AGREEMENT FOR
ON CALL PROFESSIONAL ENGINEERING
SERVICES FOR CATEGORY B
CANAL INFRASTRUCTURE
ENGINEERING SERVICES

This Agreement ("Agreement") made and entered into this 12th day of April, 2017 by and between MONROE COUNTY, a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, Florida, 33040, its successors and assigns, hereinafter referred to as "COUNTY," through the Monroe County Board of County Commissioners ("BOCC"), and TETRA TECH, INC., its successors and assigns, a corporation of the State of Delaware, whose address is 759 South Federal Highway, Suite 314, Stuart, FL 34994, hereinafter referred to as "CONSULTANT".

WITNESSETH:

WHEREAS, COUNTY desires to employ the professional engineering services of CONSULTANT for various potential County Canal Restoration Projects located in Monroe County, Florida; and

WHEREAS, CONSULTANT has agreed to provide professional services for miscellaneous projects in which construction costs do not exceed $2,000,000; and

WHEREAS, the potential professional services to be implemented under this Contract will be for services in the form of a continuing contract, commencing the effective date of this agreement and ending four years thereafter, with options for the County to renew for one additional 1 year period; and

WHEREAS, specific services will be performed pursuant to individual task orders issued by the COUNTY and agreed to by the CONSULTANT. Task Orders will contain specific scope of work, time schedule, charges and payment conditions, and additional terms and conditions that are applicable to such Task Orders; and

WHEREAS, execution of a Task Order by the COUNTY and the CONSULTANT constitutes the COUNTY's written authorization to CONSULTANT to proceed with the services described in the Task Order; and

WHEREAS, the terms and conditions of this Agreement shall apply to each Task Order, except to the extent expressly modified. When a Task Order is to modify a provision of this Agreement, the Article of this Agreement to be modified will be specifically referenced in the Task Order and the modification shall be precisely described; and

WHEREAS, the CONSULTANT shall provide Category B - comprehensive engineering consulting services to further the County's Canal Infrastructure Engineering Services for the Canal Restoration Program. Such consulting may include, but not be limited to, performing studies, engineering studies, engineering design services for canal restoration construction projects, including design, surveying, drafting, preparing specifications and solicitation/contract documents, sediment and water quality studies, hydrologic, geotechnical investigations, permitting, assisting with review of contractor proposals or bids, comprehensive project management services, construction engineering and inspection services or similar services to assist the County in expanding its Canal Restoration Program, outreach services, and arrangement of access agreements; and
WHEREAS, there is no minimum amount of work guaranteed by the COUNTY.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, COUNTY and CONSULTANT agree as follows:

**ARTICLE 1**

1.1 **TERM OF AGREEMENT**

1.1 Except as noted below, this Agreement shall begin on the 12th day of April, 2017 and extend for a period of four (4) years to April 11, 2021. A one year extension may be authorized at the option of the COUNTY.

1.2 **REPRESENTATIONS**

By executing this Agreement, CONSULTANT makes the following express representations to the COUNTY:

1.2.1 The CONSULTANT shall maintain all necessary professional licenses, permits or other authorizations necessary to act as CONSULTANT for the Project until the CONSULTANT’S duties hereunder have been fully satisfied;

1.2.2 The CONSULTANT has become familiar with the potential Project sites and the local conditions under which the Work is to be completed.

1.2.3 The CONSULTANT shall prepare all documents required by this Agreement including, but not limited to, all contract plans and specifications, in such a manner that they shall be in conformity and comply with all applicable law, codes and regulations. In providing services under this Contract, the CONSULTANT shall perform its services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality. Upon notice to the CONSULTANT and by mutual agreement between the parties, the CONSULTANT will, without additional compensation, correct those services not meeting such a standard;

1.2.4 The CONSULTANT assumes full responsibility to the extent allowed by law with regards to his performance and those directly under his employ.

1.2.5 The CONSULTANT’S services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. In providing all services pursuant to this agreement, the CONSULTANT shall abide by all statutes, ordinances, rules and regulations pertaining to, or regulating the provisions of such services, including those now in effect and hereinafter adopted. Any violation of said statutes, ordinances, rules and regulations shall constitute a material breach of this agreement and shall entitle the Board to terminate this contract immediately upon delivery of written notice of termination to the CONSULTANT.
1.2.6 At all times and for all purposes under this agreement the CONSULTANT is an independent contractor and not an employee of the Board of County Commissioners for Monroe County. No statement contained in this agreement shall be construed so as to find the CONSULTANT or any of his/her employees, contractors, servants, or agents to be employees of the Board of County Commissioners for Monroe County.

1.2.7 The CONSULTANT shall not discriminate against any person on the basis of race, creed, color, national origin, sex, age, or any other characteristic or aspect which is not job related, in its recruiting, hiring, promoting, terminating, or any other area affecting employment under this agreement or with the provision of services or goods under this agreement.

ARTICLE II
SCOPE OF BASIC SERVICES

2.1 SCOPE OF WORK

The CONSULTANT will perform for the COUNTY services as described in individual Task Orders in accordance with the requirements outlined in the Agreement and the specific Task Order.

2.2 CORRECTION OF ERRORS, OMISSIONS, DEFICIENCIES

The CONSULTANT shall, without additional compensation, promptly correct any errors, omissions, deficiencies, or conflicts in the work product of the CONSULTANT or its sub-consultants, or both.

2.3 NOTICE REQUIREMENT

All written correspondence to the COUNTY shall be dated and signed by an authorized representative of the CONSULTANT. Any notice required or permitted under this agreement shall be in writing and hand delivered or mailed, postage pre-paid, to the COUNTY by certified mail, return receipt requested, to the following:

For the County:

Ms. Rhonda Haag
Director of Sustainability and Projects
102050 Overseas Highway, Room 246
Key Largo, FL 33037

And: Mr. Roman Gastesi, Jr.
Monroe County Administrator
1100 Simonton Street, Room 2-205
Key West, Florida 33040

For the Consultant:

Mr. Gerardo Contreras

And: Mr. Brian Proctor
759 South Federal Highway, Suite 314
Stuart, FL 34994
ARTICLE III
ADDITIONAL SERVICES

3.1 Additional services are services not included in the Scope of Basic Services. Should the COUNTY require additional services they shall be paid for by the COUNTY at rates or fees negotiated at the time when services are required, but only if approved by the COUNTY before commencement.

3.2 If Additional Services are required the COUNTY shall issue a letter requesting and describing the requested services to the CONSULTANT. The CONSULTANT shall respond with a fee proposal to perform the requested services. Only after receiving an amendment to the Agreement and a notice to proceed from the COUNTY, shall the CONSULTANT proceed with the Additional Services.

ARTICLE IV
COUNTY'S RESPONSIBILITIES

4.1 The COUNTY shall provide full information regarding requirements for the Project including physical location of work, county maintained roads and maps.

4.2 The COUNTY shall designate a representative to act on the COUNTY's behalf with respect to the Project. The COUNTY or its representative shall render decisions in a timely manner pertaining to documents submitted by the CONSULTANT in order to avoid unreasonable delay in the orderly and sequential progress of the CONSULTANT'S services.

4.3 Prompt written notice shall be given by the COUNTY and its representative to the CONSULTANT if they become aware of any fault or defect in the Project or non-conformance with the Agreement Documents. Written notice shall be deemed to have been duly served if sent pursuant to paragraph 2.3.

4.4 The COUNTY shall furnish the required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the CONSULTANT'S services and work of the contractors.

4.5 The COUNTY's review of any documents prepared by the CONSULTANT or its sub-consultants shall be solely for the purpose of determining whether such documents are generally consistent with the COUNTY's criteria, as, and if, modified. No review of such documents shall relieve the CONSULTANT of responsibility for the accuracy, adequacy, fitness, suitability or coordination of its work product.

4.6 The COUNTY shall provide copies of necessary documents required to complete the work.

4.7 Any information that may be of assistance to the CONSULTANT that the COUNTY has immediate access to will be provided as requested.
ARTICLE V  
INDEMNIFICATION AND HOLD HARMLESS  

5.1 The CONSULTANT shall indemnify and hold harmless COUNTY and its officers and employees from liabilities, damages, losses and costs to third parties, including but not limited to, reasonable attorneys’ fees, to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the CONSULTANT, subcontractor(s) and other persons employed or utilized by the CONSULTANT in the performance of the contract. In no event shall the negligent, reckless or intentional wrongful conduct of the COUNTY, its officers, employees or other persons employed or utilized by the COUNTY be indemnified by CONSULTANT.  

5.2 The first ten dollars ($10.00) of remuneration paid to the CONSULTANT is for the indemnification provided for above. The extent of liability is in no way limited to, reduced, or lessened by the insurance requirements contained elsewhere within this agreement.  

5.3 To the extent the completion of the project (to include the work of others) is delayed or suspended as a result of the CONSULTANT’S failure to purchase or maintain the required insurance, the CONSULTANT shall indemnify COUNTY from documented increased expenses resulting from such delays.  

5.4 The extent of liability is in no way limited to, reduced or lessened by the insurance requirements contained elsewhere within the Agreement.  

5.5 This indemnification shall survive for a period of one (1) year following the expiration or early termination of the Agreement.  

ARTICLE VI  
PERSONNEL  

6.1 The CONSULTANT shall assign only qualified personnel to perform any service concerning the project. At the time of execution of this Agreement, the parties anticipate that the following named individuals will perform those functions as indicated:  

<table>
<thead>
<tr>
<th>NAME</th>
<th>FUNCTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brian Proctor</td>
<td>Principle-In-Charge</td>
</tr>
<tr>
<td>Richard Czlapinski, PE</td>
<td>Senior Consultant I</td>
</tr>
<tr>
<td>Brian Watson, PE</td>
<td>Senior Consultant I</td>
</tr>
<tr>
<td>Stuart McGahee, PE</td>
<td>Engineering Manager II</td>
</tr>
<tr>
<td>Gerardo Contreras, PE</td>
<td>Senior Engineering Staff III</td>
</tr>
<tr>
<td>Rebecca Serra, PE</td>
<td>Senior Engineer Staff II</td>
</tr>
<tr>
<td>Jesse Davis, PE</td>
<td>Engineer Staff VIII</td>
</tr>
<tr>
<td>Francisco Martinez, EIT</td>
<td>Engineer Staff V</td>
</tr>
<tr>
<td>Patrick Zuloaga</td>
<td>Senior Scientist I</td>
</tr>
<tr>
<td>Marcy Frick, REM</td>
<td>Staff Scientist VIII</td>
</tr>
<tr>
<td>Lisa Canty</td>
<td>Staff Scientist VI</td>
</tr>
<tr>
<td>Kelly Gracie</td>
<td>Staff Scientist (Outreach) III</td>
</tr>
</tbody>
</table>
So long as the individuals named above remain actively employed or retained by the CONSULTANT, they shall perform the functions indicated next to their names. If they are replaced the CONSULTANT shall notify the COUNTY of the change immediately.

**ARTICLE VII**

**COMPENSATION**

**7.1 PAYMENT SUM**

7.1.1 The COUNTY shall pay the CONSULTANT in current funds for the CONSULTANT'S performance of this Agreement based on rates negotiated and agreed upon and shown in Attachment A.

**7.2 PAYMENTS**

7.2.1 For its assumption and performances of the duties, obligations and responsibilities set forth herein, the CONSULTANT shall be paid monthly. Payment will be made pursuant to the Local Government Prompt Payment Act 218.70, Florida Statutes.

(A) If the CONSULTANT’S duties, obligations and responsibilities are materially changed by amendment to this Agreement after execution of this Agreement, compensation due to the CONSULTANT shall be equitably adjusted, either upward or downward;

(B) As a condition precedent for any payment due under this Agreement, the CONSULTANT shall submit monthly, unless otherwise agreed in writing by the COUNTY, a proper invoice to COUNTY requesting payment for services properly rendered and reimbursable expenses due hereunder. The CONSULTANT’S invoice shall describe with reasonable particularity the service rendered. The CONSULTANT’S invoice shall be accompanied by such documentation or data in support of expenses for which payment is sought as the COUNTY may require.

**7.3 REIMBURSABLE EXPENSES**

7.3.1 Reimbursable expenses include expenses incurred by the CONSULTANT in the interest of the project:

a. Expenses of transportation submitted by CONSULTANT, in writing, and living expenses in connection with travel authorized by the COUNTY, in writing, but only to the extent and in the amounts authorized by Monroe County Code Section. 2-106 through 2-117 for travel, per diem, meals and mileage. Other travel expenses shall be paid in accordance with Section 112.061, Florida Statutes. Travel time charges shall not begin until the employee reaches mile marker 106 if coming from outside of Monroe County, and shall not be charged if the employee resides within Monroe County

b. Cost of reproducing maps or drawings or other materials used in performing the scope of services;

c. Postage and handling of reports.
7.4 BUDGET

7.4.1 The CONSULTANT may not be entitled to receive, and the COUNTY is not obligated to pay, any fees or expenses in excess of the amount budgeted for this contract in each fiscal year (October 1 - September 30) by COUNTY’s Board of County Commissioners. The budgeted amount may only be modified by an affirmative act of the COUNTY’s Board of County Commissioners.

7.4.2 The COUNTY’s performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Board of County Commissioners and the approval of the Board members at the time of contract initiation and its duration.

ARTICLE VIII
INSURANCE

8.1 The CONSULTANT shall obtain insurance as specified and maintain the required insurance at all times that this Agreement is in effect. To the extent the completion of the project (to include the work of others) is delayed or suspended as a result of the CONSULTANT’S failure to purchase or maintain the required insurance, the CONSULTANT shall indemnify the COUNTY from documented increased expenses resulting from such delay.

8.2 The coverage provided herein shall be provided by an insurer with an A.M. Best rating of VI or better, that is licensed to business in the State of Florida and that has an agent for service of process within the State of Florida. The coverage shall contain an endorsement providing sixty (60) days’ notice to the COUNTY prior to any cancellation of said coverage. Said coverage shall be written by an insurer acceptable to the COUNTY and shall be in a form acceptable to the COUNTY.

8.3 CONSULTANT shall obtain and maintain the following policies:

A. Workers’ Compensation insurance as required by the State of Florida, sufficient to respond to Florida Statute 440.

B. Employers Liability Insurance with limits of $1,000,000 per Accident, $1,000,000 Disease, policy limits, $1,000,000 Disease each employee.

C. Comprehensive business automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including onsite and offsite operations, and owned, hired or non-owned vehicles, with One Million Dollars ($1,000,000.00) combined single limit and One Million Dollars ($1,000,000.00) annual aggregate.

D. Commercial general liability, including Personal Injury Liability, covering claims for injuries to members of the public or damage to property of others to the extent arising out of any covered act or omission of the CONSULTANT or any of its employees or agents, including Premises and/or Operations, Products and Completed Operations, Independent Contractors; Broad Form Property Damage and a Blanket Contractual Liability Endorsement with One Million Dollars ($1,000,000) per occurrence and annual
aggregate.

An Occurrence Form policy is preferred. If coverage is changed to or provided on a Claims Made policy, its provisions should include coverage for claims filed on or after the effective date of this contract. In addition, the period for which claims may be reported must extend for a minimum of 12 months following the termination or expiration of this contract.

E. Professional liability insurance of One Million Dollars ($1,000,000.00) per occurrence and Two Million Dollars ($2,000,000.00) annual aggregate. If the policy is a “claims made” policy, CONSULTANT shall maintain coverage or purchase a “tail” to cover claims made after completion of the project to cover the statutory time limits in Chapter 95 of the Florida Statutes.

F. COUNTY shall be named as an additional insured with respect to CONSULTANT’S liabilities hereunder in insurance coverages identified in Paragraphs C and D.

G. Unless otherwise agreed to by the parties, CONSULTANT shall require its sub-consultants to be adequately insured at least to the limits prescribed above, and to any increased limits of CONSULTANT if so required by COUNTY during the term of this Agreement. COUNTY will not pay for increased limits of insurance for sub-consultants.

H. CONSULTANT shall provide to the COUNTY certificates of insurance including those naming the COUNTY as an additional insured.

I. If the CONSULTANT participates in a self-insurance fund, a Certificate of Insurance will be required. In addition, the CONSULTANT may be required to submit updated financial statements from the fund upon request from the COUNTY.

J. In no event shall any coverage provided by CONSULTANT extend to claims caused by the acts, omissions or negligence of the additional insureds.

ARTICLE IX
MISCELLANEOUS

9.1 SECTION HEADINGS

Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provision of this Agreement.

9.2 OWNERSHIP OF THE PROJECT DOCUMENTS

The documents prepared by the CONSULTANT for this Project belong to the COUNTY and may be reproduced and copied without acknowledgement or permission of the CONSULTANT. In the event that COUNTY makes use of said documents on a project or projects not covered under this Contract, without CONSULTANT’S express written consent, such use shall be at the sole discretion, liability, and risk of the COUNTY.
In the event COUNTY makes use of said documents on a project or projects not covered under this Contract, without Consultant’s express written consent, said consent not to be unreasonably withheld, such use shall be at the sole discretion, liability and risk of the COUNTY.

9.3 SUCCESSORS AND ASSIGNS

The CONSULTANT shall not assign or subcontract its obligations under this agreement, except in writing and with the prior written approval of the Board of County Commissioners for Monroe County and the CONSULTANT, which approval shall be subject to such conditions and provisions as the Board may deem necessary. This paragraph shall be incorporated by reference into any assignment or subcontract and any assignee or subcontractor shall comply with all of the provisions of this agreement. Subject to the provisions of the immediately preceding sentence, each party hereto binds itself, its successors, assigns and legal representatives to the other and to the successors, assigns and legal representatives of such other party.

9.4 NO THIRD PARTY BENEFICIARIES

Nothing contained herein shall create any relationship, contractual or otherwise, with or any rights in favor of, any third party.

If the COUNTY is not the ultimate beneficiary of the Services or CONTRACTOR's work product is used in such a way as to create or induce any reliance by any third party, the COUNTY represents and warrants (i) that it shall bind its clients and/or such third parties to limitations on and protections against liability "protective provisions" commensurate with those afforded CONTRACTOR hereunder and that such protective provisions are intended to and do in fact inure to the benefit of CONTRACTOR, and/or (ii) that the COUNTY has the power to act on behalf of its clients and/or such third parties and does hereby bind such parties to these protective provisions.

9.5 TERMINATION

A. In the event that the CONSULTANT shall be found to be negligent in any aspect of service, the COUNTY shall have the right to terminate this agreement after five days written notification to the CONSULTANT.

B. Either of the parties hereto may cancel this Agreement without cause by giving the other party sixty (60) days written notice of its intention to do so.

9.6 CONTRACT DOCUMENTS

This contract consists of the Request for Qualifications, any addenda, the Agreement (Articles I-IX), the CONSULTANT'S response to the RFQ, the documents referred to in the Agreement as a part of this Agreement, and Attachment A, and modifications made after execution by written amendment. In the event of any conflict between any of the Contract documents, the one imposing the greater burden on the CONSULTANT will control.

9.7 PUBLIC ENTITIES CRIMES

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

By signing this Agreement, CONSULTANT represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes). Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from COUNTY’s competitive procurement activities.

In addition to the foregoing, CONSULTANT further represents that there has been no determination, based on an audit, that it or any sub-consultant has committed an act defined by Section 287.133, Florida Statutes, as a “public entity crime” and that it has not been formally charged with committing an act defined as a “public entity crime” regardless of the amount of money involved or whether CONUSULTANT has been placed on the convicted vendor list.

CONSULTANT will promptly notify the COUNTY if it or any subcontractor or sub-consultant is formally charged with an act defined as a “public entity crime” or has been placed on the convicted vendor list.

9.8 MAINTENANCE OF RECORDS

CONSULTANT shall maintain all books, records, and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles consistently applied. Records shall be retained for a period of ten years from the termination of this agreement. Each party to this Agreement or its authorized representatives shall have reasonable and timely access to such records of each other party to this Agreement for public records purposes during the term of the Agreement and for ten years following the termination of this Agreement. If an auditor employed by the COUNTY or Clerk determines that monies paid to CONSULTANT pursuant to this Agreement were spent for purposes not authorized by this Agreement, or were wrongfully retained by the CONSULTANT, the CONSULTANT shall repay the monies together with interest calculated pursuant to Sec. 55.03, of the Florida Statutes, running from the date the monies were paid by the COUNTY.

9.9 GOVERNING LAW, VENUE, INTERPRETATION, COSTS, AND FEES

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed entirely in the State. In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, COUNTY and CONSULTANT agree that venue shall lie in the Sixteenth Judicial Circuit, Monroe County, Florida, in the appropriate court or before the appropriate administrative body. This agreement shall not be subject to arbitration. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the circuit court of Monroe County.
9.10 SEVERABILITY

If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this Agreement, shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of this Agreement. The COUNTY and CONSULTANT agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

9.11 ATTORNEY’S FEES AND COSTS

The COUNTY and CONSULTANT agree that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorney’s fees, court costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party, and shall include attorney’s fees, courts costs, investigative, and out-of-pocket expenses in appellate proceedings.

9.12 BINDING EFFECT

The terms, covenants, conditions, and provisions of this Agreement shall bind and inure to the benefit of the COUNTY and CONSULTANT and their respective legal representatives, successors, and assigns.

9.13 AUTHORITY

Each party represents and warrants to the other that the execution, delivery and performance of this Agreement have been duly authorized by all necessary County and corporate action, as required by law.

9.14 CLAIMS FOR FEDERAL OR STATE AID

CONSULTANT and COUNTY agree that each shall be, and is, empowered to apply for, seek, and obtain federal and state funds to further the purpose of this Agreement; provided that all applications, requests, grant proposals, and funding solicitations shall be approved by each party prior to submission.

9.15 ADJUDICATION OF DISPUTES OR DISAGreements

COUNTY and CONSULTANT agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If no resolution can be agreed upon within 30 days after the first meet and confer session, the issue or issues shall be discussed at a public meeting of the Board of County Commissioners. If the issue or issues are still not resolved to the satisfaction of the parties, then any party shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law. This provision does not negate or waive the provisions of paragraph 9.5 concerning termination or cancellation.
9.16 COOPERATION

In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this Agreement, COUNTY and CONSULTANT agree to participate, to the extent required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this Agreement or provision of the services under this Agreement. COUNTY and CONSULTANT specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.

9.17 NONDISCRIMINATION

CONSULTANT and COUNTY agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. CONSULTANT agrees to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as may be amended from time to time, relating to nondiscrimination on the basis of disability; 10) Monroe County Code Chapter 13, Article VI, which prohibits discrimination on the basis of race, color, sex, religion, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age; 11) Any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

9.18 COVENANT OF NO INTEREST

CONSULTANT and COUNTY covenant that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this Agreement, and that only interest of each is to perform and receive benefits as recited in this Agreement.

9.19 CODE OF ETHICS

COUNTY agrees that officers and employees of the COUNTY recognize and will be required to comply with the standards of conduct for public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting
employment or contractual relationship; and disclosure or use of certain information.

9.20 NO SOLICITATION/PAYMENT

The CONSULTANT and COUNTY warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of the provision, the CONSULTANT agrees that the COUNTY shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

9.21 PUBLIC RECORDS COMPLIANCE.

Contractor must comply with Florida public records laws, including but not limited to Chapter 119, Florida Statutes and Section 24 of article I of the Constitution of Florida. The Contractor shall allow the COUNTY reasonable access to, and inspection of, all documents, records, papers, letters or other “public record” materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, upon request by the County in conjunction with this contract and related to contract performance. The County shall have the right to unilaterally cancel this contract upon violation of this provision by the Contractor. Failure of the Contractor to abide by the terms of this provision shall be deemed a material breach of this contract and the County may enforce the terms of this provision in the form of a court proceeding. The prevailing party, shall be entitled to reimbursement of all attorney’s fees and costs associated with that proceeding as provided for in Section 119.0701(4). This provision shall survive for a period of ten (10) years following termination or expiration of the contract.

The Contractor is encouraged to consult with its advisors about Florida Public Records Law in order to comply with this provision. Pursuant to F.S. 119.0701 and the terms and conditions of this contract, the Contractor is required to:

(1) Keep and maintain public records that would be required by the County to perform the service.

(2) Upon receipt from the County’s custodian of records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

(3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the County.

(4) Upon completion of the contract, transfer, at no cost, to the County all public records in possession of the Contractor or keep and maintain public records that would be required by the County to perform the service. If the Contractor transfers all public records to the County upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored
electronically must be provided to the County, upon request from the County’s custodian of records, in a format that is compatible with the information technology systems of the County. (5) A request to inspect or copy public records relating to a County contract must be made directly to the County. If the County does not possess the requested records, the County shall immediately notify the Contractor of the request, and the Contractor must provide the records to the County or allow the records to be inspected or copied within a reasonable time.

In accordance with Sec. 119.0701, Florida Statutes:
IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, BRIAN BRADLEY AT (305) 292-3470, Bradley-Brian@MonroeCounty-FL.Gov, 1111 12th St. Suite 408, Key West, Fl. 33040

9.22 NON-WAIVER OF IMMUNITY

Notwithstanding the provisions of Sec. 768.28, Florida Statutes, the participation of the CONSULTANT and the COUNTY in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by the COUNTY be required to contain any provision for waiver.

9.23 PRIVILEGES AND IMMUNITIES

All of the privileges and immunities from liability, exemptions from laws, ordinances, and rules and pensions and relief, disability, workers’ compensation, and other benefits which apply to the activity of officers, agents, or employees of any public agents or employees of the COUNTY, when performing their respective functions under this Agreement within the territorial limits of the COUNTY shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, volunteers, or employees outside the territorial limits of the COUNTY.

9.24 LEGAL OBLIGATIONS AND RESPONSIBILITIES

Non-Delegation of Constitutional or Statutory Duties. This Agreement is not intended to, nor shall it be construed as, relieving any participating entity from any obligation or responsibility imposed upon the entity by law except to the extent of actual and timely performance thereof by any participating entity, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this Agreement is not intended to, nor shall it be construed as, authorizing the delegation of the constitutional or statutory duties of the COUNTY, except to the extent permitted by the Florida constitution, state statute, and case law.

9.25 NON-RELIANCE BY NON-PARTIES

No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the CONSULTANT and the COUNTY agree that neither the CONSULTANT nor the COUNTY or any agent, officer, or employee of either shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and
apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

9.26 ATTESTATIONS AND TRUTH IN NEGOTIATION

CONSULTANT agrees to execute such documents as COUNTY may reasonably require, including a Public Entity Crime Statement, an Ethics Statement, and a Drug-Free Workplace Statement. Signature of this Agreement by CONSULTANT shall act as the execution of a truth in negotiation certificate stating that wage rates and other factual unit costs supporting the compensation pursuant to the Agreement are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the agency determines the contract price was increased due to inaccurate, incomplete, or concurrent wage rates and other factual unit costs. All such adjustments must be made during the term of the Agreement.

9.27 NO PERSONAL LIABILITY

No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of Monroe County in his or her individual capacity, and no member, officer, agent or employee of Monroe County shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

9.28 EXECUTION IN COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

9.29 DISADVANTAGED BUSINESS ENTERPRISE (DBE) Policy and Obligation - It is the policy of the COUNTY that DBE’s, as defined in 49 C.F.R. Part 26, as amended, shall have the opportunity to participate in the performance of contracts financed in whole or in part with COUNTY funds under this Agreement. The DBE requirements of applicable federal and state laws and regulations apply to this Agreement. The COUNTY and its CONSULTANT agree to ensure that DBE’s have the opportunity to participate in the performance of this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable federal and state laws and regulations to ensure that the DBE’s have the opportunity to compete for and perform contracts. The COUNTY and the CONSULTANT and subcontractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts, entered pursuant to this Agreement.

9.30 PURSUANT TO SECTION 558.0035, FLORIDA STATUTES, AN INDIVIDUAL EMPLOYEE OR AGENT OF CONSULTANT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE.

9.31 CONSULTANT LIABILITY. Notwithstanding any Article to the contrary contained in the Contract, CONSULTANT’S total liability arising out of or in connection with the Contract or the Services including any for damage to or loss of COUNTY’S property, shall in no event extend beyond one (1) year after completion of the Services in question or exceed the total amount of compensation paid to CONSULTANT hereunder up to the maximum amount of $250,000. The warranties and the
remedies set forth herein are exclusive. CONSULTANT makes no other warranties, express or implied, with respect to its performance under this Contract. CONSULTANT and its employees shall in no event be liable for any special, indirect or consequential damages arising out of the performance of services hereunder, including specifically but without limitation, loss of profits or revenue, business interruption, loss of or interference with, whether or not by third parties, full or partial use of any equipment, facility or property, including real property, cost of replacement power, energy or product, delay in or failure to perform or to obtain permits or approvals, cost of capital, loss of goodwill, claims of customers, fines or penalties assessed against COUNTY or similar damages. The foregoing shall apply to the fullest extent allowed by law irrespective of whether liability of CONSULTANT is claimed, or found to be based in contract, tort or otherwise (including negligence, warranty, indemnity and strict liability).

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative on the day and year first above written.

(SEAL)
Attest: KEVIN MADOK, Clerk

By: ________________________________
Deputy Clerk
Date: ______________________________

(Seal)
Attest: ______________________________

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: ________________________________
Mayor/Chairman

TETRA TECH, INC.

By: ________________________________
Brian Proctor

Title: VP, Southeast Operations
# TETRA TECH, INC.
## 2017 Schedule of Hourly Rates

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