

CONTRACT

PROJECT BID NUMBER: **Bid No. B-6-23-27**
PROJECT NAME: **Central Disposal Facility Phase I Active LFG Collection System – Cell 1 South Parcel Landfill**

THIS CONTRACT, made this _____ day of _____, 2023 by and between the **BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida, (herein referred to as the "OWNER"), whose mailing address is 2725 Judge Fran Jamieson Way, Viera, FL 32940 and **SULLIVAN ENVIRONMENTAL, INC.**, (herein referred to as the "CONTRACTOR"), whose mailing address is 4448 13th Ln NE, St. Petersburg, FL 33703. All correspondence, submittals and notices relating to or required under this Contract shall be sent, in writing, to the CONTRACTOR's and OWNER's addresses above; unless either party is notified, in writing, of a change in address.

WITNESSETH:

WHEREAS it is the intent of the OWNER to obtain the services of the CONTRACTOR in connection with the construction of **Central Disposal Facility Phase I Active Landfill Gas Collection System - Cell 1 CDF South Landfill**, hereinafter referred to as the "Project" or the "Work"; and

WHEREAS the CONTRACTOR desires to perform such construction on the Project in accordance with the terms and conditions of this Contract.

NOW, THEREFORE, in consideration of the promises made herein and other good and valuable consideration, the following terms and conditions are hereby mutually agreed to, by and between the OWNER and the CONTRACTOR:

Article 1 **DEFINITIONS**

The Contract Documents are as defined in the General Conditions. Such documents form the Contract, and all are as fully a part hereof as if attached to this Contract or repeated therein. The full contract is comprised of Volumes I, II, and III of III, all addenda issued during the bidding process, bid bond, public construction bond and all modifications, including change orders, issued after execution of this contract.

All terms which are defined in the Contract Documents shall have the meanings designated herein.

Article 2 **STATEMENT OF THE WORK**

The CONTRACTOR shall provide and pay for all materials, tools, equipment, labor and professional and non-professional services, and shall perform all other acts and supply all other things necessary, to fully and properly perform and complete the Work, as required by the Contract Documents.

The CONTRACTOR shall further provide and pay for all related facilities described in any of the Contract Documents, including all Work expressly specified therein and such additional Work as may be reasonably inferred therefrom, saving and excepting only such items of Work as are specifically stated in the Contract Documents not to be the obligation of the CONTRACTOR. The totality of the obligations imposed upon the CONTRACTOR by this Article and by all other provisions of the Contract Documents, as well as the structures to be built and the labor to be performed, is herein referred to as the "Work".

Article 3 **ENGINEER**

The Engineer (as defined in the General Conditions) shall be **Neel-Schaffer, Inc. (NSI)**, however, that the OWNER may, without liability to the CONTRACTOR, unilaterally amend this Article from time to time by designating a different person or organization to act as its ENGINEER and so advising the CONTRACTOR in writing, at which time the person or organization so designated shall be the ENGINEER for purposes of this Contract.

Article 4
TIME OF COMMENCEMENT AND COMPLETION

The CONTRACTOR shall commence the Work promptly upon the date established in the Notice to Proceed.

Time is of the essence. The CONTRACTOR shall achieve Substantial Completion, as defined in SECTION 5 - General Conditions, within **120 calendar days** from the date of Notice to Proceed. This time period shall be designated the Contract Time.

The CONTRACTOR shall also complete the following activities of Work within the interim Milestone dates indicated, as applicable:

ACTIVITY

F. Execution of Contract	Within 30 days from Notice of Award
G. Notice to Proceed	Follows Execution of Contract
H. Substantial Completion	<u>120</u> days from Notice to Proceed (Beneficial occupancy of the entire project)
I. Final Completion	<u>30</u> days from contracted Substantial Completion Date or <u>150</u> days from date of the Notice to Proceed
J. Warranty Period	<u>1</u> year from the date of final completion and acceptance by the OWNER

Should the CONTRACTOR fail to substantially complete the Work on or before the date stipulated as a Milestone date above, or for Substantial Completion (or such later date as may result from an extension of time granted by the OWNER), CONTRACTOR shall pay the OWNER, as liquidated damages, the sum of **\$1,500.00** for each calendar day that terms of the contract remain unfulfilled beyond the date allowed by the Contract, which sum is agreed upon as a reasonable estimate of actual damages which the OWNER will sustain per day by failure of the CONTRACTOR to complete within time as stipulated; it being recognized by the OWNER and the CONTRACTOR that the injury to the OWNER which could result from a failure of the CONTRACTOR to complete on schedule is uncertain and cannot be computed exactly. It is agreed that these amounts are not a penalty.

For each complete calendar day that the Work remains incomplete after the date established for Final Completion, The OWNER will retain from the compensation otherwise to be paid to the CONTRACTOR the sum of **\$1,500.00**. This amount is the minimum measure of damages the OWNER will sustain as a failure of the CONTRACTOR to complete all remedial Work, correct deficient Work, clean up the Project and other miscellaneous tasks as required to complete all Work specified. This amount is in addition to the liquidated damages prescribed above and represents compensation for additional costs the OWNER could incur or suffer caused by on-going construction while occupying the Project. Such costs could include, but are not limited to, additional security and safety measures, temporary facilities or structures, reduced employee efficiency, additional operating costs, employee overtime, split shift, insurance, etc.

The Owner has the right to deduct, as payment on such liquidated damages, the full or partial amount of liquidated damages due from any money the Owner owes the Contractor.

The Owner does not waive its right to liquidated damages due under by allowing this Contract to continue and to allowing the Contractor to finish the work, or any part of it, after the expiration of the Contract Time including granted time extensions.

In the case of a default of this Contract and the completion of the work by the Owner, the Contractor and his surety are liable for the liquidated damages under the Contract, but the Owner will not charge liquidated damages for any delay in the final completion of the Owner's performance of the work due to any unreasonable action or delay on the part of the Owner.

Article 5
CONTRACT SUM

Provided that the CONTRACTOR shall strictly and completely perform all of its obligations under the Contract Documents, and subject only to additions and deductions by Modification or as otherwise provided in the Contract Documents, the OWNER shall pay to the CONTRACTOR, in current funds and at the time and in the installments hereinafter specified, the sum of Eight Hundred Seventy Thousand, Seven Hundred Seventy-Six Dollars and Forty-One Cents, herein referred to as the "Contract Sum".

Article 6
PROGRESS PAYMENTS

The CONTRACTOR hereby agrees that on or about the last day of every month during the performance of the Work the CONTRACTOR will deliver to the Engineer an Application for Payment of the Work for the preceding thirty (30) days in accordance with the provisions of Article 14 of the General Conditions (SECTION 5). This date may be changed upon mutual agreement, stated in writing, between the OWNER and CONTRACTOR. Payment under this Contract shall be made as provided in the General Conditions.

Article 7
OTHER REQUIREMENTS

The CONTRACTOR shall submit the Public Construction Bond, Labor and Material Payment Bond, and Certification of Insurance as required by the Contract Documents.

The OWNER shall furnish to the CONTRACTOR, at the CONTRACTOR's request, any leftover set(s) of drawings and specifications, at no extra cost, for use in the Construction of the Work. Additional sets of Drawings or Specifications shall be obtained by the CONTRACTOR at the CONTRACTOR's own expense.

The CONTRACTOR shall perform at least twenty-five percent (25%) of the total Work with forces that are in the direct employment of the CONTRACTOR's organization.

Article 8
COPYRIGHT

No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the Owner, under this Contract shall be subject to copyright by Contractor in the United States or any other Country.

Article 9
MODIFICATION

This Contract, together with Contract Documents, constitutes the entire contract between the COUNTY and the CONTRACTOR and supersedes all prior written or oral understandings. No modification of this Contract shall be binding on OWNER or CONTRACTOR unless reduced to writing and signing by a duly authorized representative of OWNER and CONTRACTOR.

Article 10
RIGHT TO AUDIT RECORDS

In the performance of this Contract, the Contractor shall keep books, records, and accounts of all activities, related to this Contract, in compliance with generally accepted accounting procedures. Books, records and accounts related to the performance of this Contract shall be open to inspection during regular business hours by an authorized representative of the Owner and shall be retained by Contractor for a period of five (5) years after termination of the Contract. All records, books and accounts related to the performance of this Contract shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes.

Article 11
EMPLOYMENT ELIGIBILITY VERIFICATION (E-VERIFY)

(a) The CONTRACTOR:

(1) shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Construction Manager during the term of this Contract; and

(2) shall expressly require any subcontractors performing work or providing services pursuant to this Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of this Contract; and

(3) agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the Owner consistent with the terms of the CONTRACTOR's enrollment in the program. This includes maintaining a copy of proof of the CONTRACTOR's and subcontractors' enrollment in the E-Verify Program.

(b) Compliance with the terms of this section is made an express condition of this Contract and the Owner may treat a failure to comply as a material breach of this Contract.

(c) A contractor who registers with and participates in the E-Verify program may not be barred or penalized under this section if, as a result of receiving inaccurate verification information from the E verify program, the contractor hires or employs a person who is not eligible for employment.

(d) Nothing in this section may be construed to allow intentional discrimination of any class protected by law.

Article 12
PUBLIC ENTITY CRIMES

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid/quote/proposal on a contract to provide goods or services to a public entity, may not submit a bid/quote/proposal on a contract with a public entity for construction or repair of a public building or public work, may not submit bids/quotes/proposals on leases of rental property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of threshold amount provided in **Section 287.017 Florida Statutes for CATEGORY TWO** for a period of 36 months from date of being placed on convicted vendor list.

Article 13
SCRUTINIZED COMPANIES

The Contractor certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., The Owner may immediately terminate this Contract at its sole option if the Contractor or its subcontractors are found to have submitted a false certification; or if the Contractor or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Contract.

If this Contract is for more than one million dollars, the Contractor certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the Owner may immediately terminate this Contract at its sole option if the Contractor, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Contractor, its affiliates, or its subcontractors are placed on the Scrutinized Companies that Boycott the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Contract.

The Contractor agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Contract.

As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions, then they shall become inoperative.

Article 14
CONSTRUCTION OF CONTRACT

The parties hereby acknowledge that they fully reviewed this Contract, its attachments and had the opportunity to consult with legal counsel of their choice, and that this Contract shall not be construed against any party as if they were the drafter of this Contract.

Article 15
GOVERNING LAW

This Contract shall be deemed to have been executed and entered into the State of Florida and this Contract, and any dispute arising hereunder, shall be governed, interpreted and construed according to the laws of the State of Florida.

Article 16
VENUE

Venue for any legal action brought by any party to this Contract to interpret, construe or enforce this Contract shall be in a court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be non-jury.

Article 17
ATTORNEY'S FEES AND COSTS

In the event of any legal action to enforce the terms of this Contract each party shall bear its own attorney's fees and costs.

Article 18
SEVERABILITY

If any provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

Article 19
INDEPENDENT CONTRACTOR

The Contractor shall perform the services under this Contract as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in this Contract shall be interpreted or construed to constitute the ENGINEER or any of its agents or employees to be the agent, employee or representative of the COUNTY.

Article 20
SUPPLEMENTAL CONDITIONS

These Supplementary conditions amend or supplement the (SECTION 6) amend or supplement the SECTION 5 - General Conditions for Brevard County and other provisions of the Contract Documents as indicated. All provisions which are not so amended or supplemented remain in full force and effect.

Article 21
FEDERAL TAX ID NUMBER

The CONTRACTOR shall provide to the COUNTY their Federal Tax ID Number or, if the CONTRACTOR is a sole proprietor, a Social Security Number.

Article 22
EMPLOYMENT

The CONTRACTOR shall not engage the service of any person or persons now employed by the COUNTY, including any department, agency, board, or commission thereof, to provide services relating to the Contract without written consent from the COUNTY.

Article 23
PUBLIC RECORDS

The Contractor shall comply with Florida Public Records law under Chapter 119, F.S. Records made or received in conjunction with this Contract are public records under Florida law, as defined in Section 119.011(12), F.S. The Contractor shall keep and maintain public records required by the Owner to perform the services under this Contract.

This Contract may be unilaterally canceled by the Owner for refusal by the Contractor to either provide to the Owner upon request, or to allow inspection and copying of all public records made or received by the Contractor in conjunction with this Contract and subject to disclosure under Chapter 119, F.S., and Section 24(a), Article I, Florida Constitution.

If the Contractor meets the definition of "Contractor" found in Section 119.0701(1)(a), F.S.; [i.e., an individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency], then the following requirements apply:

1. Pursuant to Section 119.0701, F.S., a request to inspect or copy public records relating to this Contract for services must be made directly to the Owner. If the Owner does not possess the requested records, the Owner shall immediately notify the Contractor of the request, and the Contractor must provide the records to the Owner or allow the records to be inspected or copied within a reasonable time. If the Contractor fails to provide the public records to the Owner within a reasonable time, the Contractor may be subject to penalties under Section 119.10, F.S.

2. Upon request from the Owner's custodian of public records, the Contractor shall provide the Owner 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, F.S., or as otherwise provided by law.

3. The Contractor shall identify and ensure that all 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 Owner.

4. Upon completion of the Contract, the Contractor shall transfer, at no cost to the Owner, all public records in possession of the Contractor or keep and maintain public records required by the Owner to perform the services under this Contract. If the Contractor transfers all public records to the Owner upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public 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 that are stored electronically must be provided to the Owner, upon request from the Owner's custodian of public records, in a format that is accessible by and compatible with the information technology systems of the Owner.

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 OWNER'S CUSTODIAN OF PUBLIC RECORDS by telephone at (321) 633-2042, by email at miranda.guppenberger@brevardfl.gov, or at the mailing address below:

Brevard County
ATTN: Solid Waste Management Department
Public Records Request
2725 Judge Fran Jamieson Way, A118
Viera FL 32940

IN WITNESS WHEREOF, BREVARD COUNTY, FLORIDA (hereinafter called the "OWNER") by resolution of its authorized body and directing the same during adoption of Final Budgets for FY2022-2023, Item Number D.4., Public Hearing meeting thereof, duly called and held in the County of Brevard, Florida on Tuesday the 20th day of September 2022, has caused these presents to be signed and its corporate seal to be hereunto affixed, attested by the Brevard County Clerk of the Courts and Sullivan Environmental, Inc., herein before called "CONTRACTOR") has caused these presents to be signed by its President and its Corporate seal to be hereunto affixed, as hereinafter attested, all as of the day and year first above written.

ATTEST:


Rachel M. Sadoff, Clerk

BREVARD COUNTY, FLORIDA

By:



Frank Abbate, County Manager

As Approved by the Board: September 20, 2022

This Date of

5/26/23

Reviewed for legal form and content:


Justin E. Caron, Esq, Assistant County Attorney

CONTRACTOR:

ATTEST:

(Signature)


John Sullivan
(Name - Printed or Typed)

(Title)

Sullivan Environmental, Inc.

(NAME OF FIRM)


(Authorized Signature)

Kristine Sullivan

(Name - Printed or Typed)

Vice-President

(Title)

(Corporate Seal)