

Meeting Date
01/27/2015



AGENDA	
Section	New Business
Item No.	<u>VI.C.1</u>

**AGENDA REPORT**  
**BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**

SUBJECT:	Award of Contract for Disaster Debris Removal Management Services RFQ #5-14-09
DEPT/OFFICE:	Central Services/Purchasing Services on behalf of Solid Waste Management Department

Requested Action:  
 It is requested that the Board of County Commissioners (1) accept the selection committee's recommendation regarding the selection of Tetra Tech and authorize the Chairman to execute contract documents necessary to secure services.

Summary Explanation & Background:  
 On May 27, 2014, the Board of County Commissioners approved staffs' request to solicit Request For Qualifications (RFQ) for Disaster Debris Removal Management.  
 Brevard County experienced disasters in 1995, 1999, 2000, 2004, 2005 and 2008. During 2004, three storms made landfall one after the other. This taxed our human resources beyond our ability to respond to our day-to-day work and these major disasters. In view of this history, the Department feels the need to have a contract in place for additional assistance to respond and help manage large disasters as needed. These types of pre-existing disaster management contracts are generally reimbursed from the Federal Emergency Management Agency by at least 75%, 12.5% from the State and 12.5% from local reserves that the Board has approved for disaster recovery.  
 A total of four responses were received by the August 1, 2014 deadline. On September 19, 2014, the Selection Committee ranked, evaluated, and scored responses as follows:

- Leidos/Tetra Tech 1
- Metric Engineering 2
- Phillips & Jordan 2
- ATL Disaster Recovery 4

An agreement was negotiated with Tetra Tech on October 29, 2014.  
 The Department is requesting that the Board accept the selection committee's recommendation of Tetra Tech for Disaster Debris Removal Management Services and authorize Chairman to execute the negotiated agreement.

**Contact:** Teresa Camarata, Central Services Director, 321-637-5492, [Teresa.camarata@brevardcounty.us](mailto:Teresa.camarata@brevardcounty.us)  
 Euripides Rodriguez, Solid Waste Director, 321-633-2042, [Euripides.Rodriguez@brevardcounty.us](mailto:Euripides.Rodriguez@brevardcounty.us)

Exhibits Attached: Contract

Contract /Agreement (If attached): Reviewed by County Attorney Yes  No  PR

County Manager: Stockton Whitten	Assistant County Manager: Mel Scott	Department Director: Teresa Camarata, Central Services Director/X55492 Euripides Rodriguez, Solid Waste Director/X52042
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Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972

January 28, 2015

MEMORANDUM

TO: Teresa Camarata, Central Services Director

RE: Item VI.C.1., Award of Contract for Disaster Debris Removal Management Services RFQ #5-14-09

The Board of County Commissioners, in regular session on January 27, 2015, accepted the Selection Committee's recommendation regarding selection and the award of contract for Disaster Debris Removal Management Services Request for Qualifications (RFQ) #5-14-09 to Tetra Tech, Inc.; and authorized the Chairman to execute the Contract necessary to secure services. Enclosed are two fully-executed Disaster Debris Removal and Recovery Management Services Contracts for your action.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Etheridge, Deputy Clerk

/ds

Encls. (2)

cc: Solid Waste Management Director  
Budget  
Finance

*BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS*

**INITIAL CONTRACT FORM**  
Contract Administration (Administrative Order AO-29)





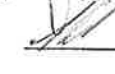
**SECTION 1**

1. Contractor   Bid or Proposal: TETRA TECH, INC.	
2. Fund: 4010 Account #: 352000	3. Division Name: Solid Waste Management Department
4. Contract Description: Agreement for Disaster Debris Removal & Recovery Management Services	
5. Contract Monitor: Gloria J. Harris	7. Mail Stop #: 81
8. Department/Office Director: Euripides Rodriguez	9. Contract Type:
Action Date: 30 days from entry	Action Requirement: Need complete data

**SECTION 11**

*The following departments must approve all CIP and Non-CIP contracts:*

**D E P A R T M E N T    R E V I E W**

<u>County Office</u>	<u>Approval</u>		<u>Initial</u>	<u>Date</u>
	<u>Yes</u>	<u>No</u>		
Gloria J. Harris-User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>		12-19-14
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>		12-19-14
Risk Management	<input checked="" type="checkbox"/>	<input type="checkbox"/>		12/22/14
Gloria J. Harris (Final Review)	<input checked="" type="checkbox"/>	<input type="checkbox"/>		1-5-15
Euripides Rodriguez, Director	<input checked="" type="checkbox"/>	<input type="checkbox"/>		1/8/2015

Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*If any office denies approval, the package will be returned immediately to the User Agency.*

## Disaster Debris Removal & Recovery Management Services

This Agreement, entered into this 27 th day of January, 2015 by and between the Board of County Commissioners of Brevard County, Florida a political subdivision of the State of Florida, hereinafter referred to as "COUNTY" and Tetra Tech, Inc., the successor in interest to the BDR Division of Leidos, Inc., a Delaware corporation authorized to do business in the State of Florida, hereinafter referred to as "CONTRACTOR" located at 2301 Lucien Way, Suite 120, Maitland, FL 32751.

### WITNESSETH

**WHEREAS**, the COUNTY wishes to provide disaster debris collection and disposal monitoring operations on behalf of the COUNTY and Partner Cities; and

**WHEREAS**, CONTRACTOR'S proposal was chosen through the procurement process to provide disaster debris monitoring;

**NOW THEREFORE**, IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, COUNTY and CONTRACTOR agree as follows:

### ARTICLE I - DEFINITIONS AND IDENTIFICATIONS

- 1.1 **Agreement** – means this document, Articles 1 – 9, inclusive. Other terms and conditions are included in the exhibits and documents that are expressly incorporated by reference.
- 1.2 **Board** – The Brevard County Board of County Commissioners.
- 1.3 **Contract Administrator** – The Brevard County Manager, the Director of the Brevard County Solid Waste Management Department, or the designee of such County Manager or Director. The primary responsibilities of the Contract Administrator are to coordinate and communicate with CONTRACTOR and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein.
- 1.4 **County** – The Board as defined in Section 1.2 unless expressly provided otherwise.
- 1.5 **County Attorney** – The chief legal counsel for the COUNTY who directs and supervises the Office of the County Attorney pursuant to Section 4.4 of the Brevard County Charter.
- 1.6 **Project** – The Project consists of the services described in Article 2.
- 1.7 **Task Order** – An enhanced description of a specific task that has been approved by the Contract Administrator and accepted by the CONTRACTOR that supplements the Scope of Services, Exhibit "A", with functional detail and limits on expense and date of completion for that specific task.

## ARTICLE 2 - SCOPE OF SERVICES

- 2.1 CONTRACTOR shall provide all services, materials and equipment to perform the services agreed upon by written task orders executed by both Parties. Those services shall be within the services described in the Brevard County RFQ No. 5-14-09 herein referred to as the "Scope of Services".

No work shall begin nor any cost incurred for any part of this Agreement without an approved/executed Task Order with Notice to Proceed (NTP) issued by Brevard County. The Task Order will describe and define Exhibit "A" Scope of Work items in operational terms and will identify a maximum amount of compensation to the CONTRACTOR for completion of the Task Order.

The Task Order must be approved by the Contract Administrator to be valid. Each Task Order will designate either a not to exceed or time and materials method for compensation and the maximum amount that can be incurred for the specific task. A time and material Task Order will specifically identify and estimate all expenses and time by staff member. Billing for staff time will apply the staff hourly labor rate as identified in Exhibit "B" times the number of hours worked on the task. Expenses will consist of the actual costs as demonstrated by receipts. No expenses or staff charge will be accepted for items not pre-approved within a Task Order.

- 2.2 CONTRACTOR acknowledges and agrees that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement, except ***that any changes to the Scope of Services must be accomplished by a written amendment, executed by the parties in accordance with Section 9.15*** as expressly authorized by the Brevard County Commissioners.
- 2.3 All work will be described by a Task Order form that will be signed by the Contract Administrator and shall describe the extent and limits of each task. No work shall be compensated that is not in accordance with an approved work Task Order. An example time and materials Task Order form is attached as Exhibit "A".

## ARTICLE 3 - TERM AND TIME OF PERFORMANCE

- 3.1 The term of this Agreement shall begin on the date it is fully executed by both parties. The term will be for a period of Five Years (5) with no renewal option.
- 3.2 All duties, obligations and responsibilities of CONTRACTOR required by this Agreement shall be competed no later than the deadlines established by the Contract Administrator. Time shall be deemed to be of the essence in performing the duties, obligations and responsibilities required by this Agreement.

## ARTICLE 4 - COMPENSATION

- 4.1 COUNTY agrees to pay CONTRACTOR, in the manner specified in Section 4.4, as compensation for work actually performed and completed pursuant to this Agreement and as detailed in an approved Task Order Hourly Labor Rates as described in Section 4.2 and to reimburse CONTRACTOR for reimbursables as described in Section 4.3, which amounts shall be accepted by CONTRACTOR as full compensation for all such work.

It is acknowledged and agreed by CONTRACTOR that this amount is the maximum payable and constitutes a limitation upon COUNTY's obligation to compensate CONTRACTOR for its services related to this Agreement. This maximum amount, however, does not constitute a limitation, of any sort, upon CONTRACTOR's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services. Amounts paid to CONTRACTOR to reimburse its expenses must be pre-approved within a Task Order and documented to show actual costs. In the event that additional funds become available to COUNTY for enhancements to the Project, this Agreement may be amended for the task to reflect the addition.

- 4.1.1 CONTRACTOR agrees that, if requested by a Brevard County municipality, CONTRACTOR shall enable the municipality to enter into an agreement for Disaster Debris Monitoring on the same basis as this Agreement.

#### 4.2 SALARY COSTS

The term Salary Costs as used herein shall mean the hourly salary rates as shown on Exhibit "B" (Fee Schedule), attached hereto and made a part hereof, paid to all personnel engaged directly on the Project including, but not limited to, principals, managers, technicians, inspectors, monitors, scientists, analyst and clerks. The salary rates include sick leave, vacation, holiday, unemployment, excise and payroll taxes, contributions for social security, unemployment, compensation insurance, retirement benefits, medical and insurance benefits; as well as, all other direct office expenses.

#### 4.3 REIMBURSABLES

- 4.3.1 The CONTRACTOR shall be paid actual reimbursable expenses for each of its employees for each day worked pursuant to Brevard County Policy BCC-29 "Travel" and Administrative Order AO-21 "Travel" (Exhibit "C"), except as follows:

##### Administrative Order AO-21 "Travel"

#### IV. PER DIEM AND SUBSISTANCE

- A. APPROVAL  
**Does not apply to the CONTRACTOR**

- D. MONETARY ADVANCES PRIOR TO TRAVEL  
**Does not apply to the CONTRACTOR**

#### V. TRAVELERS EXPENSE REIMBURSEMENT REQUIREMENTS

- A. **Tetra Tech, Inc.** employees will be required to submit expenses to **Tetra Tech, Inc.** accounts payable on standard **Tetra Tech, Inc.** expense report forms.

All receipts shall be affixed to these expense reports. **Tetra Tech, Inc.** will provide a copy of these receipts with any reimbursement submitted to the County.

- D. It is anticipated that **Tetra Tech, Inc.** employees will be using personal, rental or company vehicles during the execution of the work. The County will reimburse **Tetra Tech, Inc.** at the following rates:

1. Cost of rental vehicles supplied to employees. This does **NOT** include reimbursement for fuel costs.
2. Mileage will be reimbursed at the County rate, currently \$0.565 cents per mile. This includes reimbursement for fuel costs.

2. **Incidental Expenses**

a (7) **Private Cellular Telephone**

**Tetra Tech, Inc.** will provide cellular phone services as follows:

1. Cellular phones or other communication devices specifically obtained to provide communication for the project will be reimbursed in full by the County which includes charges for air-time and monthly service base charges. These include cellular telephones assigned to **Tetra Tech, Inc.** employees assigned full time to the project and cellular phones provided to non-**Tetra Tech, Inc.** employees.
2. The County will reimburse only project related cellular phone communications charges (air-time) for **Tetra Tech, Inc.** employees not assigned to the project full-time.

**G. Hotel Accommodations**

**Tetra Tech, Inc.** will provide hotel accommodations to its employees at reasonable local rates.

**4.3.2** The COUNTY agrees to reimburse CONTRACTOR for actual expenses incurred beyond those listed as follows:

- a) Identifiable communication expenses approved by Contract Administrator, long distance telephone, courier and express mail between the CONTRACTOR's various permanent offices. The CONTRACTOR's field office at the Project site is not considered a permanent office.  
**Reimbursables covered hereby must have written approval of the Contract Administrator prior to payment of same.**
- b) Cost of printing, reproduction or photography which is required by or of CONTRACTOR to deliver services set forth in this Agreement.  
**Reimbursables covered hereby must have the written approval of the Contract Administrator prior to payment of same.**
- c) Identifiable testing costs pre-authorized in writing by Contract Administrator.
- d) All permit fees paid to regulatory agencies for approvals directly attributable to the Project, pre-authorized in writing by the Contract Administrator.

**These permit fees do not include those permits required for the construction contractor.**

- e) Equipment or other items required to deliver services set forth in this Agreement that is not included in 4.3 above including field office rental, specialized equipment rental or

purchase, equipment purchased for non-Tetra Tech, Inc. employees or other items outlined in where reimbursement is requested will be delivered to the COUNTY upon completion of the project or when the use of the equipment is no longer required, unless the equipment or items are generally considered disposable.

**4.3.3** Reimbursable subcontractor expenses are limited to the items described above when the subcontractor agreement provides for reimbursables expenses.

**4.3.4** It is acknowledged and agreed to by CONTRACTOR that the dollar limitation set forth in Section 4.1 is a limitation upon and describes the maximum extent of, COUNTY's obligation to reimburse CONTRACTOR for direct, non-salary expenses, but does not constitute a limitation, of any sort, upon CONTRACTOR's obligation to incur such expenses in the performance of services hereunder. If COUNTY or Contract Administrator requests CONTRACTOR to incur expenses not contemplated in the amount for Reimbursables, CONTRACTOR shall notify Contract Administrator in writing before incurring such expenses. Any such expenses shall be reviewed and approved by COUNTY prior to incurring such expenses.

#### **4.4 METHOD OF BILLING AND PAYMENT**

**4.4.1** CONTRACTOR may submit invoices for compensation no more often than on a monthly basis, but only after the services for which the invoices are submitted have been completed; however, invoices for partial completion of Task Order(s) may be submitted. An original invoice plus one copy are due within fifteen (15) days of the end of the month except the final invoice which must be received no later than sixty (60) days after this Agreement expires. Invoices shall designate the nature of the services performed and/or the expenses incurred.

**4.4.2** COUNTY shall pay upon receipt of CONTRACTOR's proper invoice, as required by the Brevard County "Prompt Payment of Invoices" Administrative Order #AO-33, as may be amended from time to time. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by Contract Administrator. Payment may be withheld for failure of CONTRACTOR to comply with a term, condition or requirement of this Agreement.

**4.5** Notwithstanding any provision of this Agreement to the contrary, COUNTY may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work which has not been remedied or from lost due to fraud or reasonable evidence indicating fraud by CONTRACTOR or failure to comply with this Agreement. When the above reasons for withholding payment are removed or resolved in a manner satisfactory to Contract Administrator, payment may be made. The amount withheld shall not be subject to payment of interest by COUNTY.

**4.6** Payment will be made to the CONTRACTOR at: Tetra Tech, Inc.  
PO Box 911642  
Denver, CO 80291-1642

## **ARTICLE 5 - INDEMNIFICATION**

- 5.1** CONTRACTOR shall at all times hereafter indemnify, hold harmless the COUNTY, its officers, agents, servants and employees against claims, losses, liabilities and expenditures, including reasonable attorney fees, court costs and expenses, caused by negligent act or omission of the CONTRACTOR, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, demands, or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property.

The provisions of this section shall survive the expiration or earlier termination of this Agreement to the extent considered necessary by the Contract Administrator and County Attorney and sums due CONTRACTOR under this Agreement may be retained by COUNTY until all of the COUNTY's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by COUNTY.

## **ARTICLE 6 - INSURANCE**

- 6.1** To ensure the indemnification obligation contained above, CONTRACTOR shall, at a minimum, provide, pay for and maintain in force at all times during the term of this Agreement (unless otherwise provided), the insurance coverage's set forth in Sections 6.3, 6.4, 6.5 and 6.6, in accordance with the terms and conditions required by this Article. Each insurance policy shall clearly identify the foregoing indemnification as insured.
- 6.2** Said policy or policies shall be issued by approved companies authorized to do business in the State of Florida and having agents upon whom service of process may be made in Brevard County, Florida. CONTRACTOR shall specifically protect COUNTY and the Brevard County Board of County Commissioners by naming COUNTY and the Brevard County Board of County Commissioners as additional insured under the Comprehensive General Liability Policy only.
- 6.3** **COMPREHENSIVE GENERAL LIABILITY INSURANCE**

A comprehensive General Liability Insurance Policy shall be provided which shall contain minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit for bodily injury liability and property damage liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include:

- Premises and/or operations
- Independent contractors
- Products and/or Completed Operations for contracts
- Broad Form Contractual Coverage applicable to this specific Contract, including any hold harmless and/or Indemnification agreement.
- Personal Injury Coverage with Employee and Contractual Exclusions removed, with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

#### **6.4 BUSINESS AUTOMOBILE LIABILITY**

Business Automobile Liability shall be provided with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office and must include:

- Owned Vehicles
- Hired and Non-Owned Vehicles
- Employers' Non-Ownership

#### **6.5 WORKERS' COMPENSATION INSURANCE**

Workers' Compensation insurance must apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(s) must include:

- Employers' Liability with a limit of One Hundred Thousand Dollars (\$100,000) each accident

If any operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremen & Harbor Workers Act and Jones Act.

- 6.6 Professional Liability Insurance with the limits of liability provided by such policy to be no less than One Million Dollars \$1,000,000.

**CONTRACTOR shall notify COUNTY in writing with thirty (30) days of any claims filed or made against the Professional Liability Insurance Policy which would threaten to substantially impair the coverage available for this contract.**

- 6.7 CONTRACTOR shall furnish to the Contract Administrator certified copies of Certificates of Insurance or endorsements evidencing the insurance coverage specified by this Article prior to beginning performance of work under this Agreement.

- 6.8 Coverage is not to cease and is to remain in force (subject to cancellation notice) until all performance required of CONTRACTOR is completed. All policies must be endorsed to provide COUNTY with at least thirty (30) days notice of cancellation and/or restriction. If any of the insurance coverage will expire prior to the completion of the work, copies of renewal policies shall be furnished at least thirty (30) days prior to the date of their expiration.

### **ARTICLE 7 - TERMINATION**

- 7.1 The Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within fourteen (14) calendar days after written notice from the aggrieved party identifying the breach, or for convenience by action of the Board upon not less than thirty (30) day's written notice. This Agreement may also be terminated by Contract Administrator upon such notice as Contract Administrator deems appropriate under the circumstances in the event

Contract Administrator determines that termination is necessary to protect the public health or safety. An erroneous termination for cause shall be considered a termination for convenience.

- 7.2** Termination of this Agreement for cause by COUNTY shall include, but not be limited to, negligent, intentional, or repeated submission for payment of false or incorrect bills or invoices, failure to suitably perform the work, failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement, or multiple breach of this Agreement which has a material adverse effect on the efficient administration of the Project notwithstanding whether any such breach was previously waived or cured.
- 7.3** Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by Contract Administrator which Contract Administrator deems necessary to protect the public health, safety, or welfare may be verbal notice which shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.
- 7.4** In the event this Agreement is terminated for convenience, CONTRACTOR shall be paid for any services properly performed to the date the Agreement is terminated; however, upon being notified of COUNTY's election to terminate, CONTRACTOR shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. The CONTRACTOR acknowledges that specific consideration to the CONTRACTOR has been received for COUNTY's right to terminate this Agreement for convenience.
- 7.5** In the event this Agreement is terminated, any compensation payable by COUNTY shall be withheld until all documents are provided to COUNTY pursuant to Section 9.1 of Article 9.

#### **ARTICLE 8 - EEO COMPLIANCE**

- 8.1** CONTRACTOR shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement.

CONTRACTOR shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by COUNTY, including Titles I and II of the ADA (regarding non-discrimination on the basis of disability) and all applicable regulations, guidelines and standards. In addition, CONTRACTOR shall take affirmative steps to ensure non-discrimination in employment against disabled persons.

- 8.2** CONTRACTOR's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery. CONTRACTOR shall not engage in or commit any discriminatory practice.
- 8.3** By execution of this Agreement, CONTRACTOR represents and COUNTY hereby materially relies on such representation in entering into this Agreement, that it has not been placed on the discriminatory vendor list as provided in (Section 287.134, Florida Statutes). An untrue representation of the foregoing shall entitle COUNTY to terminate this Agreement and recover from CONTRACTOR all monies paid by COUNTY pursuant to this Agreement and may result in debarment from COUNTY's competitive procurement activities.

## **ARTICLE 9 - MISCELLANEOUS**

### **9.1 OWNERSHIP OF DOCUMENTS**

Any and all reports, photographs, surveys and other data and documents provided or created in connection with this Agreement are and shall remain the property of COUNTY. In the event of termination of this Agreement, any reports, photographs, surveys and other data and documents prepared by CONTRACTOR, whether finished or unfinished, shall become the property of COUNTY and shall be delivered by CONTRACTOR to the Contract Administrator within seven (7) days of termination of this Agreement by either party. Any compensation due to CONTRACTOR shall be withheld until all documents are received as provided herein.

### **9.2 AUDIT RIGHT AND RETENTION OF RECORDS**

COUNTY shall have the right to audit the books, records and accounts of the CONTRACTOR that are related to this Project. CONTRACTOR shall keep such books, records and accounts as may be necessary in order to record complete and correct entries related to the Project. All books, records and accounts of CONTRACTOR shall be kept in written form or in a form capable of conversion into written form within a reasonable time and upon request to do so, CONTRACTOR shall make same available at no cost to COUNTY in written form. All records, books and accounts related to the performance of this Agreement shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119 Florida Statutes.

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 the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement.

If any audit has been initiated and audit findings have not been resolved at the end of the retention period of three (3) years, whichever is longer, the books, records and accounts shall be retained until resolution of the audit findings. Any incomplete or incorrect entry in such books, records and accounts shall be a basis for COUNTY's disallowance and recovery of any payment upon such entry.

### **9.3 PUBLIC ENTITY CRIME ACT**

CONTRACTOR represents that the execution of this Agreement will not violate the Public Entity Crime Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant, or other provider who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods, services or a contract for the construction or repair of a public building or public work, submit bids on leases of real property, be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with the COUNTY and may not transact any business with COUNTY in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list.

Violation of this section shall result in termination of this Agreement and recovery of all monies paid by COUNTY pursuant to this Agreement and may result in debarment from COUNTY's competitive procurement activities.

#### **9.4 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.

#### **9.5 THIRD PARTY BENEFICIARIES**

Neither CONTRACTOR nor COUNTY intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no party shall be entitled to assert a right or claim against either of them based upon this Agreement.

#### **9.6 NOTICES**

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand delivery with a request for a written receipt of acknowledgment 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:

**FOR BREVARD COUNTY**  
Solid Waste Management Department  
Euripides Rodriguez, Director  
Building A-118  
2725 Judge Fran Jamieson Way  
Viera, FL 32940

**FOR TETRA TECH, INC.**  
Betty Kamara, Contracts Administrator  
2301 Lucien Way, Suite 120  
Maitland, FL 32751

#### **9.7 ASSIGNMENT AND PERFORMANCE**

Neither this Agreement nor any interest herein shall be assigned, transferred or encumbered by either party. In addition, CONTRACTOR shall not subcontract any portion of the work required by this Agreement unless approved in writing by Contract Administrator.

CONTRACTOR represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

CONTRACTOR shall perform its duties, obligations and services under this Agreement in a skillful and respectable manner. The quality of CONTRACTOR's performance and all interim and

final product(s) provided to or on behalf of COUNTY shall be comparable to the best local and national standards.

#### **9.8 CONFLICTS**

Neither CONTRACTOR nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CONTRACTOR's loyal and conscientious exercise of judgment and care 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 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 contract, to comply with the provisions of this section to the same extent as CONTRACTOR.

#### **9.9 MATERIALITY AND WAIVER OF BREACH**

COUNTY and CONTRACTOR agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and therefore, is a material term hereof.

COUNTY's 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.

#### **9.10 COMPLIANCE WITH LAWS**

CONTRACTOR shall comply with all federal, state and local laws, codes, ordinances, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

This includes the Florida Department of Transportation Required Contract Provisions for Federal-Aid "FHWA-1273" as Exhibit "D" attached hereto.

#### **9.11 SEVERENCE**

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless COUNTY or CONTRACTOR elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

**9.12 JOINT PREPARATION**

The parties acknowledge that they have sought and received whatever competent advice and counsel necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

**9.13 PRIORITY OF PROVISIONS**

If there is a conflict of inconsistency between any terms, statement, requirement or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement or provision of Articles 1-9 of this Agreement, the term, statement, requirement or provision contained in Articles 1-9 shall prevail and be given effect.

**9.14 ATTORNEY'S FEES, JURISDICTION, VENUE, WAIVER OF JURY TRIAL**

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. In the event of any legal action to enforce the terms of this Agreement each party shall bear its own attorney's fees and costs. Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida. 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.

**9.15 AMENDMENTS**

No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and CONTRACTOR.

**9.16 PRIOR AGREEMENTS**

This document represents the full 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.

**9.17 DRUG-FREE WORKPLACE**

It is a requirement of COUNTY that it enter into contracts only with firms that certify the establishment of a drug-free work place in accordance with Florida Statutes, Section 287.087. Execution of this Agreement by CONTRACTOR shall serve as CONTRACTOR's required certification that it either has or that it will establish a drug-free work place in accordance with Florida Statutes, Section 287.087.

**9.18 HIPAA COMPLIANCE**

It is expressly understood by the parties that COUNTY personnel and/or their agents have access to protected health information (hereinafter known as "PHI") that is subject to the requirements of 45 CFR 164.502 and related regulations. In the event CONTRACTOR is considered by COUNTY to be a covered entity or business associate and/or is required to comply with the Health Insurance Portability and Accountability Act of 1996, (hereinafter known as "HIPAA"), CONTRACTOR shall fully protect individually identifiable health information as required by HIPAA and, if requested by COUNTY, shall execute a Business Associate Agreement for the purpose of complying with HIPAA. Where required, CONTRACTOR shall handle and secure such PHI in compliance with HIPAA and its related regulations and, if required by HIPAA or other laws include in its "Notice of Privacy Practices" notice of CONTRACTOR's and COUNTY's uses of client's PHI. The requirement to comply with this provision and HIPAA shall survive the expiration or earlier termination of this Agreement.

**9.19 NO INTEREST**

Any monies which are the subject of a dispute regarding this Agreement and which are not paid by COUNTY when claimed to be due shall not be subject to interest. All requirements inconsistent with this provision are hereby waived by CONTRACTOR.

**9.20 INCORPORATION BY REFERENCE**

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The attached Exhibits "A" "B" "C" and "D" are incorporated into and made a part of this Agreement.

**9.21 REPRESENTATION OF AUTHORITY**

Each individual executing this Agreement on behalf of a party hereto does hereby represent and warrant that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party.

**9.22 CONTINGENCY FEE**

CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONTRACTOR, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, COUNTY shall have the right to terminate this Agreement without liability at its discretion, or to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

**9.23 MULTIPLE ORIGINALS**

Multiple copies of this Agreement may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

(The remainder of this page is intentionally left blank)

V I C I

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first above written.

ATTEST:

  
\_\_\_\_\_  
Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

  
\_\_\_\_\_  
Robin Fisher, Chairman

As approved by the Board on 1-27-15

Reviewed for Legal form and Content:

  
\_\_\_\_\_  
Christine Lepore, Assistant County Attorney

WITNESS:

  
\_\_\_\_\_  
Signature

Betty Kamara  
\_\_\_\_\_  
Printed or typed

Contracts Administrator  
\_\_\_\_\_  
Title

TETRA TECH, INC.

  
\_\_\_\_\_  
Signature

Jonathan Burgiel  
\_\_\_\_\_  
Name (typed or printed)

Vice President/Operations  
\_\_\_\_\_  
Title

2301 Lucien Way, Suite 120  
\_\_\_\_\_  
Mailing Address

Maitland, FL 32751  
\_\_\_\_\_  
City, State Zip

321.441.8518 | 407.803.2551  
\_\_\_\_\_  
Area Code/Telephone Number