

Board of Public Works and Safety

Agenda Item

Cover Sheet

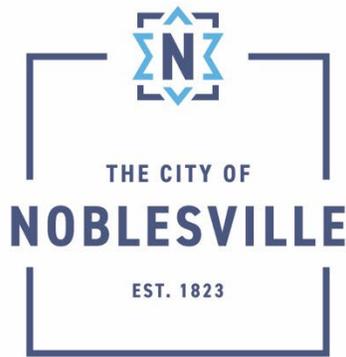
MEETING DATE: April 23, 2024

- Consent Agenda Item
- New Item for Discussion
- Previously Discussed Item
- Miscellaneous

ITEM #: 7

INITIATED BY: Jeffrey Spalding

- Information Attached
- Bring Paperwork from Previous Meeting
- Verbal
- No Paperwork at Time of Packets



TO: Members of the Board of Public Works and Safety
FROM: Jeffrey L. Spalding, CFO & Controller
SUBJECT: Davies Claims Solutions, LLC – Service Agreement
DATE: April 23, 2024

I recommend the Board of Public Works approve the attached renewal new agreement with a current vendor for an existing service to the City.

In 2018, the City switched its approach to property & casualty liability risk management from fully insured (i.e. purchasing traditional insurance policies) to self-insured (i.e. paying most losses directly and purchasing only catastrophic stop loss protection).

Davies Claims Solutions, LLC – Fee Summary					
	2020 Actual	2021 Actual	2022 Actual	2023 Actual	2024 Estimate
Claim Processing Fee - Estimated/Minimum	\$21,485.00	\$15,950.00	\$34,190.00	\$37,481.00	\$38,984.00
Standard Admin Fee	\$8,072.75	\$7,350.00	\$9,979.00	\$10,519.00	\$10,745.00
Claim Processing Fee – Reconciliation	\$16,186.49	\$32,340.00	\$6,037.00	\$24,870.05	TBD ¹
Supplemental Admin Fees	\$4,950.00	\$4,050.00	\$3,600.00	\$4,050.00	TBD ¹
Total Service Fees	\$50,694.24	\$59,690.00	\$53,806.00	\$76,920.05	\$49,729.00
Subrogation Recovery Fee	\$7,948.23	\$13,901.29	\$15,756.67	\$6,501.09	TBD ¹
Overall Total Fees	\$58,642.47	\$73,591.29	\$69,562.67	\$83,421.14	\$49,729.00

1 - The 2024 processing reconciliation, supplemental admin, and subrogation recovery fees will not be available until after the third-party claims administrator (TPA) closes their year-end.

Claim Processing Fee - Estimated/Minimum :

Represents the base, expected service fee cost. Calculated using projections of claim processing activity for the coming year.

The 2024 estimated processing fees have increased from the 2023 level due to:

- The projected Auto/General Liability claims remained at 57 but the cost per claim has increased by \$22 (to \$570) for a total additional cost of \$1,254.



- The projected Law Enforcement Liability claims remained at 4 but the cost per claim has increased by \$24 (to \$629) for a total additional cost of \$96.
- The projected Property Liability claims remained at 9 but the cost per claim has increased by \$17 (to \$442) for a total additional cost of \$153.

Standard Admin Fee:

This fee consists of the following:

- 1) 15% of the Estimated/Minimum Processing Fees (Increased from \$5,622 to \$5,848)
- 2) Systems and Data Processing Fee (\$2,797 for 2024, is the same fee as in 2023)
- 3) CMS (Centers for Medicare and Medicaid Services) Transmission Fee (\$2,100 for 2024, is the same fee as in 2023)

Note: The TPA is responsible for reporting to CMS qualified bodily injury claims for Medicare eligible individuals.

Claim Processing Fee - Reconciliation:

Processing fee charges above the estimated/minimum amount, if necessary, based on actual claim processing activity over the prior 12 months. Also included here are additional fees charged for any claims that entered litigation.

Supplemental Admin Fee:

For claims that remain open/active for more than 12 months, and supplemental admin fee is applied. Currently, that fee is \$450 per claim.

Subrogation Recovery Fee:

The TPA is entitled to retain 15% of all funds recovered for the City via subrogation of losses to other culpable parties. These fee charges are netted against those recovery amounts in the City's Self-Insurance Loss Fund.

A copy of the service agreement is attached for your review.

I am available at your call for any questions about this agreement.

Attachment

JLS/jnt



DAVIES

Davies Claims Solutions, L.L.C.

CLAIMS SERVICE CONTRACT

THIS AGREEMENT is made and entered into with an effective date of January 1, 2024, between **DAVIES CLAIMS SOLUTIONS, L.L.C.**, formed in Delaware, with principal offices at 26 Century Boulevard, Suite NT 350, P.O. Box 305148 Nashville, Tennessee 37214, hereinafter referred to as "Davies", and **CITY OF NOBLESVILLE, IN** with principal offices in Noblesville, IN, hereinafter referred to as "Client".

WITNESS:

WHEREAS, "Davies" is in the claims service business; and

WHEREAS, "Client" desires to contract with "Davies" as its claims service company to service the Automobile Liability, General Liability, Law Enforcement Liability, Public Officials E&O, and Property Liability claims of "Client's" arising out of their facilities located in Noblesville, IN.

NOW, THEREFORE, "Davies" and "Client" contract as follows:

"DAVIES" AGREES:

1. (a) To review all claims and/or losses reported during the term of this Contract which involve Automobile Liability, General Liability, Law Enforcement Liability, Public Officials and E&O claims against "Client".
 - (b) To investigate, adjust, settle, or resist all such losses and/or claims only with specific prior approval of "Client".
 - (c) To report excess claims to "Client's" excess carrier only if "Client" fulfills its obligations under "Client" Agrees Section, 4c.
2. To furnish all claim forms necessary for proper claims administration.
3. To establish claim and/or loss files for each reported claim and/or loss. Such files shall be the exclusive property of "Client". Such files are available for review by "Client" at any reasonable time, with notice.
4. To maintain adequate Automobile Liability, Errors and Omissions, Fidelity Bond, General Liability, and Workers' Compensation insurance coverage.
5. To indemnify, defend and hold harmless "Client" with respect to any claims asserted as a result of any errors, omissions, torts, intentional torts, or other negligence on the part of "Davies" and/or its employees, unless the complained of actions of "Davies" were taken at the specific direction of "Client".

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“CLIENT” AGREES:

1. To make funds available that “Davies” may draw from at any time and from time to time for claim and/or loss payments and for associated allocated expense only with the specific prior approval of “Client”.
2. To pay “Davies” fees in accordance with the Fee Schedule attached to this Contract.
3. To pay “Davies” within thirty (30) days of the effective date of all invoices. All past due invoices are subject to an interest penalty of one and one-half percent (1 1/2%) per month. In the event “Davies” brings any action or proceeding to recover any part or all of an outstanding indebtedness, “Davies” shall be entitled to recover as additional damages any reasonable attorney fees not to exceed twenty percent (20%) of the outstanding indebtedness.
4. (a) To pay all Allocated Loss Expenses in addition to the claim service fee to be paid to “Davies” as prescribed in this Contract.
(b) “Allocated Loss Expenses” shall include but not be limited to attorneys’ fees; experts’ fees (i.e. engineering, physicians, chemists, etc.); fees for independent medical examinations; witnesses’ fees; witnesses’ travel expenses; court reporters’ fees; transcript fees; the cost of obtaining public records; commercial photographers’ fees; automobile appraisal or property appraisal fees; all outside expense items; extraordinary travel expenses incurred by “Davies” at the request of “Client”; and any other similar fees, cost or expenses associated with the investigation, negotiation, settlement or defense of any claim hereunder or as required for the collection of subrogation on behalf of “Client”.
(c) To provide “Davies” with complete copies of all excess policies which apply to the claims reported during the Contract period.
5. To relinquish authority to “Davies” in all matters relating to claims service only with specific prior approval of “Client”.
6. (a) In the event, “Davies”, acting at the specific direction of “Client”, becomes liable to any third party, “Client” agrees to indemnify, defend and hold “Davies” and/or its employees harmless.

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Davies Claims Solutions, L.L.C.

- (b) If “Davies” or any of its employees are named as defendant in any action (i) where the plaintiff’s cause of action involves a claim hereunder and (ii) where there are no allegations of errors, omissions, torts, intentional torts or other negligence on the part of “Davies”, “Client” will assume the defense of the action on behalf of “Davies” and/or its employees and indemnify and hold “Davies” and/or its employees harmless from any judgment rendered as a result of such action.

“DAVIES” AND “CLIENT” MUTUALLY AGREE AS FOLLOWS:

1. The term of this Contract is continuous from its effective date for one (1) year. This Contract may be terminated by either “Davies” or “Client” with cause by providing sixty (60) days’ prior written notice by certified mail.

In the event that this Contract terminates or expires for any reason “Client” shall have the option:

- (i) to have “Davies” handle open files which have been reported for an additional fee based on our prevailing annual rate per file.
 - (ii) to have “Davies” return the files to the client and data converted at “Client’s” expense.
2. This Contract covers Claim Service for “Client” in the United States of America.
3. Gross receipts tax or assessments in those states or jurisdictions where levied shall be in addition to the service fee.
4. In the event any one or more of the provisions of this Contract shall be determined to be invalid or unenforceable by any court or other appropriate authority, the remainder of this Contract shall continue in full force and effect as if said invalid and unenforceable portion had not been included in this Contract.
5. This Contract shall be construed and interpreted in accordance with the laws of the state of Indiana.
6. This Contract represents the entire understanding of “Davies” and “Client” and supersedes all prior oral and written communications between “Davies” and “Client” as to the subject matter. Neither this Contract nor any provisions of it may be amended, modified, or waived except in writing signed by a duly authorized representative of “Davies” and “Client”.

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7. The failure or delay of either "Davies" or "Client" to take action with respect to any failure of the other party to observe or perform any of the terms or provisions of this Contract, or with respect to any default hereunder by such other party, shall not be construed as a waiver or operate as a waiver of any rights or remedies of either "Davies" or "Client" or operate to deprive either "Davies" or "Client" of its right to institute and maintain any action or proceeding which it may deem necessary to protect, assert or enforce any such rights or remedies.
8. To not employ a person who has been employed by the other party at any time during the term of this Contract, unless the person to be employed shall not have been employed by the other party during the immediately preceding six (6) months or unless the hiring party shall have the other party's prior written consent. This provision shall survive the termination of this Contract for a period of one (1) year.
9. During the term of this Contract, "Davies" will store closed files for a period of three (3) years from the date of closure, the date of the last payment of benefits, or the retention requirements of "Client's" carrier. The storage cost is included in the administrative fees. After the three (3) year period, files will either be returned to "Client" or destroyed if permitted by Statute.
- 10 (a) "Client" is responsible for reporting to the Centers for Medicare and Medicaid Services (CMS) qualified bodily injury claims involving Medicare eligible individuals. This is pursuant to the Medicare, Medicaid, and SCHIP Extension Act of 2007.
- (b) "Client" desires for "Davies" to act as "Client's" Reporting Agent (either via third-party contract or independently) and report qualified claims on behalf of "Client" to CMS under the "Client's" RRE ID 53347. "Davies" will act as "Client's" Reporting Agent as long as the client fulfills its obligations under section 10(c) and 10(d) below. During any time the "Client's" obligations are not met, "Davies" is unable to act as the "Client's" Reporting Agent and will not be held liable for any penalties as a result of the inability to report. If not identified as of contract date, an amendment will be created once the "Client" provides this information.
- (c) "Client" will register with CMS for "Davies" or its Reporting Agent to be the "Client's" CMS Account Manager. As the Account Manager, "Davies" (or its

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Reporting Agent) will be responsible for responding to CMS regarding file errors. If "Client" designates another entity as its Account Manager, neither "Davies" nor its Reporting Agent will be responsible for any penalties or fines as a result of the "Client's" Account Manager not sending file errors or other notices timely to "Davies". As of the date of this contract, the "Client" has registered with CMS for their Account Manager to be Ann Massey. If not identified as of contract date, an amendment will be created once the "Client" provides this information.

- (d) "Client" is responsible for promptly notifying "Davies" of any changes to their RRE ID or Account Manager. "Client" is also responsible for maintaining an annual renewal of its RRE ID status and Authorized Representative information with CMS.

IN WITNESS WHEREOF, "Davies" and "Client" have caused this Contract to be executed by the person authorized to act in their respective names.

DAVIES CLAIMS SOLUTIONS, LLC

WITNESS: 

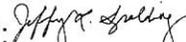
BY: 

TITLE: SR. VP

DATE: 1/2/24

CITY OF NOBLESVILLE, IN

WITNESS:  Kristen Walker

BY:  Jeffrey Spalding

TITLE: CFO/Contoller

DATE: Dec 28, 2023

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates subscribed below.

City of Noblesville

By: 

Date: 04/18/2024

Printed: Chris Jensen

Title: Mayor

**Davies Claims Solutions, L.L.C.
City of Noblesville, IN
One Year Claims Handling
January 1, 2024 to December 31, 2024**

New Claims

Service	Number Of Claimants	Per-Claimant Fee	Total Fee
Liability Claims			
Auto/General Liability – BI/PD & Auto Physical Damage	57	\$570	\$32,490
Law Enforcement Liability	4	\$629	\$2,516
Public Officials E&O	TBD	\$666	TBD
Property	9	\$442	\$3,978
Litigated Liability Claimants	TBD	Base fee + \$450	TBD
Incident Reports ¹	TBD	\$40 Per Report	TBD
Total Annual New Claims Fee			\$38,984
Account Administration Services	Annual	15% claims fee minimum \$2500	\$5,848
Systems and Data Processing	Annual		\$2,797
CMS Transmission Fee (query & submissions)	Annual		\$ 2,100
Total Annual Account Administration Fee			\$10,745
On-Line Access (One User)			No Charge
<i>Additional STARS users</i>	<i>Annual</i>	<i>\$25/user/month</i>	TBD
Total Minimum Fees			\$49,729

¹Recorded in claims system only. Must be specified as “Incident” at time of reporting.

Claims will be handled for **one year from the date the loss is reported to “Davies”** with no additional per-claim fees. Any claim remaining open after 12 months will be subject to an annual fee of \$450 plus systems and administration fees. Any claims that exceed the claim count stated above will be invoiced at the quoted per-claim rate.

Catastrophic Claims: Any event resulting in 10 or more claimants/suffixes will be treated as a catastrophe and billed the quoted per claim rate for the first 10 claimants/suffixes and any claim/suffix over 10 will be billed at a per claim rate of \$350 per claim.

The account administration fee includes:

- Account Management
- New Claim Setup
- Client Meetings
- Excess Reporting
- State Reporting
- Claim File Storage

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At contract conclusion, the following options are available for continued handling of open claims:

- Negotiated annual fee per claim
- Claims returned to client and data converted at "Client's" expense

Additional Services and Fees

Client Claims Data Transmission/Release	\$2,500 Per Release
Carrier Data Transmission	\$400 Per Release
Reports Produced by "Client"	No Charge
Reports Produced by "Davies"	\$50 Per Copy
Systems Training	T&E (\$85 Per Hour)
Customized Programming	T&E (\$180/Hour)
Call Center 24/7 Claims Reporting	\$16 per claim

Invoicing and Payment Terms

Fees will be invoiced at an agreed-upon interval during the calendar year. Fees are payable upon receipt of the invoice. "Davies" reserves the right to charge 1½% per month or the maximum legal rate on unpaid balances after 30 days.

Subrogation Pursuit and Recovery..... 15% of Recovery

Banking

Should the client wish for "Davies" to manage the claims payment account, a setup fee and annual support fee of \$2,500 will apply.

Allocated Loss Adjustment Expense List

As used herein, the term "Allocated Loss Adjustment Expenses" shall include but not be limited to the costs associated with the following:

- Court costs and fees for service of process;
- Attorneys and hearing representatives;
- Independent medical exams and medical records/reports;
- Medical case management services including, but not limited to, medical network providers, rehabilitation counselors, medical management providers, bill re-pricing activities and other related services;
- All outside activities where personal contact, investigation or litigation involvement is necessary;
- Investigation services including background activity checks, surveillance and other similar such services;
- Fraud detection, investigation and related services ("SIU");
- Outside experts and subcontractors;
- Transcripts and public records;
- Depositions, court reporters, video statements, private investigators;

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- Attendance at alternative dispute resolution forums including arbitrations, mediations, hearings or similar such activities or attendance at depositions;
- Expenses chargeable to the defense of a specific claim;
- Protection and pursuit of all third party/recovery rights including second injury recovery claims, indemnification and contribution claims, and subrogation actions;
- Index system filing services;
- State Mandated EDI reporting
- Medical records;
- Medicare set aside fees
- Accident reconstruction;
- Architects, contractors, engineers, chemists;
- Police, fire, coroner, weather or other such reports;
- Property damage appraisals;
- Extraordinary costs for witness statements;
- Pre and post judgment interest paid;
- Other extraordinary expenses including, but not limited to, photocopying, statement transcriptions, photographs, travel, express mail, public records and similar expenses as may be incurred by CONTRACTOR in fulfilling its obligations; and
- Any other similar cost, fee or expense reasonably chargeable to the investigation, negotiation, settlement of defense of a claim

DAVIES CLAIMS SOLUTIONS, LLC

WITNESS: *Kristen Brown*

BY: *Allen Dees*

TITLE: *SR. VP*

DATE: *1/2/24*

CITY OF NOBLESVILLE, IN

WITNESS: *Kristen Walker* Kristen Walker

BY: *Jeffrey Spalding* Jeffrey Spalding

TITLE: *CFO/Contoller*

DATE: *Dec 28, 2023*

Davies updated contract-try again

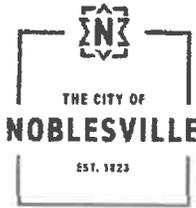
Final Audit Report

2023-12-28

Created:	2023-12-26
By:	Kristen Walker (kristen@walkerprofessional.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAACjN0XI_ErYZqRwvPkzICN-IpBnUYhNcM

"Davies updated contract-try again" History

-  Document created by Kristen Walker (kristen@walkerprofessional.com)
2023-12-26 - 10:18:32 PM GMT - IP address: 184.170.166.150
-  Document e-signed by Kristen Walker (kristen@walkerprofessional.com)
Signature Date: 2023-12-26 - 10:19:48 PM GMT - Time Source: server- IP address: 184.170.166.150
-  Document emailed to Jeff Spalding (jspalding@noblesville.in.us) for signature
2023-12-26 - 10:19:49 PM GMT
-  Email viewed by Jeff Spalding (jspalding@noblesville.in.us)
2023-12-26 - 10:20:15 PM GMT - IP address: 40.94.28.254
-  Document e-signed by Jeff Spalding (jspalding@noblesville.in.us)
Signature Date: 2023-12-28 - 1:53:44 PM GMT - Time Source: server- IP address: 52.245.214.101
-  Agreement completed.
2023-12-28 - 1:53:44 PM GMT



FINANCE & ACCOUNTING

Funding Verification/Encumbrance Request Form

Date to be submitted to BoW/Park Board: 04/23/2024 (put N/A if not submitting to BoW/Park Board)

Vendor name: Davies Claims Solutions, LLC

Vendor Address: 6492 PO Box 973641, Dallas, TX 75373-6491

Brief description of purchase: Claim Processing Fees

- Source of Funding:
- Current Year Operational Budget
 - Subsequent Year Operational Budget¹
 - Funding not yet finalized (attach explanation)²
 - Loan or debt proceeds
 - Non-Appropriated Fund³

Fund #		410
Department #		000
Project # (NA if no project #)		N/A
	Expense Object #	Amount
#1	319.100	\$ 24,864.50
#2		
#3		

- 1) This option may only be selected AFTER the adoption of the subsequent year budget. OFA will create a PO after the start of the next year. If contract details change in between form submission and the start of the year, contact OFA Staff.
- 2) This option may only be selected in unusual circumstances. An additional FVF will need to be submitted to OFA once funding source has been determined. OFA will not create a PO until this follow-up form has been submitted.
- 3) These funds are not appropriated through the annual budget process. They include but are not limited to grant funds and impact fee funds.

Are you requesting that a Purchase Order (PO) be created for this expenditure?

- Yes Select for all purchases/contracts that will not be paid immediately
- No Select ONLY if department plans to initiate payment immediately

The Department certifies that sufficient appropriation authority exists in the stated fund and expense series to obligate the expense for future payment.

Department Director

J. Spalding JMT
(Signature)

Jeffrey L. Spalding 4-1-2024
(Printed Name) (Date)

Please email completed form to OFAbudget@noblesville.in.us

FOR OFFICE OF FINANCE AND ACCOUNTING USE ONLY

OFA Action Taken

- Purchase Order Created
- Reviewed Availability of funds (Contract/Purchase of over \$50k or paid with debt proceeds only)
- No Action Taken (Department should still include this form in purchase/contract approval submission)

OFA Signature Caitlin Moss

PO # (if applicable): 2401166

Comments: *This amount represents one-half of the contracted amount.

Initials: HT Date: 4/2/24

**PURCHASE ORDER
CITY OF NOBLESVILLE
16 SOUTH 10TH STREET STE 270**

INDIANA RETAIL TAX EXEMPT
CERTIFICATE NO. 0031216070010

FEDERAL EXCISE TAX EXEMPT
356001141

**NOBLESVILLE IN 46060
PHONE: 317-776-6328
FAX: 317-776-6369**

PURCHASE ORDER NO. 240166

THIS NUMBER MUST APPEAR ON INVOICES, A/P
VOUCHER, DELIVERY MEMO, PACKING SLIPS,
SHIPPING LABELS AND ANY CORRESPONDENCE.

SHIP TO:

TO
**VENDOR # 6492
DAVIES CLAIMS SOLUTIONS LLC
PO BOX 736491
DALLAS TX 75373-6491**

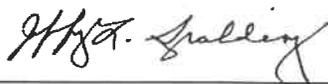
ATTN:

DATE 04/02/2024		DEPARTMENT OFA		SHIP TO ARRIVE BY		
APPROPRIATION NUMBER	QUANTITY	UNIT	DESCRIPTION	PROJECT #	UNIT PRICE	AMOUNT
410000319.100	1.0		CLAIMS PROCESSING FEE		24864.50	24864.50

SHIP VIA	TOTAL 24864.50
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SHIPPING INSTRUCTIONS
 * SHIP PREPAID
 * C.O.D. SHIPMENTS CANNOT BE ACCEPTED
 * PURCHASE ORDER NUMBER MUST APPEAR ON ALL SHIPPING LABELS.
 * THIS ORDER ISSUED IN COMPLIANCE WITH CHAPTER 99, ACTS 1945 AND ACTS AMENDATORY THEREOF AND SUPPLEMENTAL THERETO.

PAYMENT
 * A/P VOUCHER CANNOT BE APPROVED FOR PAYMENT UNLESS THE P.O. NUMBER IS MADE A PART OF THE VOUCHER AND EVERY INVOICE AND VOUCHER HAS THE PROPER SWORN AFFIDAVIT ATTACHED.
 * I HEREBY CERTIFY THAT THERE IS AN UNOBLIGATED BALANCE IN THIS APPROPRIATION SUFFICIENT TO PAY FOR THE ABOVE ORDER.

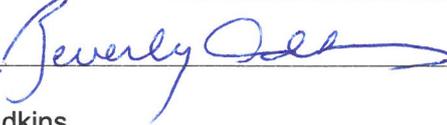
ORDERED BY 
 TITLE _____ CONTROLLER _____

E-Verify Affidavit

Pursuant to Indiana Code 22-5-1.7-11, the Contractor entering into a contract with the City is required to enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify program. The Contractor is not required to verify the work eligibility status of all its newly hired employees through the E-Verify program if the E-Verify program no longer exists.

The undersigned, on behalf of the Contractor, being first duly sworn, deposes and states that the Contractor does not knowingly employ an unauthorized alien. The undersigned further affirms that, prior to entering into its contract with the City, the undersigned Contractor will enroll in and agrees to verify the work eligibility status of all its newly hired employees through the E-Verify program.

(Contractor): Davies Claims Solutions, L.L.C.

By (Written Signature): 

(Printed Name): Beverly Adkins

(Title): President of WC/P&C TPA

Important - Notary Signature and Seal Required in the Space Below

STATE OF Florida

SS:

COUNTY OF Manatee



Subscribed and sworn to before me this 2nd day of April, 20 24.

My commission expires: 09/26/2024 (Signed) Rose Rome

a. Residing in Manatee County, State of Florida

