



AGENDA REPORT
August 14, 2018

**Permission to Participate in FEMA Pilot Program for Public Assistance
Alternative Procedures for Direct Administrative Costs (PAAP DAC) and
Advertise Request for Proposals for Disaster Reimbursement Consultant
Services**

SUBJECT:

Permission to Participate in FEMA Pilot Program for Public Assistance Alternative Procedures for Direct Administrative Costs (PAAP DAC) and Advertise Request for Proposals for Disaster Reimbursement Consultant Services

FISCAL IMPACT:

Currently, the PAAP DAC program will reimburse costs associated with disaster recovery consultant services. Costs associated with such consulting services will be initially funded through a loan from the Risk Management Property/Casualty fund, which are expected to be paid back upon receipt of federal and state reimbursements. Total costs associated with Hurricane Irma are estimated at \$41.6 million. Participation in the pilot DAC program will result in approximately \$1.6M - \$2.1M in reimbursement for administrative costs. The selection committee will negotiate a scope and fee structure that will incentivize the consultant to achieve timely closeout while still providing reimbursements to departments for their associated administrative costs. Excess funds will be allocated to the most cost-effective hazard mitigation activities to reduce the risk of damage in future disasters.

DEPT/OFFICE:

Budget

REQUESTED ACTION:

It is requested that the Board of County Commissioners

1. Authorize participation in FEMA Pilot Program for Public Assistance Alternative Procedures for Direct Administrative Costs (PAAP DAC)
2. Approve the development and advertisement of a Request for Proposal for disaster reimbursement consultant services, appoint a selection and negotiation committee consisting of representatives from the Budget Office, Public Safety Group, and Risk Management
3. Authorize the Chair to execute the associated agreements to items 1 and 2 upon approval by Risk Management and the County Attorney's Office
4. Authorize the County Manager to approve related budget change requests.

SUMMARY EXPLANATION and BACKGROUND:

On June 12, 2018, the Federal Emergency Management Agency (FEMA) released a policy for PAAP DAC, which allows subrecipients to receive a fixed estimated Direct Administrative Costs (DAC) award, calculated as a flat percentage of eligible emergency and permanent work projects. This fixed DAC award is 4% of eligible project costs (prior to reductions for insurance proceeds), and includes an incentive of 1% for timely closeout in accordance with PAAP DAC Section VIII E, for a total of 5% DAC allowance per project.

The DAC allowance under this program is substantially higher than what has been claimed by Brevard County for prior storms. For Hurricane Matthew, DAC charges averaged 0.29% for all projects, with the highest administrative costs at 2.14% for debris removal. Participation in this program will allow additional resources for the timely submittal and closeout of Hurricane Irma projects, as well as any future disasters, and will potentially provide for excess funds to be used for hazard mitigation activities.

In order to facilitate this program, permission is being requested to issue a Request for Proposal (RFP) for disaster recovery consultant services to accelerate efforts to receive reimbursement from state and federal agencies after the occurrence of a disaster. Through research and discussions with other Florida counties, it has been established that many counties are utilizing consultants to facilitate the FEMA disaster recovery process.

The objective of this RFP is to maximize financial support and claim reimbursements by retaining a qualified consultant to perform services in support the Public Assistance (PA) reimbursement process. The scope of this contract will include providing technical assistance related to PA financial management, preparing correspondence to state and federal agencies, participating in damage assessments and site visits, assisting in the preparation of project worksheets, developing standardized reporting and documentation systems, assisting in financial tracking and management, preparing closeout packages, reconciliations, final inspections and audits. The Budget Office will provide oversight to include contract monitoring, coordination between departments, and assisting in financial tracking.

CLERK TO THE BOARD INSTRUCTIONS:

ATTACHMENTS:

Description

- **DAC Pilot Policy**



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

August 15, 2018

M E M O R A N D U M

TO: Jill Hayes, Budget Office Director

RE: Item F.13., Permission to Participate in Federal Emergency Management Agency (FEMA) Pilot Program for Public Assistance Alternative Procedures for Direct Administrative Costs (PAAP DAC); and Advertise Request for Proposals (RFP) for Disaster Reimbursement Consultant Services

The Board of County Commissioners, in regular session on August 14, 2018, authorized participation in FEMA Pilot Program for Public Assistance Alternative Procedures for Director Administrative Costs (PAAP DAC); approved the development and advertisement of a Request for Proposals (RFP) for disaster reimbursement consultant services; appointed a Selection and Negotiation Committee consisting of representatives from the Budget Office, Public Safety Group, and Risk Management; authorized the Chair to execute the associated agreement to Items 1 and 2, upon approval by Risk Management and the County Attorney's Office; and authorized the County Manager to approve related budget change requests. Enclosed is the executed FEMA Recovery Policy.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

Encl. (1)

cc: County Manager
Central Services Director
Committee Members

**DISASTER REIMBURSEMENT CONSULTANT SERVICES
P-1-18-21**

DISASTER REIMBURSEMENT CONSULTANT SERVICES RFP DRAFT CONTRACT

PROFESSIONAL SERVICE AGREEMENT BETWEEN

**TETRA TECH, INC.
and
BREVARD COUNTY**

THIS CONTRACT is made this 21st day of November, 2018, by and between the Brevard County Board of County Commissioners, a political subdivision of the State of Florida (hereinafter referred as "County"), whose address is 2725 Fran Jamieson Way, Viera, FL 32940, and Tetra Tech, Inc., (hereinafter referred as the "Consultant").

WHEREAS, the County has need of professional services to assist the County in the receiving maximum reimbursement from all available sources in response to declared disasters; and

WHEREAS, the awarded consultant shall be chosen on the basis of firm's organization, professional experience, assigned team members, financial stability and price schedule, and other appropriate characteristics desired to serve as the selected consultant.

**ARTICLE I
GENERAL PROVISIONS**

1.1 Wherever used in any of the Contract Documents, the meaning shall be given to the terms herein defined: The term "Agreement" or "Contract" shall be used interchangeably and shall refer to the Contract Documents.

The term "County" means Brevard County, a political subdivision of the State of Florida, its elected officials, agents and employees.

The term "Consultant" means Tetra Tech, Inc., its consulting principal, Johnathan Burgiel, and its officers, agents and employees.

The term "Contract Documents" includes this Contract, change orders, and insurance policies called for herein.

The term "day" as used herein shall mean a calendar day, unless the context specifically indicates to the contrary.

The "Effective Date" shall be the date on which the last signatory hereto shall execute this Contract, and it shall be the date on which this Contract shall go into effect. The Contract shall not be effective against any party until said date.

A "Public Record" is as described in Section 119.011(12), Florida Statutes.

A "Subconsultant" is a person or entity who has a direct contract with the Consultant to perform any portion of the Work.

"Work" shall include the performance of professional consultation services in the area of Disaster Reimbursement, as more specifically described in Article 2 of this Contract.

1.2 The Consultant shall be available to perform the Work outlined in this Contract for the stated fee arrangement. No prior or present agreements or representations shall be binding upon any of the parties hereto unless incorporated in this Contract. The County's RFP #P-1-18-21 is incorporated herein by reference and shall govern the process.

1.3 The Consultant acknowledges that, prior to execution of this Contract, it has investigated and satisfied itself as to the conditions affecting the Work, including, but not restricted to, the availability of materials and labor, the cost thereof, the requirements to obtain necessary insurance, and the steps necessary to complete the Work within the time set forth herein. The Consultant warrants unto the County that it has the competence and abilities to carefully and faithfully complete the Work within the time set forth herein. The Consultant will perform its services with due and reasonable diligence consistent with sound professional practices.

ARTICLE 2 DESCRIPTION OF WORK TO BE PERFORMED

2.1 The County retains the services of Tetra Tech, Inc., to conduct an effective, prompt, and efficient submission of required documentation to in order for the County to receive all eligible dollars through claiming reimbursement for the financial impacts of disaster recovery under the Brevard County Board of County Commissioners. The Consultant shall be available to provide services consisting of, but not limited to, the tasks.

The project and the tasks to be performed as part of this Work are described below; however, the Work outlined below can be modified by written consent of the parties hereto.

2.3 Consultant's Role and Scope of Work. Upon receipt of the official Notice to Proceed, the Consultant shall schedule with County Contract Administrator a kickoff meeting where Consultant's team will meet County representatives and discuss current means and methods of County's reimbursement process.

Upon notification from County staff of an event which requires Consultant's expertise, Consultant will respond within 48 hours to the County Contract Administrator to begin process.

Upon notification from County staff that recovery efforts have begun, consultant will make consultant's team readily available to County staff.

- a. Develop a strategy to accomplish the timely submission of disaster reimbursement documents that will achieve a timely recoupment of reimbursable funds from federal and insurance sources.
- b. Bi-weekly activity reports summarizing and detailing the progress of the document preparation and reimbursement statuses.
- c. Participate in County Meetings as required, not to exceed 1 per week during recovery process.
- d. Develop tracking system for use with County personnel that allows for efficient tracking of all reimbursable related documents during the process.
- e. Work with County staff on development of any required document templates, as required.
- f. In accordance with federal guidelines and regulations (see FEMA Field Manual), Consultant is responsible for compiling, categorizing, recording, tracking and filing all disaster related costs on approved forms and/or via the FEMA Grants Manager Grant Portal, as appropriate (FEMA completes Project Worksheets based on information submitted) in support of the financial reimbursement process.
- g. Assist County in requesting any available immediate funding or grants. Compile estimates, develop and track plans for cash flow management and disbursements by state, federal, and/or other agencies.
- h. Identify cost effective mitigation measures (Stafford Act)
 - i. Assist County in identifying opportunities for Improved or Alternate Projects, and preparing proposals for same.
 - ii. Identify and resolve other special consideration issues:
 1. Floodplain management
 2. Environmental Issues
 3. Historic preservation
 - iii. Assist County with insurance optimization
 1. Assist County in coordinating the submission of claims through FEMA and commercial property insurance.
 2. Assist County in completing evaluations for insurance purposes.
 3. Assist County in tracking and reconciling insurance payments received (insurance payments are reduced from FEMA reimbursements).

4. Work with insurance carrier(s) to optimize coverage relating to the disaster.
 - i. Provide a means and method for the County to track all reimbursement requests, ensuring the County receives all eligible funds requested for reimbursement. This tracking will be separate from the State's and FEMA's tracking system.
 - j. Prepare required documents for capturing a comprehensive and accurate scope of work to be completed for each project. Provide project engineer estimate and categorize/prioritize projects in a manner that will allow for quick and sufficient reimbursement to the County. Ensure all timing requirements are met (i.e. project must be completed w/in 6 months of declared disaster).
 - k. Provide personnel at any requested meeting where County officials are meeting with state/federal or other agencies that provide funding for disaster recovery and assist with negotiations as needed.
 - l. Assist County purchasing office with scope reviews; preparation of bidding documents, contractor selections ensuring procurement process is in line with requirements of reimbursing agency.
 - m. Support all County agencies, as required, with documentation organization. Ensure all expenses, policies, permits, contracts, exemptions and waivers, bid documents, change orders, compliance monitoring are in accordance with reimbursing agencies requirements.
 - n. Provide clerical support to review and approve payment documentation
 - i. Compile/Summarize all required documentation to allow for a streamlined reporting process to the reimbursing agency, in accordance with their standards. Provide continuous review and monitoring of the FEMA reimbursement process through all steps and provide, as requested, documentation for status updates.
 - o. Provide assistance to any County department that requires assistance with filing a claim for reimbursement.
 - i. Prepare all payment requests in acceptable formats to ensure reimbursement from various agencies, ensuring that all payments are received in a timely fashion.
 - p. Provide schedule/tracking tool to ensure that the County meets all required timelines for prompt reimbursement of disaster funding.
 - q. Provide inspection services
 - i. Assist the County with performing interim inspections to ensure work is progressing timely and all documentation is being maintained.
 - ii. Assist the County with performing final inspections to ensure all required work has been completed in accordance with reimbursing agency requirements.

- r. Provide appeal assistance, as required for any determination made by reimbursing agency that the County disagrees with. Attempt to resolve the claim/dispute on the County's behalf. If unsuccessful in resolving dispute, Consultant shall assist County with any formal appeal and, upon request, provide recommendations for outside counsel for consideration by the County.
- s. Upon County notification of an audit by the reimbursing agency, provide any and all required documentation and personnel to assist County in responding to audit.

ARTICLE 3 PAYMENTS

3.1 Payment for Services.

(a) Invoices will be submitted by the Consultant to the County monthly, during the period in which the consultant is performing duties. The amounts of said payment shall be as specified in Section 3.4 of this Agreement. Payment of each such invoice will be due within the time limits provided for non-construction services in the Florida Prompt Payment Act, Section 218.70 et seq., Florida Statutes.

Without limiting the events for nonpayment, payments may be withheld on account of: (1) defective Work not remedied or Work of inferior quality; (2) billing for a task or cost item not contracted for by the County; (3) failure of the Consultant to complete an obligation under the Contract Documents; (4) Work claimed to have been completed, but which Work has not been properly completed; or (5) Work not completed in a timely manner and for which an extension of time has not been approved by the County. The County shall state in writing the reason for rejecting, in whole or in part, a claim or application for a Certificate of Payment. Pursuant to the time limits in the Florida Prompt Payment Act, the County shall timely pay the compensation due on any amount not in dispute. Any payment or partial payment withheld may be appealed to the Board of County Commissioners for resolution within thirty (30) days after dispatch of the notice of withholding in part or whole of any payment.

(b) Failure on the part of the County to timely issue approval of the invoice, as set forth in this Article, shall entitle the Consultant to payment by the County in the time set forth herein of the full amount of the payment applied for, but in such event, the Consultant's right to collect a full payment, as applied for, shall not be construed to be a certification by the County of the proper performance of any Work or that such Work has been completed.

(c) If the County fails to make any payment due to the Consultant for services not specifically disapproved for payment by the County within forty-five (45) days after the Consultant's transmittal of its invoice therefore, the Consultant may, after giving seven (7) days written notice to the County, suspend services under this Contract until all amounts due hereunder are paid in full.

(d) In the event any invoice or any portion thereof remains unpaid for more than sixty (60) days, or such time limit as may be extended by the Florida Prompt Payment Act, following the invoice date, the Consultant may initiate legal proceedings to collect the same and recover accrued interest, in addition to all amounts due and payable.

3.2 Sales tax. To the extent permitted by law, the County is exempted from payment of certain taxes, including, but not limited to, Florida state sales and use taxes and Federal Excise tax. The Consultant, however, shall not be exempted from paying Florida state sales and use taxes to the appropriate governmental agencies or for payment by the Consultant to suppliers for taxes on materials used to fulfill its contractual obligations with the County. The Consultant shall not use the County's exemption number in securing such materials. The Consultant shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Agreement.

3.3 Pledge of County's credit. The Consultant shall not pledge the County's credit or make the County a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness.

3.4 Compensation. The County agrees to pay the Consultant for professional services on a total hourly rate to be determined based on the attached rate schedule for each task order issued under this contract per hour of service provided to the County. Upon notification of services required, Consultant will provide a good faith estimate of hours required for services requested. Consultant shall notify County monthly how many hours were expended that month and how many hours remain on contract. Work shall be divided among the categories described in paragraph 2.3 above, and paid as follows: County will reimburse consultant based upon Consultant submitted, County approved invoices for hours worked that month.

3.5 Items Supplied and Extra Work.

If, during the progress of the study and issuance of the report, the County requests the Consultant to perform additional services other than those defined in this Contract, payment for such work shall be negotiated prior to commencement of the work.

3.6 Defective Work. Any costs caused by defective or ill-timed work shall be borne by the party responsible therefore.

ARTICLE 4 GENERAL CONDITIONS

4.1 Subject to a right of appeal to the Board of County Commissioners, the County's Manager, or designee will have authority to reject Work that does not conform to the Contract Documents.

4.2 The Work of a professional nature under this Contract shall be performed by providing consulting services for disaster reimbursement by state and federal agencies in accordance with the Scope of Services outlined in Request for Proposal P-1-18-21; Disaster Reimbursement Consultant Services, attached hereto.

4.3 The Consultant shall supervise and direct the Work, using his/her best skill and attention, and he/she shall be solely responsible for all maintenance means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract. The Consultant shall at all times enforce strict discipline and good order among his/her employees and shall ensure that employees with the appropriate skills, qualifications, and licenses (if required by appropriate governmental regulatory authorities) are assigned to each task to complete the Work. The Consultant shall be responsible to the County for the acts and omissions of his/her employees and other persons performing any of the Work, and agrees that specific consideration has been given in this respect.

4.4 The Consultant shall give all notices and comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the Work.

4.5 The Consultant agrees, to the fullest extent permitted by law, to indemnify and hold harmless the County and its independent contractors, officers, agents and employees from and against all claims, damages, losses and expenses, personal injuries (including, but not limited to, death), attorney's fees, court costs, and interest (prejudgment or otherwise), directly or indirectly arising from the negligent acts, errors, omissions, intentional or otherwise, arising out of or resulting from the Consultant's performance of this Contract, including, but not limited to, failing to properly coordinate the activities of the Consultant's agents, servants or employees; failing to properly train employees under the Consultant's control or direction; failing to properly hire or equip employees under the Consultant's control or direction; and, failing to properly supervise employees under the Consultant's control or direction in performance of services under this Contract. The Consultant affirmatively represents that it has received specific consideration from the County for this hold harmless and indemnification provision. The Consultant shall not be liable to the degree or extent of damages, loss, or expenses determined to be the fault of the County.

4.6 The indemnification provided above will obligate the Consultant to defend, at its own expense, or to provide for such defense at the option of the County, of any and all claims of liability, and all suits and actions of every name and description that may be brought against the County that may result from the Work and activities under this Contract, whether the Work be performed by the Consultant or by anyone directly or indirectly employed by the Consultant.

In all events, the County shall be permitted to choose competent legal counsel of its sole choice, the fees for which shall be subject to and included with the indemnification provided for herein.

4.7 Relationship. It is specifically understood and agreed to by and between the parties hereto that the contractual relationship between the County and the Consultant is such that the Consultant is an independent contractor and not an agent of the County.

4.8 The Consultant shall procure and maintain insurance of the types and to the limits specified herein.

The Consultant shall procure and maintain insurance of types and to the limits specified below.

- (a) Coverage. Except as otherwise stated, the amounts and types of insurance shall conform to the following minimum requirements:
 - i) Workers' Compensation: Coverage to apply for all employees at the STATUTORY limits in compliance with applicable state and federal laws; if any operations are to be undertaken on or about navigable waters, coverage must be included for the USA Longshoremen & Harbor Workers Act, and Jones Act; in addition, the policy must include EMPLOYERS LIABILITY for limits of \$100,000/each accident; \$500,000/disease - policy limit; \$100,000/disease - each employee, and a waiver of subrogation in favor of County, its agents, employees and officials.
 - ii) Commercial General Liability: Coverage must be afforded, under a per occurrence form policy, including Premise Operations, Independent Contractors, Products and Completed Operations, Broad Form Property Damage Endorsement, with a Hold Harmless and Named Additional Insured Endorsement in favor of the County for limits not less than \$1,000,000/general aggregate; \$1,000,000/products-completed operations (aggregate); \$1,000,000/personal injury and property damage liability; \$1,000,000/each occurrence; \$50,000/fire damage legal; \$5,000/medical payments.
 - iii) Business Auto Policy: Coverage must be afforded including coverage for all owned vehicles, hired/non-owned vehicles, with an Additional Named Insured Endorsement in favor of the County, for a combined single limit (bodily injury and property damage) of not less than \$1,000,000/combined single limit (bodily limits; injury/property damage); personal injury protection/statutory \$1,000,000 /uninsured/underinsured motorist: \$1,000,000/hired/non-owned auto liability.
 - iv) Professional Liability: Coverage must be afforded in the amount of \$5,000,000 per claim. If such policy is written on a "Claims-made" (rather than "occurrence") basis, continuous coverage shall be maintained in effect from the date of commencement of services to a period of at least four (4) years beyond the termination or completion of services or until expiration of any applicable statute of limitations, whichever is longer.

(b) Certificates of Insurance. Certificates of all insurance required from the Consultant shall be filed with the Brevard County Board of County Commissioners as the Certificate Holder, before operations are commenced. The insurance indicated on the Certificate shall be subject to its approval by Risk Management for adequacy and protection. The certificate will state the types of coverage provided, limits of liability, and expiration dates. Brevard County Board of County Commissioners shall be identified as an Additional Named Insured for each type of coverage required by subsection (a) above. The required certificates of insurance may refer specifically to this Contract and the above sections in accordance with which such insurance is being furnished, and may state that such insurance is as required by such sections of this Contract.

The Consultant shall provide a Certificate of Insurance to the County with a thirty (30) days' written notice of cancellation. In addition, the Brevard County Board of County Commissioners will be shown as Additional Named Insured, with a Hold Harmless Agreement in favor of the County, where applicable. The endorsements adding Brevard County Board of County Commissioners as Additional Named Insured must be attached to the Certificate of Insurance. The certificate should also indicate if coverage is provided under a "claims made" or "per occurrence" form.

If any coverage is provided under a claims made form, the certificate will show a retroactive date, which should be the same date as the Agreement (original date if Contract is renewed) or prior.

If the initial insurance expires prior to the completion of the Work, renewal certificates and/or required copies of policies shall be furnished thirty (30) days prior to the date of their expiration.

ARTICLE 5 SUBCONTRACTS AND ASSIGNMENT

5.1 Subcontracting. The Consultant shall not subcontract any of the work assigned under this contract.

5.2 Neither the County nor the Consultant shall assign this Contract, or the responsibilities and obligations set forth in the Contract Documents. Nothing under this Contract shall be construed to give any rights or benefits in this Contract to anyone other than the County and the Consultant, and all duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of the County and the Consultant and not for the benefit of any other party.

ARTICLE 6 MISCELLANEOUS PROVISIONS

6.1 Governing Law, Venue, and Attorneys' fees. This Contract shall be governed by the laws of the State of Florida. Venue for any legal action by any party to this Agreement to interpret, construe or enforce this Contract shall be in a court of competent jurisdiction in and for Brevard County, Florida. Any trial shall be non-jury. In the event of any legal action to enforce the terms of this Contract, each party shall bear its own attorneys' fees and costs.

6.2 Contact persons.

(a) The County shall designate individuals to act as a representative for the County under this Contract, with the authority to transmit instructions, receive information, and make or interpret the County's decisions. **The person who shall act as the representative for the County with respect to this Contract shall be The County Manager, or designee.** The County may from time to time designate other individuals or delete individuals with the authority to act for the County under this Contract with the authority to transmit instructions, receive information, and make or interpret the County's decisions. All deletions or designation of individuals to serve as a representative shall be given by written notice.

(b) The Consultant's representative shall be Kalindi Fitch or, if necessary, their designees under this Contract with the authority to transmit instructions, receive information, and make or interpret the Consultant's decisions. The Consultant may from time to time designate other individuals or delete individuals with the authority to act for the Consultant under this Contract with the authority to transmit instructions, receive information, and make or interpret the Consultant's decisions. All deletions or designation of individuals to serve as a representative shall be given by written notice.

6.3 Right to Audit Records: In performance of this Contract, the Consultant shall keep books, records, and accounts of all activities related to the Contract, in compliance with generally accepted accounting procedures. All documents, papers, books, records and accounts made or received by the Consultant in conjunction with the Contract and the performance of this Contract shall be open to inspection during regular business hours by an authorized representative of the office and shall be retained by the Consultant for a period of three (3) years after termination of this Contract, unless such records are confidential or exempt from Section 24(a) of Article I of the State Constitution and Chapter 119, Florida Statutes. All records or documents created by Tetra Tech, Inc., or provided to Tetra Tech, Inc., by the County in connection with the activities or services provided by Tetra Tech, Inc., under the terms of this Contract, are public records and Tetra Tech, Inc., agrees to comply with any request for such public records or documents made in accordance with section 119.07 Florida Statutes. If Consultant claims that any record, or information contained therein, is exempt or confidential then Consultant shall provide the County with the specific statutory cite justifying the redaction and/or removal of such qualifying information.

6.4 Notices. All notices, demands, requests, instructions, approvals, and claims shall be in writing. All notices of any type hereunder shall be given by U.S. mail or by hand delivery to an individual authorized to receive mail for the below listed individuals, all to the following individuals at the following locations:

TO THE COUNTY:

Frank Abbate
County Manager
Brevard County
2725 Fran Jamieson Way
Viera, FL 32940

TO THE CONSULTANT:

Betty Kamara
Contracts Administrator
Tetra Tech, Inc.
2301 Lucien Way Suite 120
Maitland, FL 32751

Notice shall be deemed to have been given and received on the date the notice is physically received if given by hand delivery, or if notice is given by first class U.S. mail, postage prepaid, then notice shall be deemed to have been given upon the date said notice was deposited in the U.S. Mail addressed in the manner set forth above. Any party hereto by giving notice in the manner set forth herein may unilaterally change the name of the person to whom notice is to be given or the address at which notice is to be received.

6.5 Consultants' Competitive Negotiation Act Prohibition Against Contingent Fees. As required by Section 287.055(6)(a), Florida Statutes, the Consultant warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Contract, and that he/she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this provision, the County shall have an immediate right to terminate this Agreement without liability and, at the County's discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

6.6 Amendment of Contract. Modifications or changes in this Contract must be in writing and executed by the parties bound to this Contract.

6.7 Severability. If a word, sentence, or paragraph herein shall be declared illegal, unenforceable, or unconstitutional, the said word, sentence, or paragraph shall be severed from this Contract, and this Contract shall be read as if said illegal, unenforceable, or unconstitutional word, sentence, or paragraph did not exist.

6.8 Additional Assurances. The Consultant certifies that:

(a) No principal (which includes officers, directors, or executive) or individual holding a professional license and performing work under this Contract is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any engineering or surveying activity by any Federal, State, or local governmental commission, department, corporation, subdivision, or agency;

(b) No principal (which includes officers, directors, or executive), individual holding a professional license and performing work under this Contract, employee, or agent has employed or otherwise provided compensation to, any employee or officer of the County; and

(c) No principal (which includes officers, directors, or executive), individual holding a professional license and performing work under this Contract, employee, or agent has willfully offered an employee or officer of the County any pecuniary or other benefit with the intent to influence the employee or officer's official action or judgment.

6.9 Attachments to Contract. The items listed below are hereby attached to this contract and included as part of the contract:

Tetra Tech, Inc., proposal response

Request for Proposal P-1-18-21 Scope of Services, Sections 1, 2, and 3 and all Attachments, attached thereto

6.10 Compliance with Applicable Laws. It shall be the Consultant's responsibility to be aware of and comply with all federal, state and local laws. Consultant will not discriminate based on race, color, sex, disability, religion, familial status or national origin in accordance with Federal Regulations found at 24 CFR 100-146 and State Law FS 760. In accordance with the ADA of 1990 ("ADA"), Consultant will not discriminate against qualified individuals with disabilities. In addition, it is understood that public funding used to pay Consultant for the Work may result in a determination that the Consultant is either directly or indirectly also subject to Title II of the ADA and that Consultant agrees to ensure compliance with all applicable ADA requirements. Consultant specifically agrees that any documents provided to the County during the course of completing the Work assigned will be compliant with WCAG 2.1 standards.

ARTICLE 7 ENFORCEMENT

7.1 Enforcement of this Contract may be by the Consultant or the County and may be accomplished by any proceeding at law or in equity against any person or person violating or attempting to violate any provision hereof, either to restrain a violation or to recover damages. Failure to enforce any covenant or provision herein contained shall in no event be deemed a waiver of the right to do so thereafter. The County shall not be obligated or bound to enforce any of the covenants or provisions herein or be liable to or for any person or persons for

non-enforcement. Further, this provision shall not act to pledge ad valorem taxes or to otherwise pledge the County sources of revenue.

ARTICLE 8 TERMINATION OF THE CONTRACT

8.1 Termination Without Cause. The County may terminate this Contract and all work connected with the Contract without cause upon thirty (30) days written notice. The obligation to provide additional services under this Contract may be terminated by the County upon thirty (30) days written notice.

8.2 Termination For Cause by the County. If Consultant fails or refuses to perform any of the provisions of this Contract or otherwise fails to timely satisfy the provisions of this Contract. The County shall have the option to terminate the entire Contract, or such part of the Contract upon thirty (30) days written notice.

8.3 Termination for Cause by the Consultant. If the County fails or refuses to perform any of the provisions of this Contract or otherwise fails to timely satisfy the provisions of this Contract, the Consultant shall have the option to terminate the entire Contract, or such part of the Contract upon ninety (90) days written notice.

8.4 Payment Upon Termination. On termination of this Contract for any reason, the County shall pay the Consultant, as full payment for all services performed, sums due and owing to the Consultant for payment of all work completed to the termination date provided in this Contract. Any payment due shall be subject to the Consultant supplying the County with detailed time sheets setting forth the task completed, by whom the task was completed, the time to complete the task, and the rate of compensation required for completion of the task. Tasks shall include individual work items completed, e.g. - phone call made, letter prepared, etc., and note phases of work or sub phases of work. All work performed to date shall thereafter be made available to the County. The County shall not be responsible for paying new costs incurred by the Consultant after the notice of termination has been received.

8.5 The Consultant hereby warrants and guarantees unto the County that it has not filed for bankruptcy or is subject to appointment of a receiver as of the Effective Date hereof. If the Consultant has filed for or files for bankruptcy, should be adjudged bankrupt, is subject to appointment of a receiver, or makes a general assignment for the benefit of creditors, or if the Consultant repeatedly or persistently refuses or fails to supply enough properly skilled workers or proper materials, or if the Consultant refuses to and fails to observe or perform any provisions of the Contract, or persistently fails to observe or disregards the instructions of the County Attorney, or is otherwise guilty of a violation of any provision of the Contract Documents, the County, upon not less than five (5) days written notice to the Consultant, without prejudice to other remedies or rights that the County may have, may terminate the Consultant's right to proceed with the Work and take over and prosecute the same to completion. All warranties,

guarantees, and requirements to make good on all Work completed or insurance shall survive the completion of the Work.

8.6 Continuation of this Contract is contingent on the continued management of Tetra Tech, Inc., and their position as the project manager for this Contract for Disaster Reimbursement. The County reserves the right to terminate this Contract if there is a change in the principals of the corporation.

8.7 No Waiver. Failure of the County to insist upon performance within any time period, or upon a proper level or quality of performance, shall not act as a waiver of the County's right to later claim a failure to perform on the part of the Consultant.

8.8 After receipt of a termination notice and except as otherwise directed by the County, the Consultant shall:

- (a) Stop Work on the date and to the extent specified.
- (b) Terminate and settle all orders and subcontracts relating to the performance of the terminated Work.
- (c) Transfer all work documents in process, completed work, and other materials related to the terminated Work to the County.
- (d) Continue and complete all parts of the Work that have not been terminated.

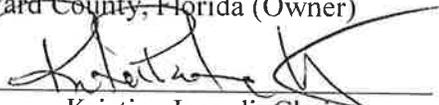
IN WITNESS WHEREOF, this Contract is entered into as of the day and year first written above.

CONSULTANT:

By: Jonathan Burgiel
Business Unit President



Scott Ellis, Clerk

Board of County Commissioners of
Brevard County, Florida (Owner)
By: 
Kristine Isnardi, Chair

Date: December 4, 2018

As approved by the Board on: _____

Seal

Current as of 1-9-17

2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II, Required Contract Clauses

Requirements under the Uniform Rules. A non-Federal entity's contracts must contain the applicable contract clauses described in Appendix II to the Uniform Rules (Contract Provisions for non-Federal Entity Contracts Under Federal Awards), which are set forth below. 2 C.F.R. § 200.326. For some of the required clauses we have included sample language or a reference a non-Federal entity can go to in order to find sample language. Please be aware that this is sample language only and that the non-Federal entity alone is responsible ensuring that all language included in their contracts meets the requirements of 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II. We do not include sample language for certain required clauses (remedies, termination for cause and convenience, changes) as these must necessarily be written based on the non-Federal entity's own procedures in that area.

1. Remedies.

- a. Standard: Contracts for more than the simplified acquisition threshold (\$150,000) 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. See 2 C.F.R. Part 200, Appendix II, ¶ A.
- b. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

2. Termination for Cause and Convenience.

- a. 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. See 2 C.F.R. Part 200, Appendix II, ¶ B.
- b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

3. Equal Employment Opportunity.

- a. Standard. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. 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 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, ¶ C.
- b. Key Definitions.

- (1) Federally Assisted Construction Contract. The regulation at 41 C.F.R. § 60-1.3 defines a “federally assisted construction contract” as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.
 - (2) Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.
- c. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.
- d. The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause:
- “During the performance of this contract, the contractor agrees as follows:
- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 - (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
 - (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section,

and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States."

4. Davis Bacon Act and Copeland Anti-Kickback Act.

- a. Applicability of Davis-Bacon Act. The Davis-Bacon Act only applies to the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. **It does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.**
- b. 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 at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction)). See 2 C.F.R. Part 200, Appendix II, ¶ D.

- c. 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.
- d. 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.
- e. In contracts subject to the Davis-Bacon Act, 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 at 29 C.F.R. 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 Copeland Anti-Kickback 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 FEMA.
- f. The regulation at 29 C.F.R. § 5.5(a) does provide the required contract clause that applies to compliance with both the Davis-Bacon and Copeland Acts. However, as discussed in the previous subsection, the Davis-Bacon Act does not apply to Public Assistance recipients and subrecipients. **In situations where the Davis-Bacon Act does not apply, neither does the Copeland "Anti-Kickback Act."** However, for purposes of grant programs where both clauses do apply, FEMA requires the following contract clause:

"Compliance with the Copeland "Anti-Kickback" Act.

- (1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- (2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

5. Contract Work Hours and Safety Standards Act.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Where applicable (see 40 U.S.C. § 3701), 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 at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶ E.
- c. Under 40 U.S.C. § 3702, 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.
- d. 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 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.
- e. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

“Compliance with the Contract Work Hours and Safety Standards Act.

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work

done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

6. Rights to Inventions Made Under a Contract or Agreement.

- a. Stafford Act Disaster Grants. This requirement **does not apply to the Public Assistance**, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”
- b. If the FEMA award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity 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 non-Federal entity must comply with the requirements of 37 C.F.R. 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

FEMA. See 2 C.F.R. Part 200, Appendix II, ¶ F.

- c. The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

7. Clean Air Act and the Federal Water Pollution Control Act. Contracts of amounts in excess of \$150,000 must contain a provision that requires the contractor 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 FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, ¶ G.

- a. The following provides a sample contract clause concerning compliance for contracts of amounts in excess of \$150,000:

“Clean Air Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal

government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.”

8. Debarment and Suspension.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Non-federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security’s regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).
- c. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II, ¶ H; and *Procurement Guidance for Recipients and Subrecipients Under 2 C.F.R. Part 200 (Uniform Rules): Supplement to the Public Assistance Procurement Disaster Assistance Team (PDAT) Field Manual* Chapter IV, ¶ 6.d, and Appendix C, ¶ 2 [hereinafter *PDAT Supplement*]. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that 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. SAM exclusions can be accessed at www.sam.gov. See 2 C.F.R. § 180.530; *PDAT Supplement*, Chapter IV, ¶ 6.d and Appendix C, ¶ 2.
- d. In general, an “excluded” party cannot receive a Federal grant award or a contract within the meaning of a “covered transaction,” to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a “covered transaction,” which is any nonprocurement transaction (unless excepted) at either a “primary” or “secondary” tier. Although “covered transactions” do not include contracts awarded by the Federal Government for purposes of the nonprocurement common rule and DHS’s implementing regulations, it does include some contracts awarded by recipients and subrecipient.
- e. Specifically, a covered transaction includes the following contracts for goods or services:

- (1) The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.
 - (2) The contract requires the approval of FEMA, regardless of amount.
 - (3) The contract is for federally-required audit services.
 - (4) A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of \$25,000.
- d. The following provides a debarment and suspension clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified:

“Suspension and Debarment

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by (insert name of subrecipient). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

9. Byrd Anti-Lobbying Amendment.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Contractors that apply or bid for an award of \$100,000 or more must file the required certification. See 2 C.F.R. Part 200, Appendix II, ¶ I; 44 C.F.R. Part 18; *PDAT Supplement*, Chapter IV, 6.c; Appendix C, ¶ 4.
- c. 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. See *PDAT Supplement*, Chapter IV, ¶ 6.c and Appendix C, ¶ 4.

d. The following provides a Byrd Anti-Lobbying contract 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.”

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

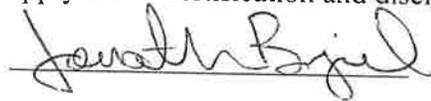
1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
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 Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, Tetra Tech, Inc., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.



Signature of Contractor's Authorized Official

Jonathan Burgiel, Business Unit President

Name and Title of Contractor's Authorized Official

November 30, 2018

Date"

10. Procurement of Recovered Materials.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). See 2 C.F.R. Part 200, Appendix II, ¶ J; 2 C.F.R. § 200.322; *PDAT Supplement*, Chapter V, ¶ 7.
- c. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of

competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- d. The following provides the clause that a state agency or agency of a political subdivision of a state and its contractors can include in contracts meeting the above contract thresholds:

“(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

(i) Competitively within a timeframe providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(2) Information about this requirement, along with the list of EPA-designate items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.”

11. Additional FEMA Requirements.

- a. The Uniform Rules authorize FEMA to require additional provisions for non-Federal entity contracts. FEMA, pursuant to this authority, requires or recommends the following:

b. Changes.

To be eligible for FEMA assistance under the non-Federal entity’s FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

c. Access to Records.

All non-Federal entities must place into their contracts a provision that all contractors and their successors, transferees, assignees, and subcontractors acknowledge and

agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities, and staff. See DHS Standard Terms and Conditions, v 3.0, ¶ XXVI (2013).

d. The following provides a contract clause regarding access to records:

“Access to Records. The following access to records requirements apply to this contract:

(1) The contractor agrees to provide (insert name of state agency or local or Indian tribal government), (insert name of recipient), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.”

12. DHS Seal, Logo, and Flags.

- a. All non-Federal entities must place in their contracts a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. See DHS Standard Terms and Conditions, v 3.0, ¶ XXV (2013).
- b. The following provides a contract clause regarding DHS Seal, Logo, and Flags: “The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.”

13. Compliance with Federal Law, Regulations, and Executive Orders.

- a. All non-Federal entities must place into their contracts an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable federal law, regulations, executive orders, and FEMA policies, procedures, and directives.
- b. The following provides a contract clause regarding Compliance with Federal Law, Regulations, and Executive Orders: “This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor

will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.”

14. No Obligation by Federal Government.

- a. The non-Federal entity must include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.
- b. The following provides a contract clause regarding no obligation by the Federal Government: “The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”

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

- a. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.
- b. The following provides a contract clause regarding Fraud and False or Fraudulent or Related Acts: “The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor’s actions pertaining to this contract.”



FEMA

RECOVERY POLICY

I. TITLE: Public Assistance Alternative Procedures for Direct Administrative Costs (Version 1.1)

II. DATE: June 12, 2018

III. POLICY STATEMENT:

This policy supersedes the *Public Assistance Alternative Procedures for Direct Administrative Costs*, dated October 25, 2017. The policy authorizes FEMA to award a fixed estimate project to Subrecipients for Public Assistance (PA) Direct Administrative Costs (DAC). The intent of the policy is to simplify and reduce the administrative burden on FEMA, Recipients, and Subrecipients; incentivize Subrecipients to provide timely and complete information and documentation to FEMA; and incentivize timely submission of projects for closeout. FEMA is implementing this policy as a pilot program.

IV. PURPOSE:

This document defines the policy details and implementation procedures for the *Public Assistance Alternative Procedures for Direct Administrative Costs Pilot Program (DAC Pilot)*. It refines the policy and includes the following additional information and changes based on stakeholder questions and feedback:

- Defines requirements and deadlines for participation;
- Eliminates Project Worksheet (PW) version limitations;
- Calculates the DAC lock-in amount for fixed estimate projects funded under the *Public Assistance Alternative Procedures Pilot Program for Permanent Work (Permanent Work Pilot)* based on the final agreed-upon estimate;
- Adjusts the 90-day deadline to submit small project closeouts;
- Defines the deadlines associated with excess funds;
- Defines the DAC PW Period of Performance (POP);
- Defines the DAC PW cost share;
- Adjusts of the effective date to coincide with the *Public Assistance Program and Policy Guide Version 3.1*; and
- Streamlines and re-organizes language for policy clarity.

V. SCOPE AND AUDIENCE:

The policy is applicable to incidents declared on or after August 23, 2017. It is intended for all personnel involved in the administration of the PA Program.



FEMA

RECOVERY POLICY

VI. AUTHORITY:

Fixed estimate DAC awards are authorized under Stafford Act Section 428(e)(1), *Public Assistance Program Alternative Procedures*. This policy furthers the goals of the alternative procedures as described in Stafford Act Section 428(c).

VII. OBJECTIVES:

- A. To simplify and reduce the administrative burden on FEMA, Recipients, and Subrecipients as it relates to tracking and requesting reimbursement for administrative tasks associated with PWs. This is achieved by consolidating DAC funding into a single Category Z PW to reimburse DAC for all of a Subrecipient's eligible PA projects; allowing Subrecipients to track direct administrative tasks and related costs for all of its PA projects rather than on a project-by-project basis; and making DAC available for Subrecipients to use for any eligible PA project once the DAC PW is obligated.
- B. To incentivize Subrecipients to provide timely and complete information and documentation to FEMA for the purposes of applying for, administering, and closing PA subawards; and to comply with the federal award administrative requirements described in Title 2 Code of Federal Regulations (CFR) Part 200. This is accomplished via the various deadlines associated with the DAC Pilot.
- C. To incentivize timely submission of projects for closeout. This is achieved by the Recipient withholding 1 percent of the DAC allowance until the respective emergency or permanent work PW is submitted to the Recipient for closeout. Once Subrecipients account for all eligible DAC, it may use any remaining funds on the DAC PW for other eligible PA activities pursuant to Stafford Act Section 428(e)(1)(D).

VIII. POLICY:

A. Recipient Participation

1. If the Recipient does not opt to participate for the respective declared incident, Subrecipients may not participate for that declaration. Recipients should make a decision prior to the Applicant Briefing and no later than the first Subrecipient's request to opt in. Once a Recipient has signed the first Subrecipient's agreement to opt in, the Recipient may not opt out.
2. The Recipient may not use the DAC Pilot for DAC related to Subrecipient projects. However, the Recipient may use the DAC Pilot for DAC related to its own projects, such as a PW for operating an Emergency Operations Center.



FEMA

RECOVERY POLICY

3. FEMA will not authorize use of the DAC Pilot on incidents declared prior to August 23, 2017.

B. Subrecipient Participation

1. The DAC Pilot is voluntary. Subrecipients may participate in the DAC Pilot regardless of whether they are participating in either of the PA Alternative Procedures Pilot Programs for Debris Removal or Permanent Work.
2. Subrecipients should inform the Recipient and FEMA of participation within 60 days of the Recovery Scoping Meeting. DAC funding cannot be obligated for any project until the Subrecipient indicates whether or not it is participating in the DAC Pilot. There is an exception in cases where DAC was obligated before the date of this policy version (VI.1). In these cases, if the Subrecipient opts-in, FEMA will de-obligate the DAC on any PW where it was included as a line item and add the respective project's cost into the DAC calculation.
3. If, on or after October 25, 2017, the Subrecipient knows the final DAC costs for any project, it cannot participate in the DAC Pilot (this includes situations where the applicant has either been billed for the final DAC or incurred its final force account DAC even if the costs have not yet been submitted to FEMA).
4. Subrecipients may not select to opt in on an individual project basis. Either the DAC Pilot applies to all of the Subrecipient's projects or the standard DAC policy applies to all of its projects. Subrecipients that elect to participate must include all DAC claims under one consolidated Category Z DAC PW.
5. Subrecipients that elect to participate must sign a written agreement binding them to the provisions of this policy. The agreement is included as Appendix A. Subrecipients may not opt out of the DAC Pilot once the agreement is signed.

C. Fixed Estimate Amount

1. The DAC PW amount is locked-in at 5 percent of the total eligible project costs based on PWs that have been signed and submitted to FEMA within two years of the declaration date (with exception of DAC costs for Permanent Work Pilot projects). When a fixed estimate is developed under the Permanent Work Pilot, FEMA will calculate and lock-in the related DAC amount based on the agreed-upon Permanent Work fixed-estimate amount once the agreed-upon amount is determined irrespective of when it is determined.
2. PWs formulated based on a broad damage description or scope of work due to lack of information or documentation at the time of PW formulation, where the estimate will likely fluctuate significantly (such as for Expedited PWs or PWs that only fund



FEMA

RECOVERY POLICY

architectural and engineering design costs), will require the Subrecipient to provide appropriate documentation to support the project amount prior to calculating the related DAC amount for that project. The documentation must be provided to FEMA prior to the two-year deadline. If not received by the deadline, FEMA will calculate the fixed DAC amount for the respective project based on the amount that is supported with documentation.

3. The 5 percent includes a 1 percent closeout incentive, which is held by the Recipient and deobligated if closeout requirements are not met.
4. The 5 percent calculation is based on the eligible project costs prior to insurance and cost share reductions. The calculation does not include costs for Emergency Work donated resource PWs, unreasonable costs, or costs related to ineligible work or projects (including projects below the minimum PW threshold).
 - a. If costs are appealed and the appealed costs are approved within the two-year deadline, FEMA will adjust the DAC PW to include the approved costs in the calculation. FEMA will not include appealed costs approved after the two-year deadline. However, if previously approved costs are determined ineligible at any point, including after the two-year deadline, FEMA will deobligate the related DAC amount.
 - b. If the DAC PW is obligated and projects or portions of projects are later found to be ineligible (including projects that are ineligible due to insurance or other reductions decreasing the project below the minimum PW threshold), FEMA will deobligate the related DAC amount.
4. FEMA will process a Version 0 Category Z DAC PW upon the Subrecipient's request. This version will include 5 percent of the combined cost of each eligible project that the Subrecipient has signed and submitted to FEMA at that time, with exception of Permanent Work Pilot projects that do not yet have agreed-upon estimates and PWs that lacked sufficient information or documentation to support the costs, such as Expedited PWs.
5. To balance the Subrecipient's need to receive DAC PW funds with the administrative time and costs of processing multiple versions, Subrecipients may request DAC PW obligations at various milestones of the recovery process, but not more than quarterly.
6. The Subrecipient should request the final version of the DAC PW once all of its Emergency and Permanent Work PWs have been signed and submitted to FEMA.
 - a. This must occur no later than two years from the declaration date.



- b. If the Subrecipient has not signed and submitted to FEMA all of its PWs or costs by the two-year deadline, any PWs or costs submitted past the two-year deadline will not be eligible for inclusion in the fixed estimate DAC amount (unless it is a Permanent Work Pilot project pending an agreed-upon estimate).
 - c. This final version sets the lock-in amount for the DAC PW.
 - d. Once the DAC PW is locked-in, it cannot be changed unless the scope of work or costs are later determined unreasonable or ineligible.
7. FEMA will obligate the DAC PW at the prevailing cost share for the declared event. If there are different cost shares for different categories of work or time periods, FEMA will apply the prevailing cost share for Permanent Work to the DAC PW.
8. The Recipient may disburse DAC funds to the Subrecipient upon their request for reimbursement (subject to the Recipient's payment procedures and the Federal cost share). The total amount of funding disbursed for DAC may not exceed the total actual costs that the Subrecipient incurred for DAC. The Recipient shall withhold the 1 percent portion of the DAC allowance, which is subject to the criteria in Section VIII.E.
9. A spreadsheet is available at <http://www.fema.gov/media-library/assets/documents/153582> to effectively calculate the appropriate value for the fixed estimate DAC PW.

D. Use of DAC PW Funds

1. Subrecipients may use funding from the DAC PW toward DAC on any of its eligible PA projects, including eligible PWs submitted after the two-year deadline or not otherwise included in the fixed estimate calculation.
2. Subrecipients may not use the DAC PW funds to cover administrative costs on ineligible projects.
3. Subrecipients may not use funds obligated under the DAC PW to cover indirect costs. If a Recipient passes through State Management Cost funds to Subrecipients, it must ensure that costs are not duplicated. For information on DAC versus indirect costs and eligible DAC activities versus indirect activities, see Chapter 2:V.N.2. Direct Administrative Costs of the *Public Assistance Program and Policy Guide*.¹
4. Subrecipients may not use DAC PW funds to cover the non-Federal cost share of the DAC PW.

¹ www.fema.gov/media-library/assets/documents/111781



FEMA

RECOVERY POLICY

5. The end of the DAC PW POP is equal to the Subrecipient's latest Category A-G PW POP.
6. Section VIII.G applies to any funds remaining on the DAC PW after the Subrecipient has accounted for all actual DAC.

E. Closeout Deadlines for One-Percent Incentive

1. For large projects, the Subrecipient must submit the closeout package within 90 days of the respective project's POP deadline to retain the 1 percent closeout incentive for each of the respective projects. Each project's scope of work must be completed within the project's POP.
2. For small projects, the Subrecipient must submit the closeout package within 90 days of the last small project's POP deadline to retain the 1 percent closeout incentive for any of its small projects. Each project's scope of work must be completed within the project's POP.
3. If a project's POP expires prior to obligation, the 90-day closeout timeframe begins on the date FEMA obligates the PW.
4. If the Subrecipient submits the PW to the Recipient for closeout within the 90-day deadline as required by 2 CFR §200.343(a), the Recipient may disburse the additional 1 percent DAC allowance for that project to the Subrecipient (the amount disbursed must not exceed the actual DAC incurred).
5. FEMA will deobligate the 1 percent related to each project where the Subrecipient does not submit closeout documentation within the 90-day deadline as a remedy for non-compliance with the closeout requirement at 2 CFR §200.343(a), pursuant to 2 CFR §200.338(b).

F. Documentation Requirements

1. The Subrecipient is not required to track to which specific PW the DAC claim is related, it only needs to substantiate that it is related to eligible projects.
2. To support the DAC claim, the Subrecipient will provide documentation to support that the costs incurred were for eligible direct administrative activities, to include payroll data, contracts, invoices, and an explanation of the activities performed. The document retention requirements of 2 CFR Part 200 must be followed.
3. All DAC PWs are closed using the large project closeout process regardless of whether the PW itself is small or large. The DAC PW will be the Subrecipient's last project to



FEMA

RECOVERY POLICY

reconcile. Upon the Recipient's request, FEMA will complete a review of the underlying projects to ensure the DAC PW does not include any ineligible projects or costs. FEMA will review the actual costs of the DAC PW to determine if the claimed costs are adequately documented and eligible. FEMA will review procurement documentation to ensure compliance with procurement regulations. FEMA will create a version to adjust for any unreasonable or ineligible costs.

G. Use of Excess Funds

1. The Subrecipient may use DAC excess funds for any costs otherwise eligible pursuant to Section 428(e)(1)(D) of the Stafford Act (42 U.S.C. §5189f). The Subrecipient will need to identify any excess funds realized on the final DAC PW and submit a request to use the funds through the Recipient to FEMA within 180 days of the latest project POP.
2. DAC excess funds may be used for cost-effective hazard mitigation activities that will reduce the risk of damage in future disasters. The Subrecipient may use the funds for hazard mitigation on facilities not damaged in the declared disaster. However, the mitigation must be applied to facilities that would otherwise be eligible for PA Program funding in future disasters. Obtain and maintain insurance requirements apply if funds are used toward an insurable facility.² Excess funds may not be used on facilities that are ineligible due to a failure to meet previous obtain and maintain requirements.
3. Use of excess funds may also include activities that improve future PA Program operations, such as training and exercises; or planning for future disaster response and recovery operations, such as developing debris management plans, and participating in State/Tribal and local training for response and recovery; or participating in federal grants management and procurement courses.
4. FEMA will evaluate the proposed use for reasonableness to ensure excess funds are used in a prudent manner.
5. Within 180 days from the Subrecipient's last project POP, the Subrecipient must submit a request through the Recipient to FEMA identifying the amount of excess funds and how it proposes to use the funds, along with a project timeline. The Recipient and FEMA will review the request and process a new PW to document approval of the proposed use of excess funds and an appropriate timeline for completion. FEMA will de-obligate any excess funds that are not associated with an agreed-upon proposal by the 180-day deadline.

² Section 311 of the Stafford Act



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RECOVERY POLICY

IX. RESPONSIBLE OFFICE:

Recovery Directorate (Public Assistance Division)

Keith Turi *6/12/18*

Keith Turi Date
Acting Assistant Administrator
Recovery Directorate



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RECOVERY POLICY

APPENDIX A: Agreement for Participation

This Agreement ("Agreement") is made by and between the Federal Emergency Management Agency ("FEMA"), the _____ ("Recipient"), and participating Subrecipients, collectively "the Parties," as of the date of the executed Agreement. This Agreement is hereby incorporated into and made part of the disaster assistance processing for the Public Assistance Alternative Procedures for Direct Administrative Cost for Subrecipient Administrative Costs for both non-fixed estimate grants provided under sections 403, 406, and 407 of the Stafford Act, as well as fixed estimate, capped grants under section 428 of the Stafford Act. Once a Subrecipient agrees to participate in the pilot, all direct administrative costs for their obligated PWs must be included.

Agreement Stipulations

- A. Each Party acknowledges and agrees that the grant conditions of this Agreement constitute an agreement of FEMA, the Recipient, and the Subrecipient (by signature of the Recipient and Subrecipient) related to FEMA's discretionary eligibility determinations reflected herein and in the administrative cost PW.
- B. The Parties agree that no additional documentation outside of that described in Section VIII.F of the Recovery Policy for Public Assistance Alternative Procedures for Direct Administrative Costs will be required by FEMA to substantiate the fixed estimate DAC award, pursuant to the terms of this Agreement.
- C. The Parties agree that these conditions comport with the statutes, rules, and regulations that relate to and govern awards under FEMA's Public Assistance program and Section 428 of the Stafford Act. The parties agree that these conditions do not create any liability on the part of FEMA that would be contrary to 42 U.S.C. § 5148.
- D. FEMA will deobligate funding awarded in compliance with this Agreement and memorialized in the respective PW only (1) as a remedy for non-compliance with the closeout requirement at 2 CFR § 200.343(a) pursuant to Section VIII.E of this policy; or (2) upon a determination of fraud, waste, or abuse. FEMA recognizes that any subsequent determination that deobligates funding associated with the determinations made herein and memorialized in the respective PW could constitute a new dispute subject to appeal under 44 C.F.R. § 206.206.



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RECOVERY POLICY

In consideration of the foregoing covenants, the Parties do hereby set forth their signatures:

Recipient Signature

8-14-18

Date

ATTEST:

Recipient Representative Name:
RITA PRITCHETT
Recipient Representative Title:
CHAIR
Name of Recipient (State, Tribe, or Territory):
FLORIDA

SCOTT ELLIS, CLERK

Subrecipient Signature

Date

Subrecipient Representative Name:
Subrecipient Representative Title:
Name of Subrecipient (County, City, etc.):

FEMA Signature

Date

FEMA Representative Name:
FEMA Representative Title: