.082 or 775.083 of the Florida Statutes.

14.8.3 Contractor understands and acknowledges that any individual, corporation, partnership, firm, or company, other than a bona fide employee working solely for the Contractor, who offers, agrees, or contracts to solicit or secure County contracts for professional Services for any other individual, company, corporation, partnership, or firm and to be paid, or is paid, any fee, commission, percentage, gift, or other consideration contingent upon, or resulting from, the award or the making of an agreement for professional Services shall, upon conviction in a competent court of this State, be found guilty of a first degree misdemeanor, punishable as provided in Sections 775.082 or 775.083 of the Florida Statutes.

14.8.4 Any County official, agent or employee who offers to solicit or secure, or solicits or secures, an agreement for professional Services and to be paid, or is paid, any fee, commission, percentage, gift, or other consideration contingent upon the award or making of such an agreement for professional Services between the County and any individual person, company, firm, partnership, or corporation shall, upon conviction by a court of competent authority, be found guilty of a first degree misdemeanor, punishable as provided in Sections 775.082 or 775.083 of the Florida Statutes.

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

The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex 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, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, up-grading or promotion, demotion, transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

15 MISCELLANEOUS PROVISIONS

- 15.1 **Independent Contractor.** Contractor is an independent contractor under this Agreement. Services provided by Contractor pursuant to this Agreement shall be subject to the supervision of Contractor. In providing such Services, neither Contractor nor its agents shall act as officers, employees, or agents of the County. No partnership, joint venture, or other joint relationship is created hereby. County does not extend to Contractor or Contractor's agents any authority of any kind to bind County in any respect whatsoever.
- 15.2 **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.
- 15.3 **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. 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:	with a copies of legal notices to:
County of Volusia Attn: Director of Purchasing & Contracts Address: 123 W. Indiana Ave., Rm. 302 DeLand, Florida 32720 Phone: 386-736-5935	County of Volusia Attn: County Attorney Address: 123 W. Indiana Ave., Rm. 301 DeLand, Florida 32720 Phone: 386-736-5950
In the case of Contractor:	with a copy of legal notices to:
Thompson Consulting Services, LLC Attn: Jon Hoyle, President Address: 1135 Townpark Avenue, Suite 2101 Lake Mary, FL 32746 Phone: 321-303-2543	Thompson Consulting Services, LLC Chief Legal Officer, Chad Brown 2970 Cottage Hill Road, Suite 190 Mobile, AL 36606

15.4 **Assignment.**

Contractor may not assign or otherwise convey Contractor's rights and/or obligations under this Agreement without obtaining County's prior written consent, which consent County may withhold, limit and/or condition in County's sole discretion, including, but not limited to, requiring the 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 no less than thirty (30) days prior to the

assignment's proposed effective date, provide County with a written request for County's consent. 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 the Contractor to the County's acceptance or approval of its request for assignment.

Failure by the Contractor to obtain the County's consent in accordance with this Section prior to assignment or other conveyance shall: 1) constitute a material breach of the Contract; and 2) entitle the County utilize any and all legal rights, claims, and defenses to enforce this Section, including, but not limited to, seeking injunctive or declaratory relief and damages, including attorney's fees and costs. Payment of any sum by the County in accordance with the Agreement to the Contractor or any person or entity prior to the Contractor obtaining the County's consent to the assignment shall not constitute a waiver of the rights of the County under this Section 15.4.

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.

- 15.5 **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.

- 15.6 **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. The 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. The Contractor shall preserve and make available, at reasonable times for examination and audit by 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 contract, require its Subcontractors to agree to the requirements and obligations of this Section 15.6. Audits will be subject to applicable privacy and confidentiality laws and regulations and Contractor's privacy and confidentiality

policies and procedures. All audits must be performed at Contractor's home office in Lake Mary, FL. Nothing in this section 15.6 shall require Contractor to violate any laws applicable to Contractor as a provider of disaster cost recovery and related grant management project management services.

- 15.7 **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.
- 15.8 **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 or future statement of work, 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 Contract Administrator to replace key personnel, such approval not to be unreasonably withheld. Contractor shall provide the Contract Administrator with such information as necessary for County to evaluate the new key personnel. In the event the Contract Administrator 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.
- 15.9 **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 and logo on Contractor's Web site 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.
- 15.10 **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, 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:

- 15.10.1 Upon the occurrence of 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.
- 15.10.2 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 two (2) 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.
- 15.10.3 In the event of a Force Majeure Event, the time for performance by the parties under the applicable Scope 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.
- 15.11 **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.
- 15.12 **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.
- 15.13 **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.
- 15.14 **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 be exclusively in the state courts of the Judicial Circuit of

County of Volusia, Florida, unless one or more causes of action are solely cognizable in federal court, in which case, venue for and jurisdiction over such dispute(s) shall be in the Middle District of Florida, Orlando Division. By entering into this Agreement, Contractor and 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.

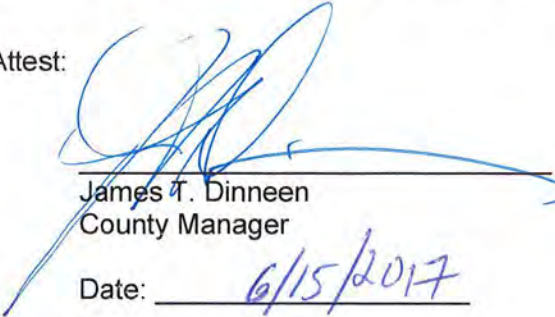
- 15.15 **Prior Agreements.** This document represents the final and complete understanding of the Parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The Parties agree that there is no 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 **All provisions of this Agreement which impose or contemplate continuing obligations on a party shall survive the expiration or termination of this Agreement.**

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

17 SIGNATURES

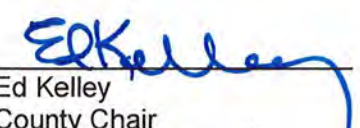
IN WITNESS WHEREOF, the parties have made and executed this Agreement for Disaster Cost Recovery and Related Grant and Project Management Services on the date last written below.

Attest:


James T. Dinneen
County Manager


Date: 6/15/2017

COUNTY OF VOLUSIA

BY: 
Ed Kelley
County Chair


Date: 6/15/2017

Attest:


Name and Title Comptroller

Date: MAY 23 2017

THOMPSON CONSULTING SERVICES, LLC

BY: 
Jon Hoyle
President

Date: 05/23/2017

CC Date: 6/15/17

EXHIBIT A

17-SQ-43BB SCOPE OF SERVICES

DISASTER COST RECOVERY AND RELATED GRANT AND PROJECT MANAGEMENT SERVICES

SCOPE OF SERVICE: A general description of the scope of services required includes, but is not limited to, the following:

The Contractor shall provide all Services described herein and other Services required to coordinate and assist the County with completing emergency and permanent work projects for federally declared disasters. Activities include grant or FEMA Project Worksheet preparation, grants or project management, and accounting for costs in accordance Federal, State, and local regulations. The Contractor shall supply the necessary personnel with the appropriate qualifications and skill sets to provide the Services as delineated below. Services shall be clearly delineated according to the damages caused by each disaster and funding shall be separated to ensure proper accounting for each storm is maintained and all appropriate deadlines and other requirements for grant closure are satisfied. Note, however, the County cannot contract away its duties and obligations as a recipient of Federal and State grant funds. The Contractor shall advise and assist the County with administering these grants as necessary, but the Contractor cannot assume the County's duties and responsibilities as a grant recipient.

- A. Grant and FEMA Project Worksheet Preparation - The Contractor shall prepare grant applications and FEMA Project Worksheets, which include:
1. Accompanying County personnel on-site inspections, including preliminary damage assessment activities. Pursuant to 44 CFR §206.202, an authorized local representative is required to ensure that all eligible work has been identified, and that all costs for disaster-related damages have been submitted to FEMA for funding. The Contractor shall assist the County's representative to ensure all eligible work is identified and accurate estimates of damage are submitted to FEMA for funding. The Contractor shall prepare the necessary documents to identify and estimate the cost of the damaged areas in the format required by FEMA and the County.
 2. Pursuant to 44 CFR §206.202, preparing Small FEMA Project Worksheets. The Contractor shall assist the County in preparing any small FEMA Project Worksheets for FEMA Categories A-G. The Contractor shall supply the necessary staff to ensure the FEMA Project Worksheets are completed in accordance with FEMA and County guidelines within the time constraints imposed by FEMA.
 3. Preparing Large FEMA Project Worksheets. The Contractor shall assist the County to gather and prepare information required by FEMA to complete large FEMA Project Worksheets and represent the County's interest in dealing with FEMA and the State of Florida. The Contractor shall supply the necessary staff to ensure the FEMA Project Worksheets are completed in accordance with FEMA and County guidelines within the time constraints imposed by FEMA.

EXHIBIT A

4. Identifying Improved or Alternate Projects. Pursuant to 44 CFR §206.203, the County may use FEMA funding for alternate or improved projects. The Contractor shall advise the County on the appropriateness of requesting this type of funding from FEMA and shall assist the County in applying for this type of funding.
 5. Identifying Cost-effective Mitigation Measures under Stafford Act Section 406. Pursuant to 44 CFR §206.226, cost-effective hazard mitigation measures may be incorporated in the restoration of damaged facilities. The Contractor shall assist the County in identifying hazard mitigation opportunities and shall assist the County with preparing benefit/cost analyses and hazard mitigation funding applications.
 6. Identifying/Resolving Other Special Considerations. The Contractor shall assist the County with identifying and resolving special consideration issues such as insurance, floodplain management, environmental issues, and historic preservation issues. The Contractor shall review any insurance settlements for accuracy and shall ensure that the insurance settlement is properly incorporated into the FEMA Project Worksheet. The Contractor shall work with the County, FEMA, and the State of Florida to ensure compliance with the National Environmental Policy Act (NEPA), the Clean Water Act, the Clean Air Act, the Endangered Species Act, the National Historic Preservation Act and other federal statutes and executive orders.
- B. Grants Management - The Contractor shall assist the County with managing grants, including, but not limited to:
1. Monitoring Contractor Performance. The Contractor shall monitor contractor performance to ensure that FEMA mandated work deadlines are completed timely. According to 44 CFR §206.204, emergency work projects shall be completed within eighteen (18) months of the disaster declaration. The Contractor shall assist the County with ensuring that the above deadlines are met, or shall assist the County with applying for time extensions.
 2. Providing Clerical Support to Review and Approve Payment Documentation. The Contractor shall assist the County by supplying clerical support to review, prepare, and approve payment to contractors performing eligible disaster related work to ensure that the documentation meets all Federal, State, and the County's financial and accounting requirements.
 3. Payment Requests/Cash Flow. The Contractor shall assist the County with maintenance of financial records, in accordance with County requirements for financial reporting to ensure prompt reimbursement from FEMA and the State of Florida. The Contractor shall assist in preparing payment requests in acceptable formats to ensure reimbursements from FEMA and the State of Florida are obtained in a timely fashion.
 4. Preparing Schedules and Performing Reconciliations. The Contractor shall assist the County and coordinate with its personnel in preparing the necessary schedules and performing any required reconciliations to ensure that the costs recorded in

EXHIBIT A

the County's financial records are correct and auditable by the County's external auditors. The Contractor shall supply the necessary qualified personnel to ensure this is completed in a timely fashion in accordance with the County's audit schedule. In addition, clerical support shall be provided to collect, gather, organize, and enter data into a database that support information presented on schedules and work papers. All schedules and work papers shall be prepared using the Microsoft Office suite products, such as Excel, Word, or Access.

5. Conducting Interim Inspections. The Contractor shall assist the County and coordinate with its personnel in performing interim grant inspections to ensure work is progressing timely and all documentation is being maintained in an orderly manner. The Contractor shall also assist the County with preparing progress reports for FEMA, the State of Florida, and County management.
6. Conducting Final Inspections. The Contractor shall assist the County and coordinate with its personnel in performing final grant inspections to ensure work completion and to document all eligible costs for FEMA reimbursement.
7. Assisting with Grant Closure. The Contractor shall assist the County with final reconciliation of grant funds and shall assist the County with completion of required FEMA and State of Florida documentation for grant closure.
8. Assisting with Audit Defense. The Contractor shall be available to assist the County with the defense of any audits conducted by the FEMA Office of the Inspector General or other auditors (additional fees may be required depending on the amount of time involved).
9. Assisting with Appeals. The Contractor shall be available to assist the County with submitting appeals to FEMA, if necessary (additional fees may be required depending on the amount of time involved).

EXHIBIT B

2 CFR 200 Contract Provisions

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by [41 U.S.C. 1908](#), must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part [60](#), all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part [60-1.3](#) must include the equal opportunity clause provided under 41 CFR [60-1.4\(b\)](#), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part [60](#), “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended ([40 U.S.C. 3141-3148](#)). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act ([40 U.S.C. 3141-3144](#), and [3146-3148](#)) as supplemented by Department of Labor regulations (29 CFR Part [5](#), “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be 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. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act ([40 U.S.C. 3145](#)), as supplemented by Department of Labor regulations (29 CFR Part [3](#), “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act ([40 U.S.C. 3701-3708](#)). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with [40 U.S.C. 3702](#) and [3704](#), as supplemented by Department of Labor regulations (29 CFR Part [5](#)). Under [40 U.S.C. 3702](#) of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of [40 U.S.C. 3704](#) are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or

EXHIBIT B

2 CFR 200 Contract Provisions

dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient 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 recipient or subrecipient must comply with the requirements of 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 awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

(I) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(J) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of \$100,000 or more must 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 must 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 non-Federal award.

(K) See § 200.322 Procurement of recovered materials.

Exhibit C Insurance Requirements

1. 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 below, in the form and from companies satisfactory to the County are detailed in *Figure 1* below. *Figure 1* 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 Exhibit C and ensure that the insurance policies comply with the specific terms and conditions therein.

Figure 1:

TYPE OF INSURANCE		
WORKERS COMPENSATION <input checked="" type="checkbox"/> Waiver of Subrogation <input type="checkbox"/> Longshore & Harbor Workers' Act, Jones Act, & Maritime Coverage Endorsement	Florida Statutory Coverage	
COMMERCIAL GENERAL LIABILITY - Broad form <input checked="" type="checkbox"/> Occurrence Basis <input checked="" type="checkbox"/> Blanket Contractual Liability <input checked="" type="checkbox"/> County Additional Insured <input type="checkbox"/> County Additional Named Insured <input checked="" type="checkbox"/> Waiver of Subrogation <input type="checkbox"/> Independent Contractors <input type="checkbox"/> Blanket additional insured endorsement <input type="checkbox"/> Project specific <input type="checkbox"/> Location specific <input type="checkbox"/> XCU <input type="checkbox"/>	EACH OCCURRENCE	\$ 1,000,000
	GENERAL AGGREGATE	\$ 2,000,000
	Premises-Operations	\$ 1,000,000
	Products & Completed Ops	
	Personal & Adv Inj.	\$1,000,000
	Fire Damage	\$
		\$
AUTO LIABILITY <input checked="" type="checkbox"/> Any Auto <input type="checkbox"/> Broadened Pollution Liability Endorsement CA 99 48 03 06 <input type="checkbox"/> MCS 90 <input type="checkbox"/> County Additional Insured <input type="checkbox"/>	Combined Single Limit	\$ 1,000,000
	Bodily Injury (Per person)	\$
	Bodily Injury (Per accident)	\$
	Property Damage (Per Accident)	\$
<i>Note: If contractor does not own any vehicles, Contractor shall have coverage symbol 8 (Hired Autos) and coverage symbol 9 (Non-Owned Autos).</i>		
<input checked="" type="checkbox"/> PROFESSIONAL LIABILITY <input type="checkbox"/> County Additional Insured	\$ 1,000,000	
CANCELLATION: Thirty (30) days written notice of cancellation is required to the Certificate Holder:		

Certificate Holder: County of Volusia Purchasing & Contracts Division 123 W. Indiana Avenue, Room 302 DeLand, FL 32720 ATTN: <u>Rebecca Bishop</u>	
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

- A. 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 to 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.

- B. Risk Retention Groups and Pools. Contractor shall not obtain an insurance policy required under this Agreement from a Risk Retention Group or Pool.

- C. Minimum Required Policies and Limits. Minimum underlying policies, coverages, and limits shall include all policies listed in *Figure 1*.

- D. 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 *Figure 1* 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.

- E. If the services provided require the disposal of any hazardous or non-hazardous materials off the job site, the disposal site operator must furnish a certificate of insurance for Pollution Legal Liability with coverage for bodily injury and property damage for losses that arise from the facility that is accepting the waste under the Agreement.

- F. 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.

- i. 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).

- G. Commercial General Liability Insurance. The Contractor shall acquire and maintain Commercial General Liability insurance, with limits of not less than the amounts shown above. Contractor shall not obtain an insurance policy wherein the policy limits are reduced by defense and claim expenses. Such insurance shall be issued on an occurrence basis and include coverage for the Contractor's operations, independent Contractors, Subcontractors and "broad form" property damage coverages protecting itself, its employees, agents, Contractors or subsidiaries, and their employees or agents for claims for damages caused by bodily injury, property damage, or personal or advertising injury, and products liability/completed operations including what is commonly known as groups A, B, and C. Such policies shall include coverage for claims by any person as a result of actions directly or indirectly related to the employment of such person or entity by the Contractor or by any of its Subcontractors arising from work or services performed under the Agreement. Public liability coverage shall include either blanket contractual insurance or a designated contract contractual liability coverage endorsement, indicating expressly the Contractor's Agreement to indemnify, defend and hold harmless the County as provided in the Agreement. The commercial general liability policy shall provide coverage to County when it is required to be named as an additional insured either by endorsement or pursuant to a blanket additional insured endorsement, for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01), as filed for use in the State of Florida by the Insurance Services Office, without the attachment of any endorsements excluding or limiting coverage for Bodily Injury, Property Damage, Products/Completed Operations, Independent Contractors, Property of County in Contractor's Care, Custody or Control or Property of County on which contracted operations are being performed, Explosion, Collapse or Underground hazards (XCU Coverage, Contractual Liability or Separation of Insureds. When County is added as additional insured by endorsement, ISO Endorsements CG 20 10 and CG 20 37 or their equivalent shall be used and shall provide such additional insured status that is at least as broad as ISO form CG 20 10 11 85. If County has agreed by separate agreement to require Contractor to name another party as an additional insured, Contractor shall add said party as an additional insured to the commercial general liability policy by ISO

Endorsement CG 20 38. Contractor shall require its subcontractors performing work on this Project to add the County and any other party that the County has agreed by separate agreement to require Contractor to name as an additional insured to their Commercial General Liability policy as an additional insured by ISO Endorsement CG 20 38. All commercial general liability policies shall provide a waiver of subrogation in favor of the County and any other party required by this Agreement to be named as an additional insured.

- H. 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 *Figure 1* 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 *Figure 1*.
- I. 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 above. Such policy shall cover all the Contractor’s or its Subcontractor’s professional liabilities whether occasioned by the Contractor or its Subcontractors, or their 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 *Figure 1*.

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.

- J. Primary and Excess Coverage. Any insurance required may be provided by primary and excess insurance policies.

2. Insurance Requirements

- A. General Insurance Requirements:
- i. 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.
 - ii. 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.

- iii. 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).
- iv. 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.
- v. Cancellation Notices. During the term of the Agreement, Contractor shall be responsible for promptly advising and providing the County's Risk Management 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.

Proof of Insurance

- A. 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.
- B. 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 and 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.
- C. 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.

- D. 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.
3. The provisions of this Exhibit C, shall survive the cancellation or termination of the Agreement.

EXHIBIT D
THOMPSON CONSULTING SERVICES, LLC
FEE SCHEDULE

Position	Hourly Rate
Office/Clerical	\$ 29.00
Field Site Inspector	\$ 65.00
Grant Management Analyst	\$ 70.00
Data/Document Manager	\$ 85.00
Land Surveyor	\$ 85.00
Grant Management Specialist	\$ 90.00
Environmental Scientist (Regulatory Support)	\$100.00
Grant Management Consultant	\$110.00
Project Engineer	\$115.00
Senior Grant Consultant	\$135.00
Project Manager	\$150.00
Legislative Affairs Consultant	\$165.00

The above referenced hourly rates are inclusive of overhead, profit, direct, and general & administrative expenses. If travel is required Thompson will seek written approval from the County.

The travel expenses, if any, must be approved in writing in advance and will be subject to the Volusia County Travel and Training Policy as set forth in the County's web site; <http://www.volusia.org/purchasing/>

EXHIBIT 2

INSURANCE REQUIREMENTS

As a condition precedent to the effectiveness of this Agreement, during the term of this Agreement and during any renewal or extension term of this Agreement, the Contractor, at the Contractor's sole expense, shall provide insurance of such types and with such terms and limits as noted below. Providing proof of and maintaining adequate insurance coverage are material obligations of the Contractor. The Contractor shall provide the City a certificate of insurance evidencing such coverage. The Contractor's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under this Agreement. All insurance policies shall be from insurers authorized to write insurance policies in the State of Florida and that possess an A.M. Best rating of A-, VII or better. All insurance policies are subject to approval by the City's Risk Manager.

The coverages, limits, and endorsements required herein protect the interests of the City, and these coverages, limits, and endorsements may not be relied upon by the Contractor for assessing the extent or determining appropriate types and limits of coverage to protect the Contractor against any loss exposure, whether as a result of this Agreement or otherwise. The requirements contained herein, as well as the City's review or acknowledgement, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Contractor under this Agreement.

The following insurance policies and coverages are required:

Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- \$1,000,000 each occurrence and \$2,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$1,000,000 each occurrence and \$2,000,000 aggregate for Products and Completed Operations

Policy must include coverage for Contractual Liability and Independent Contractors.

The City and the City's officers, employees, and volunteers are to be covered as additional insureds with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of the Contractor. The coverage shall contain no special limitation on the scope of protection afforded to the City or the City's officers, employees, and volunteers.

Business Automobile Liability

Coverage must be afforded for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage in an amount not less than \$1,000,000 combined single limit each accident.

If the Contractor does not own vehicles, the Contractor shall maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

Workers' Compensation and Employer's Liability

Coverage must be afforded per Chapter 440, Florida Statutes. Any person or entity performing work for or on behalf of the City must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the City's Risk Manager, if they are in accordance with Florida Statute.

The Contractor waives, and the Contractor shall ensure that the Contractor's insurance carrier waives, all subrogation rights against the City and the City's officers, employees, and volunteers for all losses or damages. The City requires the policy to be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or equivalent.

The Contractor must be in compliance with all applicable State and federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act and the Jones Act, if applicable.

Insurance Certificate Requirements

- a. The Contractor shall provide the City with valid Certificates of Insurance (binders are unacceptable) no later than thirty (30) days prior to the start of work contemplated in this Agreement.
- b. The Contractor shall provide to the City a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.
- c. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of the Contractor to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.
- d. In the event the Agreement term goes beyond the expiration date of the insurance policy, the Contractor shall provide the City with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The City reserves the right to suspend the Agreement until this requirement is met.
- e. The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.
- f. The City shall be named as an Additional Insured on all liability policies, with the exception of Workers' Compensation.
- g. The City shall be granted a Waiver of Subrogation on the Contractor's Workers' Compensation insurance policy.
- h. The title of the Agreement, Bid/Contract number, event dates, or other identifying reference must be listed on the Certificate of Insurance.

The Certificate Holder should read as follows:

City of Fort Lauderdale
100 N. Andrews Avenue
Fort Lauderdale, FL 33301

The Contractor has the sole responsibility for the payment of all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. Any costs for adding the City as an Additional Insured shall be at the Contractor's expense.

If the Contractor's primary insurance policy/policies do not meet the minimum requirements, as set forth in this Agreement, the Contractor may provide evidence of an Umbrella/Excess insurance policy to comply with this requirement.

The Contractor's insurance coverage shall be primary insurance as applied to the City and the City's officers, employees, and volunteers. Any insurance or self-insurance maintained by the City covering the City, the City's officers, employees, or volunteers shall be non-contributory.

Any exclusion or provision in the insurance maintained by the Contractor that excludes coverage for work contemplated in this Agreement shall be unacceptable and shall be considered breach of contract.

All required insurance policies must be maintained until the contract work has been accepted by the City, or until this Agreement is terminated, whichever is later. Any lapse in coverage shall be considered breach of contract. In addition, Contractor must provide to the City confirmation of coverage renewal via an updated certificate should any policies expire prior to the expiration of this Agreement. The City reserves the right to review, at any time, coverage forms and limits of Contractor's insurance policies.

The Contractor shall provide notice of any and all claims, accidents, and any other occurrences associated with this Agreement shall be provided to the Contractor's insurance company or companies and the City's Risk Management office as soon as practical.

It is the Contractor's responsibility to ensure that any and all of the Contractor's independent contractors and subcontractors comply with these insurance requirements. All coverages for independent contractors and subcontractors shall be subject to all of the applicable requirements stated herein. Any and all deficiencies are the responsibility of the Contractor.

Professional Liability and/or Errors and Omissions

Coverage must be afforded for Wrongful Acts in an amount not less than \$1,000,000 each claim and \$2,000,000 aggregate.

Contractor must keep insurance in force until the third anniversary of expiration of this Agreement or the third anniversary of acceptance of work by the City.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
[GENERAL CONDITIONS FOLLOW]

EXHIBIT 3

CITY OF FORT LAUDERDALE GENERAL CONDITIONS for PIGGYBACK & CO-OP CONTRACTS

These conditions are standard for all piggyback, local, state, or national cooperative procurement organization, federal General Services Administration, and State of Florida contracts for the purchase of goods or services by the City of Fort Lauderdale.

PART I CONDITIONS:

1.01 DELIVERY: Time will be of the essence for any orders placed as a result of this ITB. The City reserves the right to cancel any orders, or part thereof, without obligation if delivery is not made in accordance with the schedule specified by the Bidder and accepted by the City.

1.02 PACKING SLIPS: It will be the responsibility of the Contractor to attach all packing slips to the OUTSIDE of each shipment. Packing slips must provide a detailed description of what is to be received and reference the City of Fort Lauderdale purchase order number that is associated with the shipment. Failure to provide a detailed packing slip attached to the outside of shipment may result in refusal of shipment at Contractor's expense.

1.03 PAYMENT TERMS AND CASH DISCOUNTS: Payment terms will be net 45 days after the date of satisfactory delivery at the place of acceptance and receipt of correct invoice at the office specified, whichever occurs last.

1.04 MINORITY AND WOMEN BUSINESS ENTERPRISE PARTICIPATION AND BUSINESS DEFINITIONS: The City of Fort Lauderdale wants to increase the participation of Minority Business Enterprises (MBE), Women Business Enterprises (WBE), and Small Business Enterprises (SBE) in its procurement activities. If your firm qualifies in accordance with the below definitions please indicate in the space provided in this ITB.

Minority Business Enterprise (MBE) "A Minority Business" is a business enterprise that is owned or controlled by one or more socially or economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons include, but are not limited to: Blacks, Hispanics, Asian Americans, and Native Americans.

The term "Minority Business Enterprise" means a business at least 51 percent of which is owned by minority group members or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by minority group members. For the purpose of the preceding sentence, minority group members are citizens of the United States who include, but are not limited to: Blacks, Hispanics, Asian Americans, and Native Americans.

Women Business Enterprise (WBE) a "Women Owned or Controlled Business" is a business enterprise at least 51 percent of which is owned by females or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by females.

Small Business Enterprise (SBE) "Small Business" means a corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit, which is independently owned and operated, has either fewer than 100 employees or less than \$1,000,000 in annual gross receipts.

BLACK, which includes persons having origins in any of the Black racial groups of Africa.

WHITE, which includes persons whose origins are Anglo-Saxon and Europeans and persons of Indo-European decent including Pakistani and East Indian.

HISPANIC, which includes persons of Mexican, Puerto Rican, Cuban, Central and South American, or other Spanish culture or origin, regardless of race.

NATIVE AMERICAN, which includes persons whose origins are American Indians, Eskimos, Aleuts, or Native Hawaiians.

ASIAN AMERICAN, which includes persons having origin in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

1.05 MINORITY-WOMEN BUSINESS ENTERPRISE PARTICIPATION

It is the desire of the City of Fort Lauderdale to increase the participation of minority (MBE) and women-owned (WBE) businesses in its contracting and procurement programs. While the City does not have any preference or set aside programs in place, it is committed to a policy of equitable participation for these firms. Proposers are requested to include in their proposals a narrative describing their past accomplishments and intended actions in this area. If proposers are considering minority or women owned enterprise participation in their proposal, those firms, and their specific duties have to be identified in the proposal. If a proposer is

considered for award, he or she will be asked to meet with City staff so that the intended MBE/WBE participation can be formalized and included in the subsequent contract.

1.06 SCRUTINIZED COMPANIES

As a condition precedent to the effectiveness of any contract for goods or services of \$1 million or more and as a condition precedent to the renewal of any contract for goods or services of \$1 million or more, subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), affirmed, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), with regard to the "Cuba Amendment," the Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, and that it does not have business operations in Cuba or Syria, as provided in section 287.135, Florida Statutes (2019), as may be amended or revised. As a condition precedent to any contract for goods or services of any amount and as a condition precedent to the renewal of any contract for goods or services of any amount, the Contractor certifies that it is not on the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2019), and that it is not engaged in a boycott of Israel. The City may terminate this Agreement at the City's option if the Contractor is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2019), as may be amended or revised, or 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 the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2019), as may be amended or revised, or is engaged in a boycott of Israel, or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2019), as may be amended or revised.

1.07 DEBARRED OR SUSPENDED CONTRACTORS

The Contractor certifies that neither it nor any of its principals or subcontractors are presently debarred or suspended by any federal department or agency.

Part II TAXES:

2.01 TAXES: The City of Fort Lauderdale is exempt from Federal Excise and Florida Sales taxes on direct purchase of tangible property. Exemption number for EIN is 59-6000319, and State Sales tax exemption number is 85-8013875578C-1.

PART III BONDS AND INSURANCE

3.01 PERFORMANCE BOND: If a performance bond is required by the Contract, as a condition precedent to the effectiveness of the Agreement, the Contractor shall within fifteen (15) working days after the commencement date of the Contract, furnish to the City a Performance Bond, payable to the City of Fort Lauderdale, Florida, in the face amount specified in the Contract as surety for faithful performance under the terms and conditions of the Contract. If the bond is on an annual coverage basis, renewal for each succeeding year shall be submitted to the City thirty (30) days prior to the termination date of the existing Performance Bond. The Performance Bond must be executed by a surety company of recognized standing, authorized to do business in the State of Florida and having a resident agent.

Acknowledgement and agreement is given by both parties that the amount herein set for the Performance Bond is not intended to be nor shall be deemed to be in the nature of liquidated damages nor is it intended to limit the liability of the Contractor to the City in the event of a material breach of this Agreement by the Contractor.

3.02 INSURANCE: The Contractor shall assume full responsibility and expense to obtain all necessary insurance as required by City or specified in the Contract.

The Contractor shall provide to the Procurement Services Division original certificates of coverage and receive notification of approval of those certificates by the City's Risk Manager prior to engaging in any activities under this contract. The Contractor's insurance is subject to the approval of the City's Risk Manager. The certificates must list the City as an ADDITIONAL INSURED for General Liability Insurance, and shall have no less than thirty (30) days written notice of cancellation or material change. Further modification of the insurance requirements may be made at the sole discretion of the City's Risk Manager if circumstances change or adequate protection of the City is not presented. The Contractor agrees to abide by such modifications.

PART IV PURCHASE ORDER AND CONTRACT TERMS:

4.01 COMPLIANCE WITH SPECIFICATIONS, LATE DELIVERIES/PENALTIES: Items offered may be tested for compliance with contract specifications. Items delivered which do not conform to Contract specifications may be rejected and

returned at Contractor's expense. Any violation resulting in contract termination for cause or delivery of items not conforming to specifications, or late delivery may also result in:

- Contractor's name being removed from the City's bidder's mailing list for a specified period and Contractor will not be recommended for any contract during that period.
- All City Departments being advised to refrain from doing business with the Contractor.
- All other remedies in law or equity.

4.02 ACCEPTANCE, CONDITION, AND PACKAGING: The material delivered pursuant to the Contract shall remain the property of the Seller until a physical inspection is made and the material accepted to the satisfaction of the City. The material must comply fully with the terms of the Contract, be of the required quality, new, and the latest model. All containers shall be suitable for storage and shipment by common carrier, and all prices shall include standard commercial packaging. The City will not accept substitutes of any kind. Any substitutes or material not meeting specifications will be returned at the Bidder's expense. Payment will be made only after City receipt and acceptance of materials or services.

4.03 SAFETY STANDARDS: All manufactured items and fabricated assemblies shall comply with applicable requirements of the Occupation Safety and Health Act of 1970 as amended.

4.04 ASBESTOS STATEMENT: All material supplied must be 100% asbestos free. Contractor certifies that Contractor will supply only material or equipment that is 100% asbestos free.

4.05 VERBAL INSTRUCTIONS PROCEDURE: No negotiations, decisions, or actions shall be initiated or executed by the Contractor as a result of any discussions with any City employee. Only those communications which are in writing from an authorized City representative may be considered. Only written communications from Contractors, which are assigned by a person designated as authorized to bind the Contractor, will be recognized by the City as duly authorized expressions on behalf of Contractors.

4.06 INDEPENDENT CONTRACTOR: The Contractor is an independent contractor under this Agreement. Personal services provided by the Proposer shall be by employees of the Contractor and subject to supervision by the Contractor, and not as officers, employees, or agents of the City. Personnel policies, tax responsibilities, social security, health insurance, employee benefits, procurement policies unless otherwise stated in the Contract, and other similar administrative procedures applicable to services rendered under this contract shall be those of the Contractor.

4.07 INDEMNITY/HOLD HARMLESS AGREEMENT: Contractor shall protect and defend at Contractor's expense, counsel being subject to the City's approval, and indemnify and hold harmless the City and the City's officers, employees, volunteers, and agents from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, expenses, or liabilities, including any award of attorney fees and any award of costs, in connection with or arising directly or indirectly out of any act or omission by the Contractor or by any officer, employee, agent, invitee, subcontractor, or sublicensee of the Contractor. Without limiting the foregoing, any and all such claims, suits, or other actions relating to personal injury, death, damage to property, defects in materials or workmanship, actual or alleged violations of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court shall be included in the indemnity hereunder.

4.08 TERMINATION FOR CAUSE: If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contractor shall violate any of the provisions of this Agreement, the City may upon written notice to the Contractor terminate the right of the Contractor to proceed under this Agreement, or with such part or parts of the Agreement as to which there has been default, and may hold the Contractor liable for any damages caused to the City by reason of such default and termination. In the event of such termination, any completed services performed by the Contractor under this Agreement shall, at the option of the City, become the City's property and the Contractor shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. The Contractor, however, shall not be relieved of liability to the City for damages sustained by the City by reason of any breach of the Agreement by the Contractor, and the City may withhold any payments to the Contractor for the purpose of setoff until such time as the amount of damages due to the City from the Contractor can be determined.

4.09 TERMINATION FOR CONVENIENCE: The City reserves the right, in the City's best interest as determined by the City, to cancel the contract by giving written notice to the Contractor thirty (30) days prior to the effective date of such cancellation.

4.10 CANCELLATION FOR UNAPPROPRIATED FUNDS: The obligation of the City for payment to a Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of the contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law.

4.11 RECORDS/AUDIT: The Contractor shall maintain during the term of the contract all books of account, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this contract. The Contractor agrees to make available to the City Auditor or the City Auditor's designee, during normal business hours and in Broward, Miami-Dade or Palm Beach Counties, all books of account, reports, and records relating to this contract. The Contractor shall retain all books of account, reports, and records relating to this contract for the duration of the contract and for three years after the final payment under this Agreement, until all pending audits, investigations or litigation matters relating to the contract are closed, or until expiration of the records retention period prescribed by Florida law or the records retention schedules adopted by the Division of Library and Information Services of the Florida Department of State, whichever is later.

4.12 PERMITS, TAXES, LICENSES: The successful Contractor shall, at Contractor's own expense, obtain all necessary permits, pay all licenses, fees and taxes, required to comply with all local ordinances, state and federal laws, rules and regulations applicable to business to be carried out under this contract.

4.13 LAWS/ORDINANCES: The Contractor shall observe and comply with all Federal, state, local and municipal laws, ordinances rules and regulations that would apply to this contract.

NON-DISCRIMINATION: The Contractor shall not, in any of its activities, including employment, discriminate against any individual on the basis of race, color, national origin, religion, creed, sex, disability, sexual orientation, gender, gender identity, gender expression, or marital status.

The following subparagraphs apply to any contract for the purchase of goods or services exceeding one hundred thousand dollars (\$100,000.00):

1. The Contractor certifies and represents that the Contractor will comply with Section 2-187, Code of Ordinances of the City of Fort Lauderdale, Florida, (2019), as may be amended or revised, ("Section 2-187").
2. The failure of the Contractor to comply with Section 2-187 shall be deemed to be a material breach of this Agreement, entitling the City to pursue any remedy stated below or any remedy provided under applicable law.
3. The City may terminate this Agreement if the Contractor fails to comply with Section 2-187.
4. The City may retain all monies due or to become due until the Contractor complies with Section 2-187.
5. The Contractor may be subject to debarment or suspension proceedings. Such proceedings will be consistent with the procedures in section 2-183 of the Code of Ordinances of the City of Fort Lauderdale, Florida.

4.14 UNUSUAL CIRCUMSTANCES: If during a contract term where costs to the City are to remain firm or adjustments are restricted by a percentage or CPI cap, unusual circumstances that could not have been foreseen by either party of the contract occur, and those circumstances significantly affect the Contractor's cost in providing the required prior items or services, then the Contractor may request adjustments to the costs to the City to reflect the changed circumstances. The circumstances must be beyond the control of the Contractor, and the requested adjustments must be fully documented. The City may, after examination, refuse to accept the adjusted costs if they are not properly documented, increases are considered to be excessive, or decreases are considered to be insufficient. In the event the City does not wish to accept the adjusted costs and the matter cannot be resolved to the satisfaction of the City, the City will reserve the following options:

1. The contract can be canceled by the City upon giving thirty (30) days written notice to the Contractor with no penalty to the City or Contractor. The Contractor shall fill all City requirements submitted to the Contractor until the termination date contained in the notice.
2. The City requires the Contractor to continue to provide the items and services at the firm fixed (non-adjusted) cost until the termination of the contract term then in effect.

3. If the City, in its interest and in its sole opinion, determines that the Contractor in a capricious manner attempted to use this section of the contract to relieve Contractor of a legitimate obligation under the contract, and no unusual circumstances had occurred, the City reserves the right to take any and all action under law or equity. Such action shall include, but not be limited to, declaring the Contractor in default and disqualifying Contractor from receiving any business from the City for a stated period of time.

If the City does agree to adjusted costs, these adjusted costs shall not be invoiced to the City until the Contractor receives notice in writing signed by a person authorized to bind the City in such matters.

4.15 ELIGIBILITY: If applicable, the Contractor must first register with the Florida Department of State in accordance with Florida Statutes, prior to entering into a contract with the City.

4.16 PATENTS AND ROYALTIES: The Contractor, without exception, shall defend, indemnify, and hold harmless the City and the City's employees, officers, employees, volunteers, and agents from and against liability of any nature and kind, including cost and expenses for or on account of any copyrighted, patented or un-patented invention, process, or article manufactured or used in the performance of the contract, including their use by the City. If the Contractor uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the bid prices shall include any and all royalties or costs arising from the use of such design, device, or materials in any way involved in the work.

4.17 ASSIGNMENT: Contractor shall not transfer or assign the performance required by the Contract without the prior written consent of the City. The Contract and the monies which may become due hereunder are not assignable except with the prior written approval of the City Commission or the City Manager or City Manager's designee, depending on original approval.

4.18 GOVERNING LAW; VENUE: The Contract shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of the Contract, and for any other legal proceeding, shall be in the courts in and for Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida.

4.19 PUBLIC RECORDS

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT PRRCONTRACT@FORTLAUDERDALE.GOV, 954-828-5002, CITY CLERK'S OFFICE, 100 N. ANDREWS AVENUE, FORT LAUDERDALE, FLORIDA 33301.

Contractor shall comply with public records laws, and Contractor shall:

1. Keep and maintain public records required by the City to perform the service.
2. Upon request from the City's custodian of public records, provide the City 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 (2019), as may be amended or revised, or as otherwise provided by law.
3. 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 of the contract if the Contractor does not transfer the records to the City.
4. Upon completion of the Contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

4.20 WARRANTIES OF USAGE: Any quantities listed in this Contract are estimates. No warranty or guarantee of quantities is given or implied. It is understood that the Contractor will furnish the City's needs as they arise.