

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2010-66**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, WAIVING THE CITY'S PURCHASING POLICIES AND PROCEDURES AND APPROVING CONTRACTS WITH, BECK DISASTER RECOVERY, INC., AND O'BRIAN RESPONSE MANAGEMENT, INC., FOR EMERGENCY DISASTER MANAGEMENT AND RECOVERY SERVICES ON A NEEDED BASIS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACTS ON BEHALF OF THE CITY AND TO EXPEND EMERGENCY FUNDS AS NEEDED; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the City may enter into contracts for services without competitive bidding by utilizing existing contract terms and prices entered into by other governmental authorities as long as the governmental authority has followed a competitive bidding procedure leading to the award of the contract which is substantially similar to the City's competitive bidding procedure; and

**WHEREAS**, the City of Cooper City, Florida ("Cooper City") and Broward County, Florida ("Broward County") competitively bid out emergency disaster management and recovery services and entered into contracts with Beck Disaster Recovery, Inc. and O'Brian Response Management, Inc., respectively; and

**WHEREAS**, the City Manager recommends that the City Council waive the City's purchasing policies and procedures and "piggy back" on the contracts between Cooper City and Beck Disaster Recovery, Inc., and Broward County and O'Brian Response Management, Inc. to provide comprehensive disaster management and recovery services to the City.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:**

**Section 1.** The above recitals are true and correct and incorporated herein.

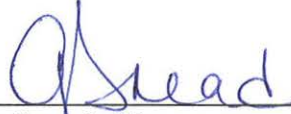
**Section 2.** Based upon the recommendation of the City Manager, the City Council waives the City's purchasing policies and procedures.

**Section 3.** The contracts between the City and Beck Disaster Recovery, Inc. and O'Brian Response Management, Inc for emergency disaster management and recovery services, copies of which are attached as Exhibit "A," together with such non-material changes as may be acceptable to the City Manager and approved as to form by the City Attorney, are hereby approved. The City Manager is authorized to execute the agreements and expend emergency funds as needed on behalf of the City.

**Section 4.** This resolution shall take effect immediately upon its adoption.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 13<sup>th</sup> DAY OF JULY, 2010.**

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**Ginger Snead, Mayor**

AYES: Cinque, Keating, Ramsay, Worthington, Snead  
NOES: None  
ABSENT: None  
ABSTAIN: None

**ATTEST:**

  
\_\_\_\_\_  
Diane Clavier, City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**

  
\_\_\_\_\_  
City Attorney

**AGREEMENT  
FOR DISASTER DEBRIS MONITORING SERVICES**

This Agreement, made as of this 29 day of July, 2010, (Effective Date) by and between the CITY OF MARATHON, a municipal corporation organized and existing under the laws of the State of Florida, with its permanent post office address at 9805 Overseas Highway, Marathon, Florida, 33050 (hereinafter referred to as "CITY") and Beck Disaster Recovery, Inc., a Washington State corporation, with its permanent post office address at 2301 Lucien Way, Suite 120, Maitland, Florida 32751 (hereinafter referred to as "CONTRACTOR"):

**WITNESSETH:**

WHEREAS, the CITY has the need to contract for disaster debris monitoring services; and

WHEREAS, Broward County, Florida competitively bid for disaster debris monitoring services (RFP No. 20070712-0-WRS-01) which is attached hereto and incorporated herein as Exhibit A; and

WHEREAS, CONTRACTOR submitted a Response to Broward County; and

WHEREAS, after receipt of said Response from CONTRACTOR, Broward County entered into a Contract with CONTRACTOR to provide disaster debris monitoring services; and

WHEREAS, said Contract is dated June 3, 2008 and is attached hereto and incorporated herein as Exhibit B (Broward County Contract); and

WHEREAS, the CITY has reviewed the Scope of Services of the competitively bid Broward County Contract and has determined that it is an Agreement that can be utilized by CITY to provide disaster debris monitoring services; and

WHEREAS, CONTRACTOR has agreed to honor the prices, terms and conditions of Broward County's Contract in performing disaster debris monitoring services for the CITY; and

WHEREAS, the CITY desires to retain the services of CONTRACTOR established in this Agreement based on the Contract developed and executed by Broward County, Florida; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

**Section 1.** The foregoing recitals are true and correct and are hereby incorporated into this Agreement.

**Section 2.** Attached hereto and made a part hereof by reference as Exhibits A & B are RFP 2009-7 and Broward County's Contract referred to above. The prices, terms and conditions of Broward County's Contract shall govern the relationship between CITY and CONTRACTOR, except as amended below:

- a. The Scope of Services to be performed under this Agreement shall be as set forth in the Broward County Contract and the Broward County Request for Proposals, except said services shall be performed in and for CITY.
- b. CONTRACTOR shall perform the services in and for CITY as detailed in the Broward County Contract utilizing the prices as set forth in the Contract.
- c. The Contract Administrator shall be the Public Works Director of the CITY or his designee.
- d. The Broward County Contract is amended as follows:
  - i. 2.4: SECOND PARTY shall separately track, document, report. And invoice all debris removal monitoring activities occurring during the first pass on Federal Aid roadway system (FAS) to include, but not limited to, data managers, supervisors, overhead, etc. This document process includes denoting on all debris load tickets or loads collected on FAS to state "FIRST PASS". Bill under separate invoice which clearly states that the work was on FAS roads for first pass.
  - ii. 2.5: SECOND PARTY shall establish a telephone claim reporting system with a local or toll free number and provide staff for the professional management for receiving phone complaints or damage claims from the local residents.
  - iii. 2.6: SECOND PARTY shall investigate and assist in documentation of claims if requested by the City.
- e. This Agreement is for a term of three years beginning the Effective Date and providing for two additional one year option to extend, which must be approved by the City Council.
- f. Notice to CITY shall be sent to: Director of Public Works, City of Marathon, at 9805 Overseas Highway, Marathon, Florida, 33050, with a copy to the City Manager at the same address.
- g. Regarding governing law and venue, the validity, construction and effect of this Agreement shall be governed by the laws of the State of Florida. Any claim, objection, dispute or otherwise arising out of the terms of this Agreement shall be litigated in the Sixteenth Judicial Circuit in and for Monroe County, Florida.

**Section 3.** In all other respects, the terms and conditions of the Broward County Contract are hereby ratified and shall remain in full force and effect under this Agreement as provided by their terms.

IN WITNESS WHEREOF, CITY and CONTRACTOR have set their hands and seals, as of the day and year first above written.

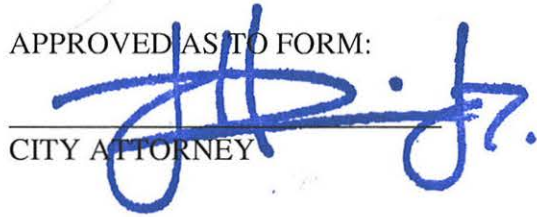
ATTEST:

  
DIANE CLAVIER  
CITY CLERK

CITY OF MARATHON, FLORIDA

  
ROGER HERNSTADT 072910  
CITY MANAGER

APPROVED AS TO FORM:

  
CITY ATTORNEY

BECK DISASTER RECOVERY, INC.

  
Printed Name: Betty Kamara  
Title: Contract Administrator  
Dated: July 23, 2010

EXHIBIT A

AGREEMENT

between

BROWARD COUNTY

and

BECK DISASTER RECOVERY, INC.

for

DISASTER DEBRIS MONITORING SERVICE

RFP # 20070712-0-WRS-01

AGREEMENT

between

BROWARD COUNTY

and

BECK DISASTER RECOVERY, INC.

for

DISASTER DEBRIS MONITORING SERVICE

RFP # 20070712-0-WRS-01

This is an Agreement, made and entered into by and between: BROWARD COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY,"

AND

BECK DISASTER RECOVERY, Inc., a Florida corporation, hereinafter referred to as "SECOND PARTY."

IN CONSIDERATION of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, COUNTY and SECOND PARTY agree as follows:

ARTICLE 1

DEFINITIONS AND IDENTIFICATIONS

For purposes of this Agreement, reference to one gender shall include the other, use of the plural shall include the singular, and use of the singular shall include the plural. The following definitions apply unless the context in which the word or phrase is used requires a different definition:

- 1.1 **Agreement** - means this document, Articles 1 through 9, inclusive. Other terms and conditions are included in the exhibits and documents that are expressly incorporated by reference.
- 1.2 **Board** - The Broward County Board of County Commissioners.

- 1.3 **Contract Administrator** - The Broward County Administrator, the Director of Broward County Waste and Recycling Services, or the designee of such County Administrator or Director. The primary responsibilities of the Contract Administrator are to coordinate and communicate with SECOND PARTY and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.
- 1.4 **County Administrator** – The administrative head of COUNTY pursuant to Sections 3.02 and 3.03 of the Broward County Charter.
- 1.5 **County Attorney** - The chief legal counsel for COUNTY who directs and supervises the Office of the County Attorney pursuant to Section 2.10 of the Broward County Charter.
- 1.6 **Community Disadvantaged Business Enterprise or "CDBE"** - is a business located in Broward County, Florida, that is owned by an economically disadvantaged individual whose ability to compete in the free enterprise system has been impaired due to diminished opportunities to obtain capital and credit as compared to others in the same line of business who are not economically disadvantaged. To qualify as a CDBE business, a firm must meet the criteria and eligibility requirements of Broward County's CDBE Program and must be certified by Broward County's Small Business Development Division.
- 1.7 **Project** - The Project consists of the services described in Article 2.
- 1.8 **Work Authorization** – A written statement initiated by the originating agency representative, reviewed and approved by Contract Administrator, and thereafter executed by the appropriate award authority, directing SECOND PARTY to begin work.

## ARTICLE 2

### SCOPE OF SERVICES

- 2.1 SECOND PARTY shall perform all work identified in this Agreement and Exhibit "A." The parties agree that the Scope of Services is a description of SECOND PARTY's obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the work described that exclusion would render performance by SECOND PARTY impractical, illogical, or unconscionable.



- 2.2 SECOND PARTY acknowledges and agrees that Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement.
- 2.3 SECOND PARTY shall pay its subcontractors and suppliers, including its CDBE subcontractors and suppliers, within thirty (30) days following receipt of payment from the COUNTY for such subcontracted work or supplies. SECOND PARTY agrees that if it withholds an amount as retainage from such subcontractors or suppliers, that it will release such retainage and pay same within thirty (30) days following receipt of payment of retained amounts from COUNTY.

### ARTICLE 3

#### TERM AND TIME OF PERFORMANCE

- 3.1 The term of this Agreement shall begin on the date it is fully executed by both parties and shall end on June 1, 2011; provided, however, if the term of this Agreement extends beyond a single fiscal year of COUNTY, the continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Chapter 129, Florida Statutes. This Agreement may be extended, at the option of the Purchasing Director for two (2) additional one (1) year renewals, upon sixty (60) days' written notice to SECOND PARTY prior to the expiration of any term.
- 3.2 All duties, obligations, and responsibilities of SECOND PARTY required by this Agreement shall be completed as required by this Agreement and Exhibit "A." Time shall be deemed to be of the essence in performing the duties, obligations and responsibilities required by this Agreement.

### ARTICLE 4

#### AUTHORIZATION OF WORK

- 4.1 Each department, division, agency or office may request, either solely or in conjunction with other departments, divisions, agencies or offices, through Contract Administrator, for work to be performed by SECOND PARTY. The department, division, agency or office shall supply the Contract Administrator with a request for a Work Authorization. The Work Authorization shall be in one of the forms attached hereto respectively as Exhibit "G" "G-1" or "G-2" depending on the amount of the Work Authorization, including a description of the project and budget for all charges expected to be incurred for such project. Requests for Work Authorizations submitted to Contract Administrator shall be signed by both the Originating Agency and SECOND PARTY and thereafter, reviewed and

approved by the Contract Administrator prior to execution by the appropriate award authority. The Work Authorization shall, upon execution by the appropriate award authority, be a Work Authorization to SECOND PARTY.

4.2 All Work Authorizations issued by COUNTY shall contain, at a minimum, the following information and requirements:

4.2.1 A description of the project to be undertaken, a reference to the type of service provided and a statement of the method of compensation.

4.2.2 A budget for the project. Such amount shall constitute a guaranteed maximum and shall not be exceeded unless prior written approval of COUNTY, through a revised Work Authorization, is obtained. The information contained in the budget shall be in sufficient detail so as to identify the various elements of costs.

4.2.3 Any other additional instructions or provisions relating to the project authorized pursuant to this Agreement.

4.2.4 Work Authorizations shall be dated, serially numbered, and signed as required by an authorized representative of the originating agency representative, SECOND PARTY, Contract Administrator, and the appropriate award authority.

4.2.5 Award Authority.

4.2.5.1 Any individual Work Authorization that will cost COUNTY Thirty Thousand Dollars (\$30,000.00) or less may be executed by COUNTY's Contract Administrator using the Work Authorization Form attached hereto as Exhibit "G." No Work Authorization executed by Contract Administrator shall exceed Thirty Thousand Dollars (\$30,000.00) and the total of all annual Work Authorizations executed by Contract Administrator shall not exceed Three Hundred Thousand Dollars (\$300,000.00). For the purposes of this subsection 4.2.5.1, "annual" shall refer to COUNTY's fiscal year.

4.2.5.2 Any individual Work Authorization that will cost COUNTY more than Thirty Thousand Dollars (\$30,000.00) but not to exceed One Hundred Thousand Dollars (\$100,000.00) may be executed by COUNTY's Purchasing Director using the Work Authorization Form attached hereto as Exhibit "G-1." No Work Authorization executed by the Purchasing Director shall exceed One Hundred Thousand Dollars (\$100,000.00) and the total of all annual Work Authorizations executed by the Purchasing Director shall not

exceed One Million Dollars (\$1,000,000.00). For the purposes of this subsection 4.2.5.2, "annual" shall refer to COUNTY's fiscal year. The Purchasing Director's authority referenced in this subsection 4.2.5.2 includes Work Authorizations that cost COUNTY Thirty Thousand Dollars (\$30,000.00) or less once Contract Administrator's award authority in subsection 4.2.5.1 is reached.

- 4.2.5.3 Any individual Work Authorization that will cost COUNTY more than One Hundred Thousand Dollars (\$100,000.00) or any Work Authorization that exceeds the Purchasing Director's award authority in subsection 4.2.5.2 above shall be executed by the Board, except when an emergency has been declared as provided by law, in which event the County Administrator or designee may execute Work Authorization, using the Work Authorization Form attached hereto as Exhibit "G-2."

#### 4.3 METHOD OF BILLING AND PAYMENT

- 4.3.1 SECOND PARTY may submit invoices for compensation no more often than on a monthly basis, but only after the services for which the invoices are submitted have been completed. An original invoice plus one copy are due within fifteen (15) days of the end of the month except the final invoice which must be received no later than sixty (60) days after this Agreement expires. Invoices shall designate the nature of the services performed and/or the expenses incurred. SECOND PARTY shall submit with each invoice a Certification of Payments to Subcontractors and Suppliers (Exhibit "F"). The certification shall be accompanied by a copy of the notification sent to each subcontractor and suppliers listed in item 2 of the form, explaining the good cause why payment has not been made.
- 4.3.2 COUNTY shall pay SECOND PARTY within thirty (30) calendar days of receipt of SECOND PARTY's proper invoice, as required by the "Broward County Prompt Payment Ordinance" (Broward County Ordinance No. 89-49, as may be amended from time to time). To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by Contract Administrator.
- 4.4 Notwithstanding any provision of this Agreement to the contrary, COUNTY may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work which has not been remedied or resolved in a manner satisfactory to Contract Administrator or failure to comply with this Agreement. The amount withheld shall not be subject to payment of interest by COUNTY.

4.5 Payment shall be made to SECOND PARTY at:

Beck Disaster Recovery, Inc.  
800 North Magnolia Avenue, Suite 400  
Orlando, FL 32803

#### ARTICLE 5

#### INDEMNIFICATION

SECOND PARTY shall at all times hereafter indemnify, hold harmless and, at the County Attorney's option, defend or pay for an attorney selected by the County Attorney, except as may otherwise be provided by the terms of an insurance policy procured by SECOND PARTY as required by this Agreement, to defend COUNTY, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by intentional or negligent act of, or omission of, SECOND PARTY, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against COUNTY by reason of any such claim, cause of action or demand, SECOND PARTY shall, upon written notice from COUNTY, resist and defend such lawsuit or proceeding by counsel satisfactory to COUNTY or, at COUNTY's option, pay for an attorney selected by County Attorney to defend COUNTY, except as may otherwise be provided by the terms of an insurance policy procured by SECOND PARTY as required by this Agreement. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the County Attorney, any sums due SECOND PARTY under this Agreement may be retained by COUNTY until all of COUNTY's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by COUNTY.

#### ARTICLE 6

#### INSURANCE

6.1 To ensure the indemnification obligation contained above, SECOND PARTY shall, at a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement (unless otherwise provided), the insurance coverages set forth in Sections 6.3, 6.4, 6.5, and 6.6, in accordance with the terms and

conditions required by this Article. Each insurance policy shall clearly contain the limits and coverages required by Article 6.

6.2 Such policy or policies shall be without any deductible amount unless otherwise noted in this Agreement and shall be issued by approved companies authorized to do business in the State of Florida, and having agents upon whom service of process may be made in Broward County, Florida. SECOND PARTY shall pay all deductible amounts, if any. SECOND PARTY shall specifically protect COUNTY and the Broward County Board of County Commissioners by naming COUNTY and the Broward County Board of County Commissioners as additional insureds under the Commercial Liability Policy as well as on any Excess Liability Policy coverage.

6.3 ~~Professional Liability Insurance. A Professional Liability Insurance Policy shall be provided which shall contain minimum limits of One Million Dollars (\$1,000,000.00) for each claim. Any deductible amount shall not exceed One Hundred Thousand Dollars (\$100,000.00) for each occurrence. SECOND PARTY shall notify COUNTY in writing within thirty (30) days of any claim filed or made against its Professional Liability Insurance Policy.~~

6.4 Commercial Liability Insurance. A Commercial Liability Insurance Policy shall be provided which shall contain minimum limits of Five Hundred Thousand Dollars (\$500,000.00) per occurrence combined single limit for bodily injury liability and property damage liability and shall contain minimum limits of Five Hundred Thousand Dollars (\$500,000.00) per aggregate. Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include:

Premises and/or operations.

Independent contractors.

Products and/or Completed Operations for contracts.

Broad Form Contractual Coverage applicable to this specific Agreement, including any hold harmless and/or indemnification agreement.

Personal Injury Coverage with Employee and Contractual Exclusions removed, with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

6.5 Business Automobile Liability. Business Automobile Liability shall be provided with minimum limits of Five Hundred Thousand Dollars (\$500,000.00) per occurrence, combined single limit for Bodily Injury Liability and Property Damage

Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

Owned Vehicles.

Hired and Non-Owned Vehicles.

Employers' Non-Ownership.

- 6.6 Workers' Compensation Insurance. Workers' Compensation insurance to apply for all employees in compliance with Chapter 440, Florida Statutes, as may be amended from time to time, the "Workers' Compensation Law" of the State of Florida, and all applicable federal laws. In addition, the policy(ies) must include:

Employers' Liability with a limit of One Hundred Thousand Dollars (\$100,000.00) each accident.

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

- 6.7 Prior to beginning performance of work under this Agreement, SECOND PARTY shall provide to COUNTY certificates of insurance for all insurance policies required by this Article. COUNTY reserves the right to require a certified copy of such policies upon request.
- 6.8 Coverage is not to cease and is to remain in force (subject to cancellation notice) until all performance required of SECOND PARTY is completed. All policies must be endorsed to provide COUNTY with at least thirty (30) days' notice of expiration, cancellation and/or restriction. If any of the insurance coverages will expire prior to the completion of the work, copies of renewal policies shall be furnished at least thirty (30) days prior to the date of their expiration.
- 6.9 COUNTY reserves the right to review and revise any insurance requirements at the time of renewal or amendment of this Agreement, including, but not limited to, deductibles, limits, coverage, and endorsements based on insurance market conditions affecting the availability or affordability of coverage, or changes in the scope of work or specifications that affect the applicability of coverage.

## ARTICLE 7

### TERMINATION

- 7.1 This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) days after written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by the Board. Termination for convenience by the Board shall be effective on the termination date stated in written notice provided by the COUNTY, which termination date shall be not less than thirty (30) days after the date of such written notice. This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances in the event the County Administrator determines that termination is necessary to protect the public health or safety. The parties agree that if the COUNTY erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.
- 7.2 This Agreement may be terminated for cause for reasons including, but not limited to, SECOND PARTY's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to suitably perform the work; or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement. This Agreement may also be terminated by the Board:
- 7.2.1 Upon the disqualification of SECOND PARTY as a CDBE by COUNTY's Director of Small Business Development Division if SECOND PARTY's status as a CDBE was a factor in the award of this Agreement and such status was misrepresented by SECOND PARTY;
  - 7.2.2 Upon the disqualification of SECOND PARTY by COUNTY's Director of Small Business Development Division due to fraud, misrepresentation, or material misstatement by SECOND PARTY in the course of obtaining this Agreement or attempting to meet the CDBE contractual obligations;
  - 7.2.3 Upon the disqualification of one or more of SECOND PARTY's CDBE participants by COUNTY's Director of Small Business Development Division if any such participant's status as a CDBE firm was a factor in the award of this Agreement and such status was misrepresented by SECOND PARTY or such participant;
  - 7.2.4 Upon the disqualification of one or more of SECOND PARTY's CDBE participants by COUNTY's Director of Small Business Development

Division if such CDBE participant attempted to meet its CDBE contractual obligations through fraud, misrepresentation, or material misstatement; or

- 7.2.5 If SECOND PARTY is determined by COUNTY's Director of Small Business Development Division to have been knowingly involved in any fraud, misrepresentation, or material misstatement concerning the CDBE status of its disqualified CDBE participant.
- 7.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by the County Administrator, which the County Administrator deems necessary to protect the public health, safety, or welfare may be verbal notice that shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.
- 7.4 In the event this Agreement is terminated for convenience, SECOND PARTY shall be paid for any services properly performed under the Agreement through the termination date specified in the written notice of termination. SECOND PARTY acknowledges and agrees that it has received good, valuable and sufficient consideration from COUNTY, the receipt and adequacy of which are, hereby acknowledged by SECOND PARTY, for COUNTY's right to terminate this Agreement for convenience.
- 7.5 In the event this Agreement is terminated for any reason, any amounts due SECOND PARTY shall be withheld by COUNTY until all documents are provided to COUNTY pursuant to Section 9.1 of Article 9.

## ARTICLE 8

### EEO and CDBE COMPLIANCE

#### 8.1 EEO COMPLIANCE

SECOND PARTY shall not unlawfully discriminate on the basis of race, color, national origin, sex, religion, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement, the solicitation for or purchase of goods or services relating to this Agreement, or in subcontracting work in the performance of this Agreement and shall not otherwise unlawfully discriminate in violation of the Broward County Code, Chapter 16½, as may be amended from time to time. SECOND PARTY shall include the foregoing or similar language in its contracts with any subcontractors or subconsultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26, as amended. Failure to comply with the foregoing requirements is a material breach of this Agreement.



which may result in the termination of this Agreement or such other remedy as COUNTY deems appropriate.

SECOND PARTY shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. SECOND PARTY shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by COUNTY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, SECOND PARTY shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

By execution of this Agreement, SECOND PARTY represents that it has not been placed on the discriminatory vendor list (as provided in Section 287.134, Florida Statutes, as may be amended from time to time). COUNTY hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle COUNTY to terminate this Agreement and recover from SECOND PARTY all monies paid by COUNTY pursuant to this Agreement, and may result in debarment from COUNTY's competitive procurement activities.

## 8.2 CDBE COMPLIANCE

8.2.1 The CDBE Program, which is implemented under COUNTY's Community Disadvantaged Business Enterprise Act of 2007 (Broward County Ordinance No. 2007-32, as may be amended from time to time), referred to as the "Act," provides for the establishment and implementation of CDBE participation goals, initiatives, and other opportunities for COUNTY contracts. In completing this Project, SECOND PARTY agrees to and shall comply with the CDBE Program. Failure by SECOND PARTY to carry out any of the CDBE Program requirements shall constitute a material breach of this Agreement, which shall permit COUNTY to terminate this Agreement or to exercise any other remedy available under this Agreement, under the Broward County Administrative Code, under the Broward County Code of Ordinances, or under applicable law, all of which remedies being cumulative. SECOND PARTY acknowledges that the Broward County Board of County Commissioners, acting by and through the Director of the Broward County Office of Equal Opportunity, may make minor administrative modifications to the CDBE Program which shall become applicable to this Agreement if the administrative modifications are not unreasonable. Written notice of any such modification shall be provided to SECOND PARTY and shall include a deadline for SECOND PARTY to notify COUNTY if SECOND PARTY concludes that the modification exceeds the authority of this section of this Agreement.

Failure of SECOND PARTY to timely notify COUNTY of its conclusion that the modification exceeds such authority shall be deemed acceptance of the modification by SECOND PARTY.

The COUNTY, acting by and through its Small Business Development Division, shall have the right to review each proposed amendment, extension, modification, or change order to this Agreement that, by itself or aggregated with previous amendments, extensions, modifications, or change orders increases the initial Agreement price by ten percent (10%) or Fifty Thousand Dollars (\$50,000) whichever is less, for opportunities to include or increase the participation of CDBE firms already involved in this Agreement. SECOND PARTY shall make a good faith effort to include CDBE firms in work resulting from any such amendment, extension, modification, or change order and shall report such efforts, along with evidence thereof, to the Small Business Development Division.

8.2.2 COUNTY and SECOND PARTY agree that subcontract awards to CDBE firms are crucial to the achievement of the Project's CDBE participation goal. SECOND PARTY understands that each CDBE firm utilized on the Project to meet the participation goal must be certified by the Broward County Small Business Development Division. In an effort to assist COUNTY in achieving its established goal for this Project, SECOND PARTY agrees to meet the following CDBE participation goal by utilizing the CDBE firms for the work and dollar values described in Subsection 8.2.3:

|                 |     |
|-----------------|-----|
| Total CDBE Goal | 10% |
|-----------------|-----|

SECOND PARTY shall inform COUNTY immediately when a CDBE firm is not able to perform or if SECOND PARTY believes the CDBE firm should be replaced for any other reason, so that the Small Business Development Division may review and verify the good faith efforts of SECOND PARTY to substitute the CDBE firm with another CDBE firm. Whenever a CDBE firm is terminated, SECOND PARTY shall make good faith efforts to find another CDBE firm to perform the work required of the original CDBE firm.

8.2.3 In performing services for this Project, COUNTY and SECOND PARTY hereby incorporate SECOND PARTY's participating CDBE firms, addresses, scope of work, and dollar value identified on the Schedule of CDBE Participation into this Agreement (Exhibit "D"). Upon execution of this Agreement by COUNTY, SECOND PARTY shall enter into a formal contract with the CDBE firms SECOND PARTY selected to fulfill the CDBE participation goal for this Agreement and agrees to provide copies of its contracts with such firms to the Contract Administrator and the Broward County Small Business Development Division. SECOND PARTY

shall not terminate a CDBE firm listed on the Schedule of Participation without cause unless SECOND PARTY has received COUNTY's prior written consent. SECOND PARTY understands that each replacement CDBE firm utilized on the Project to meet the participation goal must also be certified by the Broward County Small Business Development Division.

- 8.2.4 SECOND PARTY shall allow COUNTY to engage in on-site reviews to monitor SECOND PARTY's progress in achieving and maintaining its contractual and CDBE Program obligations. Such review and monitoring shall be by the Contract Administrator in conjunction with the Small Business Development Division. COUNTY shall have access, without limitation, to SECOND PARTY's books and records, including payroll records, tax returns and records, and books of account, on five (5) business days notice, to allow COUNTY to determine SECOND PARTY's compliance with its commitment to the CDBE participation goal and the status of any CDBE firm performing any portion of this Agreement.
- 8.2.5 SECOND PARTY understands that it is the responsibility of the Contract Administrator and the Broward County Small Business Development Division to monitor compliance with the CDBE requirements. In that regard, SECOND PARTY agrees to furnish monthly reports regarding compliance with its CDBE obligations to the Contract Administrator with its partial pay requests under Section 4.2 of this Agreement, which report shall, as a minimum, include all expenditures made to achieve compliance with its assigned goal or other contractual conditions agreed to by SECOND PARTY, the name and business address of each CDBE firm participating in this Agreement; a description of the work performed and/or product or service supplied by each CDBE firm; the date and amount of each expenditure; and any other information requested by COUNTY's representative which may assist COUNTY in determining SECOND PARTY's compliance with its contractual obligations, or which may assist in the implementation and enforcement of the Act. The submission of the report required by this subsection shall be a condition of payment to SECOND PARTY. The monthly reports shall be submitted on a form which may be obtained at the Small Business Development Division. The first report shall be due at the end of the first month of this Agreement.
- 8.2.6 In the event of SECOND PARTY's noncompliance with its participation commitment to a CDBE firm (including without limitation the unexcused reduction of the CDBE firm's participation), the affected CDBE firm shall have the right to the following remedies if the noncompliance is or was alleged to be due to no fault of the CDBE firm, and alleged to be due to the willful action or omission of SECOND PARTY:

- 8.2.6.1 The affected CDBE firm shall be entitled to damages pursuant to its agreement with SECOND PARTY.
- 8.2.6.2 If the CDBE firm has the right to arbitrate and institutes arbitration proceedings claiming non-compliance with the Act by SECOND PARTY, then in such event the CDBE firm may submit the dispute to arbitration. However, arbitration shall not be available as to any dispute between SECOND PARTY and COUNTY; nor shall COUNTY incur any cost, fee, or liability relative to any arbitration proceeding.
- 8.2.6.3 Nothing under this Subsection 8.2.6 shall be construed to limit the rights of and remedies available to COUNTY, including the right to seek its own damages pursuant to this Agreement.
- 8.2.7 SECOND PARTY agrees that nonpayment of a CDBE subcontractor or CDBE supplier as required by Section 2.3 of this Agreement shall be a material breach of this Agreement and that COUNTY's Contract Administrator may, at its option, increase allowable retainage or withhold progress payments unless and until SECOND PARTY demonstrates timely payments of sums due to such subcontractors or suppliers. SECOND PARTY agrees that the presence of a "pay when paid" provision in its contract with a CDBE firm shall not preclude COUNTY or its representatives from inquiring into allegations of nonpayment. The foregoing remedies under this Subsection 8.2.7 shall not be employed when SECOND PARTY demonstrates that failure to pay results from a bona fide dispute with its CDBE subcontractor or supplier.
- 8.2.8 If SECOND PARTY fails to comply with the requirements of this Agreement, COUNTY shall have the right to exercise any administrative remedies provided by the Act, or any other right or remedy provided in this Agreement or under applicable law.

## ARTICLE 9

### MISCELLANEOUS

#### 9.1 OWNERSHIP OF DOCUMENTS

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of COUNTY. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by SECOND PARTY, whether finished or unfinished, shall become the property of COUNTY and shall be delivered by SECOND PARTY to the Contract Administrator within

seven (7) days of termination of this Agreement by either party. Any compensation due to SECOND PARTY shall be withheld until all documents are received as provided herein.

## 9.2 AUDIT RIGHT AND RETENTION OF RECORDS

COUNTY shall have the right to audit the books, records, and accounts of SECOND PARTY and its subcontractors that are related to this Project. SECOND PARTY and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. All books, records, and accounts of SECOND PARTY and its subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, SECOND PARTY or its subcontractor, as applicable, shall make same available at no cost to COUNTY in written form.

SECOND PARTY and its subcontractors shall preserve and make available, at reasonable times for examination and audit by COUNTY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by COUNTY to be applicable to SECOND PARTY's and its subcontractors' records, SECOND PARTY and its subcontractors shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by SECOND PARTY or its subcontractors. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for COUNTY's disallowance and recovery of any payment upon such entry.

SECOND PARTY shall, by written contract, require its subcontractors to agree to the requirements and obligations of this Section 9.2.

## 9.3 PUBLIC ENTITY CRIME ACT

SECOND PARTY represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, as may be amended from time to time, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to COUNTY, may not

submit a bid on a contract with COUNTY for the construction or repair of a public building or public work, may not submit bids on leases of real property to COUNTY, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with COUNTY, and may not transact any business with COUNTY in excess of the threshold amount provided in Section 287.017, Florida Statutes, as may be amended from time to time, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by COUNTY pursuant to this Agreement, and may result in debarment from COUNTY's competitive procurement activities.

In addition to the foregoing, SECOND PARTY further represents that there has been no determination, based on an audit, that it 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 SECOND PARTY has been placed on the convicted vendor list.

#### 9.4 INDEPENDENT CONTRACTOR

SECOND PARTY is an independent contractor under this Agreement. Services provided by SECOND PARTY pursuant to this Agreement shall be subject to the supervision of SECOND PARTY. In providing such services, neither SECOND PARTY nor its agents shall act as officers, employees, or agents of COUNTY. No partnership, joint venture, or other joint relationship is created hereby. COUNTY does not extend to SECOND PARTY or SECOND PARTY's agents any authority of any kind to bind COUNTY in any respect whatsoever.

#### 9.5 THIRD PARTY BENEFICIARIES

Except as provided under Subsection 8.2.6, neither SECOND PARTY nor COUNTY intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

#### 9.6 NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set

forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR COUNTY:

Broward County Waste and Recycling Services  
1 North University Drive, Suite 400  
Plantation, Florida 33324

FOR SECOND PARTY:

Beck Disaster Recovery, Inc.  
800 North Magnolia Avenue, Suite 400  
Orlando, FL 32803

9.7 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other party. In addition, SECOND PARTY shall not subcontract any portion of the work required by this Agreement, except as provided in Exhibit "D," unless approved in writing by Contract Administrator. COUNTY may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by SECOND PARTY of this Agreement or any right or interest herein without COUNTY's written consent.

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

SECOND PARTY shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of SECOND PARTY's performance and all interim and final product(s) provided to or on behalf of COUNTY shall be comparable to the best local and national standards.

9.8 CONFLICTS

Neither SECOND PARTY nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with SECOND PARTY's loyal and conscientious exercise of judgment and care related to its performance under this Agreement.

SECOND PARTY further agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against COUNTY in any legal or administrative proceeding in which he, she, or SECOND PARTY is not a party, unless compelled by court process. Further, SECOND PARTY agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of COUNTY in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude SECOND PARTY or any persons in anyway from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event SECOND PARTY is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, SECOND PARTY agrees to require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as SECOND PARTY.

#### 9.9 MATERIALITY AND WAIVER OF BREACH

COUNTY and SECOND PARTY agree that each requirement, duty, and obligation set forth herein was bargained for at arms-length and is agreed to by the parties in exchange for quid pro quo, that each is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof.

COUNTY's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

#### 9.10 COMPLIANCE WITH LAWS

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

#### 9.11 SEVERANCE

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



9.12 JOINT PREPARATION

Each party and its counsel have participated fully in the review and revision of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

9.13 PRIORITY OF PROVISIONS

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

9.14 JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, SECOND PARTY AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

9.15 AMENDMENTS

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and SECOND PARTY or others delegated authority to or otherwise authorized to execute same on their behalf.

9.16 PRIOR AGREEMENTS

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

9.17 HIPAA COMPLIANCE

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

9.18 PAYABLE INTEREST

9.18.1. Payment of Interest. Except as required by the Broward County Prompt Payment Ordinance, COUNTY shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof SECOND PARTY waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Agreement.

9.18.2. Rate of Interest. In any instance where the prohibition or limitations of Section 9.18.1 are determined to be invalid or unenforceable, the annual rate of interest payable by COUNTY under this Agreement,

whether as prejudgment interest or for any other purpose, shall be .025 percent simple interest (uncompounded).

9.19 CONTINGENCY FEE

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

9.20 INCORPORATION BY REFERENCE

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

9.21 REPRESENTATION OF AUTHORITY

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

9.22 PREVAILING WAGE REQUIREMENT

If construction work in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) is required of, or undertaken by, SECOND PARTY as a result of this Agreement, Broward County Ordinance No. 83-72, as may be amended from time to time, shall be deemed to apply to such construction work; and further SECOND PARTY shall fully comply with the requirements of such ordinance and shall satisfy, comply with, and complete the requirements set forth in Exhibits "B" and "C."

9.23 MULTIPLE ORIGINALS

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

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the 24<sup>th</sup> day of June, 2008 and SECOND PARTY, signing by and through its President, duly authorized to execute same.

COUNTY

ATTEST:

R.H. Crossland  
Broward County Administrator, as  
Ex-officio Clerk of the Broward County  
Board of County Commissioners

BROWARD COUNTY, by and through  
its Board of County Commissioners

By [Signature]  
Mayor

24<sup>th</sup> day of June, 2008



Insurance requirements  
approved by Broward County  
Risk Management Division

By [Signature] 4/4/08  
(Date)

Approved as to form by  
Office of the County Attorney  
for Broward County, Florida  
JEFFREY J. NEWTON, County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-6968

By [Signature]  
Noel M. Pfeffer (Date)  
Deputy County Attorney

AGREEMENT BETWEEN BROWARD COUNTY AND BECK DISASTER RECOVERY, INC. FOR DISASTER DEBRIS MONITORING SERVICE

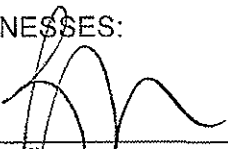
SECOND PARTY

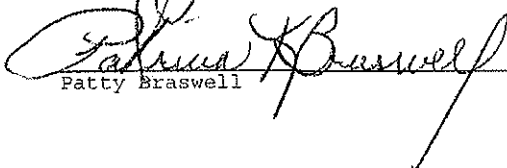
BECK DISASTER RECOVERY, INC.

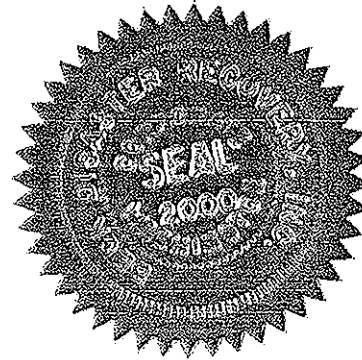
By   
Charles M. McLendon, President

3rd day of June, 20 08

WITNESSES:

  
Betty Kamara

  
Patty Braswell



NMP:slw  
5/2908A  
DISASTERdebrismonitoring  
07-081.08

## EXHIBIT "A"

### Scope of Service RFP Number: 20070712-0-WRS-01 Disaster Debris Monitoring Service

#### GENERAL DESCRIPTION OF THE DISASTER DEBRIS MONITORING SERVICE

The work involves pre-event and post event services, which may include:

##### Pre-event

- Provide assistance in the preparation for a disaster through participation in meetings, workshops, training sessions and the refinement of Debris Management Plans including data management and related systems.
- Provide debris estimation models or aids.
- Review temporary debris management sites (TDMS).

##### Post Event

- Assist with damage assessments or debris estimations.
- Perform oversight for road clearance and debris loading by county contractors or force account labor.
- Monitor multiple truck pickups, issue load tickets, record load site information, delineate FHWA or FEMA designations, and document contractor actions in cases of damaged property or other field oversight functions.
- Provide TDMS monitoring at various locations, including sites that handle material from multiple jurisdictions, different contractors and or monitoring firms.
- Provide other field services related to dangerous trees (hangers and leaners) and stumps that are within public right of ways or public property.
- Provide technical advice to the county and support Debris Management Center operations.
- Provide assistance with FEMA, FHWA and other submittals, audits, appeals and associated processes.

The disaster debris monitoring process must be immediate, rapid, and efficient with acceptable cost controls, accountability procedures, written reports and submittals to assure that the County shall have the means to be reimbursed for all eligible disaster recovery costs from appropriate Federal, State and private agencies. Response will typically be activated only in the event of an emergency and in accordance with an awarded contract. Response activation will be through a Work Authorization

#### SCOPE OF WORK

SECOND PARTY shall provide assistance in refining COUNTY's Debris

Management Plan specific to the emergency event.

SECOND PARTY shall provide training of selected COUNTY staff in essential debris management, monitoring, and collection functions to insure appropriate interface with staff of Debris Collection Contractors and County, State, and Federal Agencies.

SECOND PARTY shall provide field monitors at designated locations to ensure that only eligible debris is being removed and to check and verify information on debris removal and at TDMS designated by COUNTY.

SECOND PARTY shall provide technical assistance associated with the need to locate additional TDMS when requested by COUNTY.

SECOND PARTY shall provide assistance with hiring, scheduling, dispatching, and logistical operations of the field monitors assigned to work areas of storm debris collection. This assistance will include, but not be limited to:

- Recruiting, hiring, training, deploying, and supervising properly equipped monitors;
- Establishing daily schedules for monitors;
- Monitoring and recording the volumetric measurement (cubic yards or gross empty weight) of each truck that is added into service;
- Maintaining records of contract hauler's trucks, to include cubic yardage or loaded weight, time in and time out, number of loads per day, and other data as requested by designated COUNTY staff or as required by State, Federal, or other involved agencies;
- Determining truck assignments and providing the necessary vehicle decals or placards for ease of identification and tracking;
- Coordinating with COUNTY personnel to respond to problems in the field to include residential and commercial property damage claims in the process of debris removal;
- Investigating and documenting damage or other claims;
- Surveying the affected areas for special situations or emergent needs to include, but not limited to, identifying tree stumps and the management of root balls and associated cavities, hazardous trees (including leaners and hangers), construction and demolition debris, or other potentially hazardous situations;
- Maintaining a list of potentially hazardous locations and situations, coordinating and tracking the appropriate dispatch of staff and equipment to remediate the hazard, and making frequent reports to COUNTY regarding the hazard, remedial action, and post-event status;
- Recording on a map the streets where debris has been collected;
- Performing other duties as directed by designated COUNTY personnel.

SECOND PARTY shall collect baseline environmental data according to local, State and Federal agency requirements from the designated emergency debris management sites prior to the opening of these sites.

SECOND PARTY shall assist COUNTY in obtaining necessary local, State, and Federal permits for the designated emergency debris management sites.

SECOND PARTY shall conduct ongoing environmental data collection per local, State, and Federal requirements for the designated emergency debris management sites.

SECOND PARTY shall provide technical, clerical, and information technology consultation assistance to COUNTY in completing any and all forms necessary for reimbursement of fees and costs from local, State, or Federal agencies, including the Federal Emergency Management Agency of the Department of Homeland Security (FEMA), the State of Florida, the Federal Highway Administration (FHWA), the Department of Housing and Urban Development, or private insurance carriers relating to eligible costs arising out of the disaster recovery effort. This may include, but is not limited to, the timely and accurate completion and submittal of reimbursement requests; preparation and submittal of any and all necessary cost documentation and substantiations; preparing replies to any and all agency requests, inquiries, or potential denials; and preparing potential decision appeals.

SECOND PARTY shall review and validate Debris Removal Contractor(s) invoices prior to submission to COUNTY for processing.

SECOND PARTY shall assist COUNTY staff in conducting an annual tabletop exercise(s) to determine the adequacy of the debris removal plan and debris management process.

### PERSONNEL

The Debris Monitoring Team to be provided by SECOND PARTY shall include, but not be limited to, the following positions:

Project Manager/Liaison Officer: The primary functions of the Project Manager/Liaison Officer shall be to manage and supervise the debris monitoring services provided by the Proposer(s) and to serve as liaison between the Debris Manager and the Proposer(s).

Supervising Monitors: The function of the Supervising Monitors shall be the following:



- Verify that only eligible debris is being removed from designated public rights-of-way and public property within assigned debris pickup zones;
- Verify adequate photographic documentation of hazardous trees (leaners and hangers);
- Coordinate activities between monitors;
- Provide breaks to monitors;
- Coordinate, research, and make recommendation on damage claims to the Debris Manager;
- Maintain positive public relations in regard to individual complaints;
- Compile and complete necessary reports;
- Investigate and resolve complaints of residents within the limits of the contract;
- Coordinate daily operations with the Debris Hauler;
- Coordinate daily operations of monitors

Loading Site Monitors: The primary functions of the Loading Site Monitors are to complete and issue debris load tickets for eligible debris cleared and removed at locations designated by the Debris Management Center and to verify that only eligible debris is being removed from the designated eligible sites within assigned debris pickup zones in the County. The loading site monitor shall also photographically document hazardous trees (leaners and hangers).

TDMS Site Monitors: The primary function of the TDMS Site Monitors is to complete the load ticket and estimate volumes that have been transported to the debris management site for processing, storage, and disposal. TDMS Site Monitors shall also verify that all trucks leaving the Site have completely emptied all debris from the trucks.

Roving Monitors: The function of the Roving Monitors is to verify that only eligible debris is being removed from eligible property within assigned debris pickup locations in the County. The Roving Monitors shall also photographically document hazardous trees (leaners and hangers).

Debris Management Advisor: The Advisor is an experienced professional(s), who may assist COUNTY in the operations and coordination of activities at the Debris Management Center. The qualified individual (s) must have direct debris management experience including the management of debris removal operations, the oversight of temporary debris storage and reduction sites, debris recycling and disposal. Emphasis on management and coordination of post debris causing event recovery and FEMA reimbursement guidelines are required.

## **EMPLOYMENT REQUIREMENTS**

All Loading Site, Management Site, Roving, and Supervising Monitors must be a minimum of eighteen (18) years of age, and have a valid driver's license issued in

the United States.

All Loading Site, Management Site, Roving and Supervising Monitors must have experience in at least one of the following: Entry level engineer, solid waste site operations, construction inspector, land-clearing operations, entry level surveyor, solid waste collections, previous similar monitoring or inspection experience.

All Loading Site, Management Site, Roving, and Supervising Monitors must be capable of working in an outside environment and be able to climb a staircase ladder of ten (10) feet high.

All Loading Site, Management Site, Roving, and Supervising Monitors must attend a one-half day debris monitor training session to be conducted at a location specified by the Debris Manager before the start of the first shift. Training will be the responsibility of SECOND PARTY and must be approved by COUNTY.

### **OPERATIONAL REQUIREMENTS**

General Operations Procedures: COUNTY has contracts to remove and transport disaster debris from the public access roadways, rights-of-way and public property within the County to designated debris management sites. Each load of eligible debris shall be tracked using a multi-page load ticket. The Debris Hauler or COUNTY shall provide the load tickets to be used. The load tickets shall be inventoried and logged by SECOND PARTY.

Within forty-eight (48) hours of the issuance of the Work Authorization, SECOND PARTY shall be prepared to provide qualified, on-site personnel to monitor debris receiving operations at debris management sites located throughout the County. Additional sites may be added as debris removal efforts increase. SECOND PARTY must be prepared to provide a minimum of two (2) Debris Management Site Monitors per day at a minimum of a twelve to fourteen (12-14) hour shift, seven (7) days per week.

SECOND PARTY must be prepared to provide Roving Debris Monitors as necessary and needed to monitor and verify eligible debris removal functions. The Roving Debris Monitors must be prepared to operate a minimum of twelve to fourteen (12-14) hours per day, seven (7) days per week.

SECOND PARTY shall provide all management, supervision, labor, logistical support, transportation, mobile communications equipment, computer equipment, safety equipment, digital cameras, video cameras, and other equipment necessary to initiate and to safely and accurately perform all of COUNTY's debris monitoring activities. Mobile communications equipment shall be sufficient to allow all monitors to remain in contact with dispatch and supervisor(s) at all times.

SECOND PARTY shall maintain and update a log of damages reported, damage corrections, and releases for work by either the property owner or COUNTY.

SECOND PARTY shall maintain and update a log of the tickets inventoried, issued, and/or voided.

SECOND PARTY shall maintain and update tower logs of ticked information.

SECOND PARTY shall maintain and update map books issued by COUNTY, marking work complete with date and daily log of activities.

SECOND PARTY shall maintain and update a log of ineligible debris piles.

### **SAFETY AND HEALTH STANDARDS**

Whenever on a loading site or a debris management site, all personnel of SECOND PARTY must wear required safety equipment as necessary to comply with all OSHA, Federal, State and local requirements. The following are mandatory: hard hat, reflective vest, safety shoes, long pants, appropriate cold or rainy weather clothing, eye and hearing protection.

SECOND PARTY shall maintain a telephone contact list at each loading site and debris management site of the employees' supervisor, Debris Manager, Debris Management Center and nearest fire, police and emergency medical facilities.

SECOND PARTY shall ensure that personnel of SECOND PARTY adhere to all appropriate site safety requirements.

### **OTHER CONSIDERATIONS**

SECOND PARTY shall supervise and direct all work using qualified labor and proper equipment for all tasks. Safety of SECOND PARTY's personnel and equipment is the responsibility of SECOND PARTY. Additionally, SECOND PARTY shall pay for all materials, personnel, taxes, and fees necessary to perform work under the terms of the proposed contract.

SECOND PARTY must be duly licensed in accordance with Federal and State statutory and regulatory requirements to perform the work being sought through this RFP.

SECOND PARTY shall be responsible for determining what permits shall be necessary to perform work under the proposed contract. Copies of all permits shall be submitted to Contract Administrator before commencing work.

During the performance of this contract, SECOND PARTY shall be responsible for correcting any notices of violations issued as a result of actions or operations of SECOND PARTY or its subcontractors. Corrections for any such violations shall be at no additional cost to COUNTY.

SECOND PARTY shall be responsible for paying any and all costs associated with violations of law or regulation relative to the activities of the Proposer(s). Such costs might include but are not limited to: fines, administrative and civil penalties, and third party claims imposed on Broward County by any regulatory agency or by any third party as a result of noncompliance with Federal, State or local environmental laws and regulations or nuisance statutes by SECOND PARTY, its subcontractors, or any other persons, corporations, or legal entities retained by SECOND PARTY under this contract.

### **DELIVERABLES**

At a minimum, the following deliverables must be provided to COUNTY at the completion of the event response effort. However, deliverables shall be in no way limited to the following list. At its sole discretion, COUNTY may add and/or delete deliverables to meet the needs of COUNTY.

- Original load tickets shall be boxed, bound by date and sorted by ticket number
- Ticket logs including all information from ticket
- Daily tower logs
- List of all personnel with signatures and initials.
- Binder(s) with damage reports, completed repairs, and releases (if applicable).
- Binders with issues and final resolution
- Map books boxed by pass with daily logs.
- List of tickets issued by monitors, and list of lost/voided tickets.
- Each debris removal pass may, at the discretion of COUNTY, have a door hanger placed at each residence or street sign hanger placed at key intersections to indicate pickup has occurred. A report describing the location of hangers shall be provided to COUNTY.

- Each pile of ineligible debris will be tagged and a list compiled and submitted to COUNTY. COUNTY must approve format of the ineligible debris tag.
- Daily Report – the Proposer(s) shall prepare and submit daily operational reports throughout the duration of the recovery operations. Daily reports shall document the debris contractors' activities and progress from the previous day and shall be submitted by 10:30 a.m. to Contract Administrator or designee. Each daily report shall contain the following minimum information:
  - Correctly and accurately completed load tickets consistent with all reporting documents;
  - The times of operation of all debris loading trucks;
  - Reports, maps and graphs to delineate production rates of crews and their equipment, progress by area and estimations of total quantities remaining, time to completion, and daily cumulative cubic yards of debris removed, processed and hauled.
- Final Report – A final report will be prepared by SECOND PARTY and submitted to Contract Administrator within thirty (30) days of completion of recovery operations. Recovery Operations include closure and remediation of TDMS and conclusions of all related operations. At a minimum this report will include: a discussion of disaster response requirements and results and recommendations for future disaster response.

All deliverables will be submitted both electronically in a format specified by Contract Administrator and on paper.

### **PAYMENT**

All labor rates are to be fully burdened to include all taxes, benefits, handling charges, equipment, mileage, rentals, per diem, housing, reproduction, overhead, profits and any other expenses necessary to the execution of a contract.

Billable time for field operations shall include hours when debris-hauling trucks are in operation as well as reasonable start-up and close of day actions. Billable time shall be supported with daily timesheets or other documentation processes as approved, in writing, by Contract Administrator.

All load tickets, forms, reports and other deliverables shall be accurately and correctly submitted in the initial instance of submittal. SECOND PARTY shall not bill and shall not be paid for time spent by any personnel to correct a load ticket, form, report, or other deliverable.

No overtime rates will be paid.

Payment Schedule – Invoices will be processed for payment only after approval by Contract Administrator or designee. SECOND PARTY shall be responsible for reviewing the debris hauler's deliverables and invoices, for certifying their consistency with SECOND PARTY's deliverables and invoices, and for resolving any discrepancies that may exist. Approval for payment shall not be granted until appropriate deliverables are received and determined to be correct, accurate and consistent by the user agency's Program Manager.

### **Davis-Bacon Act**

The Davis-Bacon Act as amended, requires that each contract over \$2,000 to which the United States or the District of Columbia is a party for the construction, alteration, or repair of public buildings or public works shall contain a clause setting forth the minimum wages to be paid to various classes of laborers and mechanics employed under the contract. Under the provisions of the Act, contractors or their subcontractors are to pay workers employed directly upon the site of the work no less than the locally prevailing wages and fringe benefits paid on projects of a similar character. The Davis-Bacon Act directs the Secretary of Labor to determine such local prevailing wage rates. A "wage determination" is the listing of wage rates and fringe benefit rates for each classification of laborers and mechanics, which the Administrator of the Wage and Hour Division of the U. S. Department of Labor has determined to be prevailing in a given area for a particular type of construction (e.g., building, heavy, highway, or residential).

Project wage determinations are issued at the specific request of a contracting agency; each is applicable to the named project only; and expires 180 calendar days from the date of issuance unless an extension of the expiration date is requested by the agency and approved by the Wage and Hour Division. If such a determination is not used in the period of its effectiveness, it is void. Project determinations are issued in response to contracting agencies submitting to the Wage and Hour Division a Standard Form 308 requesting a wage determination.

Debris monitoring activities on federal roads for which cost reimbursement is being sought from the Federal Highway Administration may be subject to Davis-Bacon Act requirements. Debris monitoring activities to which Davis-Bacon Act requirements are applicable shall be reimbursed at the Proposer(s)' hourly rate(s) as stipulated in the contract to be executed as a result of this RFP or at the prevailing wage rate as determined by Davis-Bacon Act procedures, whichever is higher. It shall be the responsibility of the Proposer(s) to submit a Standard Form 308 and/or other necessary form(s) to the Wage and Hour Division of the Department of Labor to request a Davis-Bacon Act wage determination. The wage determination secured from the Wage and Hour Division of the Department of labor shall be provided by the

Proposer(s) to the County. It shall additionally be the responsibility of the Proposer(s) to abide by all Davis-Bacon Act requirements and to be knowledgeable about the applicability of the Act. SECOND PARTY shall be financially responsible for any expenses denied reimbursement due to failure to adhere to Davis-Bacon Act requirements.

**Subcontractors**

If there is intent to use subcontractors, headed by the primary consultant who will be responsible for the entire engagement a guarantee of performance of all subcontractors is required. If subcontractors are proposed, the response should include all information on every subcontractor, including management, experience, references and expertise. Prior to the initiation of the project, any subcontractor should be approved by COUNTY.

**EXHIBIT "A"**  
**(continued)**

**Disaster Debris Monitoring Service**

**PRICE LIST**

The hourly rates shall include all costs, (including lodging, meals and transportation), all applicable overhead and profit.

| <u>POSITIONS</u>                         | <u>HOURLY RATES</u> |
|--|---------------------|
| Project Manager                          | \$105.00            |
| Supervisor                               | \$ 65.00            |
| Debris Management Advisor                | \$125.00            |
| Roving Monitors                          | \$ 55.00            |
| Load Site/Field Monitors                 | \$ 45.00            |
| Debris Site/Tower Monitors               | \$ 50.00            |
| GIS Analyst                              | \$ 65.00            |
| Environmental Specialist                 | \$ 85.00            |
| Data Manager                             | \$ 95.00            |
| Load Ticket Data Entry Clerks<br>(QA/QC) | \$ 35.00            |
| Billing/Invoice Analysts                 | \$ 65.00            |
| Administrative Assistants                | \$ 35.00            |



## EXHIBIT B

Prevailing Wage Rates: On November 17, 1983, the Broward County Board of County Commissioners enacted Ordinance No. 83-72 providing that, in all non-federally funded construction procurement activity of \$250,000 or more, the rate of wages and fringe benefit payments for all laborers, mechanics, and apprentices shall not be less than those payments for similar skills in classifications of work in like industries as determined by the Secretary of Labor and as published in the Federal Register (latest revision).

1. Prevailing Wage Rate Ordinance. This Project is not federally funded. If the construction cost is in excess of \$250,000, the following sections shall apply:
  - 1.1. The rate of wages and fringe benefit payments for all laborers, mechanics, and apprentices shall not be less than those payments for similar skills in classifications of work in a like construction industry as determined by the Secretary of Labor and as published in the Federal Register (latest revision).
  - 1.2. All mechanics, laborers, and apprentices, employed or working directly upon the site of the work shall be paid in accordance with the above-referenced wage rates. SECOND PARTY shall post notice of these provisions at the site of the work in a prominent place where it can be easily seen by the workers.
  - 1.3. If the parties cannot agree on the proper classification of a particular class of laborers or mechanics or apprentices to be used, the Contract Administrator shall submit the question, together with its recommendation, to the County Administrator for final determination.
  - 1.4. In the event it is found by the Contract Administrator that any laborer or mechanic or apprentice employed by SECOND PARTY, or any Subcontractor directly on the site of the work has been or is being paid at a rate of wages less than the rate of wages required by the ordinance, the Contract Administrator may: (1) by written notice to SECOND PARTY terminate its right to proceed with the work or such part of work for which there has been a failure to pay said required wages; and (2) prosecute the work or portion thereof to completion by contract or otherwise. Whereupon, SECOND PARTY and its sureties shall be liable to COUNTY for any excess costs occasioned to COUNTY thereby.

- 1.5. Sections 1.1 through 1.4 above shall apply to this Agreement to the extent that it is: (1) a prime Agreement subject to the ordinance; or (2) a subcontract also subject to the ordinance under such prime Agreement.
- 1.6. SECOND PARTY shall maintain payrolls and basic records relating thereto during the course of the work and shall preserve such for a period of three (3) years thereafter for all laborers, mechanics, and apprentices working at the site of the work. Such records shall contain the name and address of each such employee; its current classification; rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits); daily and weekly number of hours worked; deductions made; and actual wages paid.
- 1.7. SECOND PARTY shall submit, with each requisition for payment, a signed and sworn "Statement of Compliance" attesting to compliance with Broward County Ordinance No. 83-72. The Statement shall be in the form attached as Exhibit "C."
- 1.8. The Contract Administrator may withhold or cause to be withheld from SECOND PARTY so much of the payments requisitioned as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, watchpersons, and guards employed by SECOND PARTY or any subcontractor on the work, the full amount of wages required by this Agreement.
- 1.9. If SECOND PARTY or any subcontractor fails to pay any laborer, mechanic, or apprentice employed or working on the site of the work all or part of the wages required by this Agreement, the Contract Administrator may, after written notice to SECOND PARTY, take such action as may be necessary to cause suspension of any further payments or advances until such violations have ceased.





EXHIBIT D

LETTER OF INTENT

To Utilize a Community Disadvantaged Business Enterprise (CDBE) Subcontractor/Subconsultant

From: Beck Disaster Recovery, Inc.  
(Name of Proposer/Bidder)

To: Broward County, Selection and Negotiation Committee

Project Description: Disaster Debris Monitoring Services

In response to Broward County's RFP/Bid No. 20070712-0-WRS-01, the undersigned hereby agrees to utilize the CDBE firm listed below, if awarded the contract. The undersigned further certify that the firm has been contacted and properly apprised of the projected work assignment(s) upon execution of the contract with Broward County.

Name of Firm: Nova Consulting, Inc.  
(Proposed CDBE Subcontractor/Subconsultant)

Work Assignment:  
Monitoring/Supervising

Percentage of Prime's Contract Fees to be Awarded: Fifteen Percent (15%)  
(Dollar Amount or Percentage %)

[Signature] February 6, 2008  
(Signature of Owner or Authorized Rep.) (Date)

Subscribed and sworn to before me this 6th day of February 2008

[Signature] [Notary Seal]  
(Notary's Signature) (Notary Seal)

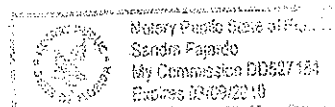
(ACKNOWLEDGEMENT BY THE PROPOSED CDBE FIRM)

The undersigned intends to perform work in connection with the above Contract as (check one)  
an individual a partnership X a corporation a joint venture. The undersigned agrees with the prime contractor's/consultant's proposal and further certifies that all information provided herein is true and correct.

[Signature] February 6, 2008  
(Signature of Owner or Authorized Rep.) (Date)

Subscribed and sworn to before me this 6th day of February 2008

[Signature] [Notary Seal]  
(Notary's Signature) (Notary Seal)





**SCHEDULE OF PARTICIPATION (CDBE)**

(Submit this form with an executed Letter of Intent from each CDBE firm listed in this form)

| Bid/RFP/RFP #: 20070712-0-WRS-01  |                      | Project Location: Broward County, FL                               |  | Date Form Submitted: February 6, 2008 |   |
|---|----------------------|--|--|---------------------------------------|---|
| Project Name: Disaster Debris Monitoring Service                          |                      |  | Project Start Date: N/A  |                                       |   |
| Prime Contractor: Beck Disaster Recovery, Inc.                            |                      |  | Address: 800 North Magnolia Avenue, Suite 400, Orlando, FL 32803 |                                       |   |
| Contact Person: Chuck McLendon  |                      | Telephone #: (407) 803-5700  |  | Fax #: (407) 803-5701                 |   |
| CDBE Subcontractor  | CDBE Expiration date | Address  | Phone  | Type of Work to be Performed          | Sub-contract Amount (Agreed Price (\$) or Percentage (%)) |
| Nova Consulting, Inc.   | 12/20/10             | 3323 W. Commercial Blvd.<br>Suite 250<br>Fort Lauderdale, FL 33309 | (954) 731-8140   | Monitoring/<br>Supervising            | 15%   |
|   |                      |  |  |                                       |   |
|   |                      |  |  |                                       |   |
|   |                      |  |  |                                       |   |
|   |                      |  |  |                                       |   |
|   |                      |  |  |                                       |   |
|   |                      |  |  |                                       |   |
|   |                      |  |  |                                       |   |
|   |                      |  |  |                                       |   |
| <b>Total CDBE Participation</b>   |                      |  |  |                                       | 15%   |
| <b>Total Contract Amount</b>  |                      |  |  |                                       | N/A   |
| <b>CDBE Subcontractor Participation Percentage</b>                        |                      |  |  |                                       | %   |
| <b>(Total amount allocated to CDBEs divided by Total Contract Amount)</b> |                      |  |  |                                       | 15%   |

The listing of a CDBE shall constitute a representation by the bidder/responder to Broward County that such CDBE has been contacted and properly apprised of the upcoming County project. Bidders/Responders are advised that the information contained herein is subject to verification by the Small Business Development Division and that submission of said information is an assertion of its accuracy, per the requirements of the Small Business Development Program.

I certify that the above information is true to the best of my knowledge:

|                |                         |                           |
|----------------|-------------------------|---------------------------|
| Signature:<br> | Title:<br>President/COO | Date:<br>February 6, 2008 |
|----------------|-------------------------|---------------------------|

**THIS DOCUMENT MUST BE PROVIDED WITH THE SUBMITTAL AND SIGNED BY THE PERSON SIGNING THE SUBMITTAL**

EXHIBIT E

BUSINESS ASSOCIATE ADDENDUM TO AGREEMENT BETWEEN  
BROWARD COUNTY, FLORIDA  
AND  
[INSERT COMPANY NAME HERE]  
FOR  
[INSERT AGREEMENT DESCRIPTION]

This BUSINESS ASSOCIATE ADDENDUM amends the following Agreement by and between Broward County, Florida (hereinafter called "County"), and [INSERT COMPANY NAME HERE] (hereinafter called "Business Associate"), [INSERT COMPANY ADDRESS HERE], for [INSERT AGREEMENT DESCRIPTION HERE]:

[Date of original contract and date of most recent amendment], [hereinafter the "Existing Agreement."]

IN CONJUNCTION WITH the Existing Agreement, this Business Associate Addendum is made and entered into by and between the County and the Business Associate.

WHEREAS, the County and the Business Associate have previously entered into an Agreement related to the operation of certain activities related to the provision of health care;

WHEREAS, the operation of such programs is subject to the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA);

WHEREAS, the requirements of HIPAA mandate that certain responsibilities of contractors with access to Protected Health Information as defined under HIPAA must be documented through a written agreement;

WHEREAS, the County and the Business Associate desire to comply with the requirements of HIPAA and acknowledge respective responsibilities;

NOW, THEREFORE, the parties enter into this Business Associate Addendum for the consideration set out below, all of which is deemed to be good and sufficient consideration in order to make this Business Associate Addendum a binding legal instrument.

**Section 1: Definitions.**

All terms used in this Addendum not otherwise defined shall have the meaning as those terms in 45 CFR § 164 [hereinafter called, the "HIPAA Privacy Rule"].

## **Section 2: Obligations and Activities of the Business Associate.**

- 2.1 Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this special agreement or as required by law.
- 2.2 Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as permitted or required by this Addendum or as required by law.
- 2.3 Business Associate agrees to mitigate, to the extent possible, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Addendum.
- 2.4 Business Associate agrees to report to the County any use or disclosure of the Protected Health Information not provided for by this Addendum of which it becomes aware.
- 2.5 Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from the County or created or received on behalf of the County by the Business Associate, agrees to the same restrictions and conditions that apply through this Addendum to the Business Associate with respect to such information.
- 2.6 Business Associate agrees to provide access to the County to all Protected Health Information in Designated Record Sets in a timely manner in order to meet the requirements under 45 CFR § 164.524.
- 2.7 Business Associate agrees to make any amendments to Protected Health Information in a Designated Record Set as directed or agreed to by the County pursuant to 45 CFR § 164.526 in a timely manner.
- 2.8 Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from the County or created or received on behalf of the County available to the County or to the Secretary of Health and Human Services or designee within five business days for the purposes of determining the Business Associate's compliance with the Privacy Rule.
- 2.9 Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for

the County to respond to an individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

- 2.10 Business Associate agrees to provide the County, or an individual under procedures approved by the County, information and documentation collected in accordance with the preceding paragraph to respond to an individual requesting an accounting for disclosures as provided under 45 CFR § 164.528.

### **Section 3: Permitted Uses and Disclosures.**

- 3.1 Except as otherwise limited in this Addendum, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, the County as specified in the Existing Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by the County or the minimum necessary policies and procedures of the County that are communicated to the Business Associate in writing.
- 3.2 Except as otherwise limited in this Addendum, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- 3.3 Except as otherwise limited in this Addendum, Business Associate may use Protected Health Information to provide Data Aggregation services to the County as permitted by 42 CFR § 164.504 (e)(2)(i)(B).
- 3.4 Business Associate may use Protected Health Information to report violations of law to appropriate federal and state authorities, consistent with 42 CFR § 164.504 (j)(1).

### **Section 4: Obligations of the County.**

- 4.1 The County shall notify Business Associate of any limitations in its notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use of Protected Health Information.
- 4.2 The County shall notify Business Associate of any changes in, or revocation of, permission by an individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use of Protected Health Information.
- 4.3 The County shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information to which the County has agreed in accordance with 45 CFR § 164.522, to the extent that such changes may affect Business Associate's use of Protected Health Information.



4.4 The County shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by the County.

**Section 5: Term.**

The term of this Addendum shall be effective upon execution by all parties, and shall terminate when all of the Protected Health Information provided by the County or contractors for the County, or created or received by the Business Associate on behalf of the County, is destroyed, turned over to the County, or turned over to Contractors designated by the County.

**Section 6: Amendment.**

The parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for the County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Public Law No. 104-191.

[THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY.]

BUSINESS ASSOCIATE ADDENDUM TO AGREEMENT BETWEEN BROWARD COUNTY, FLORIDA AND \_\_\_\_\_ for \_\_\_\_\_

WHEREAS, the parties have made and executed this Business Associate Addendum to Agreement between COUNTY and \_\_\_\_\_ for \_\_\_\_\_, on the respective dates under each signature: Broward County through its County Administrator, authorized to execute same, and \_\_\_\_\_, duly authorized to execute same on behalf of \_\_\_\_\_.

**COUNTY**

BROWARD COUNTY

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, County Administrator

\_\_\_ day of \_\_\_\_\_, 20\_\_.

Approved as to form by  
Office of County Attorney

By: \_\_\_\_\_ (Date)  
Assistant County Attorney

**BUSINESS ASSOCIATE**

WITNESSES:

[INSERT NAME OF COMPANY]

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
[TYPE NAME AND TITLE]

Dated \_\_\_ day of \_\_\_\_\_, 20\_\_.

EXHIBIT F

CERTIFICATION OF PAYMENTS TO SUBCONTRACTORS AND SUPPLIERS

RLI/Bid/Contract No. \_\_\_\_\_

Project Title \_\_\_\_\_

\_\_\_\_\_

The undersigned CONTRACTOR hereby swears under penalty of perjury that:

1. CONTRACTOR has paid all subcontractors and suppliers all undisputed contract obligations for labor, services, or materials provided on this project in accordance with Section 2.3 of the Agreement, except as provided in paragraph 2 below.
2. The following subcontractors and suppliers have not been paid because of disputed contractual obligations; a copy of the notification sent to each, explaining in reasonably specific detail the good cause why payment has not been made, is attached to this form:

| Subcontractor or suppliers name and address | Date of disputed invoice | Amount in dispute |
|---|--------------------------|-------------------|
| _____                                       | _____                    | _____             |
| _____                                       | _____                    | _____             |
| _____                                       | _____                    | _____             |

3. The undersigned is authorized to execute this Certification on behalf of CONTRACTOR.

Dated \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Contractor

By \_\_\_\_\_  
(Signature)

By \_\_\_\_\_  
(Name and Title)

CERTIFICATION OF PAYMENTS TO SUBCONTRACTORS AND SUPPLIERS  
(Continued)

STATE OF                    )  
                                  ) SS.  
COUNTY OF                )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ who is personally known to me or who has produced \_\_\_\_\_ as identification and who did/did not take an oath.

WITNESS my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(NOTARY SEAL)

\_\_\_\_\_  
(Signature of person taking acknowledgment)

\_\_\_\_\_  
(Name of officer taking acknowledgment)  
**typed, printed or stamped**

\_\_\_\_\_  
(Title or rank)

\_\_\_\_\_  
(Serial number, if any)

My commission expires:

**EXHIBIT "G"**  
**BROWARD COUNTY**  
**WORK AUTHORIZATION FOR BECK DISASTER RECOVER, INC.**  
**PURCHASING DIVISION DIRECTOR AWARD AUTHORITY**

WORK AUTHORIZATION NO. \_\_\_\_\_

This Work Authorization is issued pursuant to the Agreement between Broward County and Beck Disaster Recovery, Inc., (BDR) approved by the Board of County Commissioners on \_\_\_\_\_.

This Work Authorization is issued on behalf of \_\_\_\_\_ (Agency) and permits BDR to invoice Broward County for \_\_\_\_\_ (Description of Project) per Article 2 (Scope of Services) and Article 4 (Authorization of Work) of the Agreement.

Payment for these services shall be in accordance with Article 6 (Reimbursement/Remuneration) of the Agreement and the method of compensation shall be a guaranteed maximum amount not to exceed \$\_\_\_\_\_. Payment to BDR for services rendered pursuant to this Work Authorization shall be charged against the \_\_\_\_\_ (Agency) budget for Fiscal Year \_\_\_\_\_.

ORIGINATING AGENCY REPRESENTATIVE:

Beck Disaster Recovery, Inc:

By \_\_\_\_\_  
Signature

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Print or Type Name

\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

WITNESSES TO BDR:

By

\_\_\_\_\_

Signature

\_\_\_\_\_  
Print Name

By

\_\_\_\_\_

Signature

\_\_\_\_\_  
Print Name

**EXHIBIT "G"**  
**BROWARD COUNTY**  
**WORK AUTHORIZATION FOR BECK DISASTER RECOVERY, INC.**  
**(Continued)**

This is a Notice to Proceed is being provided to Beck Disaster Recovery, Inc. for the above-specified services, by the Contract Administrator following execution by COUNTY as provided for below.

BROWARD COUNTY

BROWARD COUNTY  
CONTRACT ADMINISTRATOR:

By \_\_\_\_\_  
Name

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Insurance requirements  
approved as to form by  
County's Risk Management  
Attorney  
Division

By \_\_\_\_\_  
(Date)

Approved as to form by  
Office of the County Attorney  
for Broward County, Florida  
JEFFREY J. NEWTON, County

Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-6968

By \_\_\_\_\_  
Noel M. Pfeffer (Date)  
Deputy County Attorney

**EXHIBIT "G-1"**  
**BROWARD COUNTY**  
**WORK AUTHORIZATION FOR BECK DISASTER RECOVER, INC.**  
**PURCHASING DIVISION DIRECTOR AWARD AUTHORITY**

WORK AUTHORIZATION NO. \_\_\_\_\_

This Work Authorization is issued pursuant to the Agreement between Broward County and Beck Disaster Recovery, Inc., (BDR) approved by the Board of County Commissioners on \_\_\_\_\_.

This Work Authorization is issued on behalf of \_\_\_\_\_ (Agency) and permits BDR to invoice Broward County for \_\_\_\_\_ (Description of Project) per Article 2 (Scope of Services) and Article 4 (Authorization of Work) of the Agreement.

Payment for these services shall be in accordance with Article 6 (Reimbursement/Remuneration) of the Agreement and the method of compensation shall be a guaranteed maximum amount not to exceed \$\_\_\_\_\_. Payment to BDR for services rendered pursuant to this Work Authorization shall be charged against the \_\_\_\_\_ (Agency) budget for Fiscal Year \_\_\_\_\_.

ORIGINATING AGENCY REPRESENTATIVE:

Beck Disaster Recovery, Inc:

By \_\_\_\_\_  
Signature

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Print or Type Name

\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_ day of \_\_\_\_\_, 20\_\_.

WITNESSES TO BDR:

\_\_\_\_\_

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

**EXHIBIT "G-1"**  
**BROWARD COUNTY**  
**WORK AUTHORIZATION FOR BECK DISASTER RECOVERY, INC.**  
**(Continued)**

This is a Notice to Proceed is being provided to Beck Disaster Recovery, Inc. for the above-specified services, by the Contract Administrator following execution by COUNTY as provided for below.

BROWARD COUNTY  
CONTRACT ADMINISTRATOR

DIRECTOR OF PURCHASING DIVISION

By \_\_\_\_\_  
Signature

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Print or Type Name

\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_ day of \_\_\_\_\_, 20\_\_.

DIRECTOR:

WITNESS TO PURCHASING

By \_\_\_\_\_  
Signature

Insurance requirements  
approved as to form by  
County's Risk Management  
Attorney  
Division

Approved as to form by  
Office of the County Attorney  
for Broward County, Florida  
JEFFREY J. NEWTON, County

By \_\_\_\_\_  
(Date)

Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-6968

By \_\_\_\_\_  
Noel M. Pfeffer (Date)  
Deputy County Attorney



**EXHIBIT "G-2"**  
**BROWARD COUNTY**  
**WORK AUTHORIZATION FOR BECK DISASTER RECOVERY, INC.**

WORK AUTHORIZATION NO. \_\_\_\_\_

This Work Authorization is issued pursuant to the Agreement between Broward County and Beck Disaster Recovery, Inc., (BDR) approved by the Board of County Commissioners on \_\_\_\_\_.

This Work Authorization is issued on behalf of \_\_\_\_\_ (Agency) and permits BDR to invoice Broward County for \_\_\_\_\_ (Description of Project) per Article 2 (Scope of Services) and Article 4 (Authorization of Work) of the Agreement.

Payment for these services shall be in accordance with Article 6 (Reimbursement/Remuneration) of the Agreement and the method of compensation shall be a guaranteed maximum amount not to exceed \$\_\_\_\_\_. Payment to BDR for services rendered pursuant to this Work Authorization shall be charged against the \_\_\_\_\_ (Agency) budget for Fiscal Year \_\_\_\_\_.

ORIGINATING AGENCY REPRESENTATIVE:

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or Type Name

\_\_\_ day of \_\_\_\_\_, 20\_\_.

Beck Disaster Recovery, Inc:

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or Type Name

\_\_\_ day of \_\_\_\_\_, 20\_\_.

DISASTER RECOVERY, INC.:

\_\_\_\_\_

\_\_\_\_\_

WITNESSES TO BECK

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or Type Name

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or Type Name

**EXHIBIT "G-2"**  
**BROWARD COUNTY**  
**WORK AUTHORIZATION FOR BECK DISASTER RECOVERY, INC.**  
**BOARD OF COUNTY COMMISSIONERS AWARD AUTHORITY**  
**(Continued)**

This is a Notice to Proceed is being provided to Beck Disaster Recovery, Inc. for the above-specified services, by the Contract Administrator following execution by COUNTY as provided for below.

BROWARD COUNTY  
CONTRACT ADMINISTRATOR:

By \_\_\_\_\_  
Name  
(Date)

\_\_\_\_\_  
(Witness)

\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ATTEST:  
through its

BROWARD COUNTY,  
Board of County  
Commissioners

By \_\_\_\_\_  
County Administrator and Ex-officio  
Clerk of the Board of County  
Commissioners of Broward County, Florida  
\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

By  
Mayor

Insurance requirements  
approved by County's  
Risk Management Division

Approved as to form by  
Office of the County Attorney  
for Broward County, Florida  
JEFFREY J. NEWTON, County

Attorney

Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-6968

By \_\_\_\_\_  
(Date)

By \_\_\_\_\_  
Noel M. Pfeffer (Date)  
Deputy County Attorney

**AGREEMENT  
FOR DISASTER MANAGEMENT  
AND RECOVERY SERVICES**

This Agreement, made as of this 20 day of July, 2010, (Effective Date) by and between the CITY OF MARATHON, a municipal corporation organized and existing under the laws of the State of Florida, with its permanent post office address at 9805 Overseas Highway, Marathon, Florida, 33050 (hereinafter referred to as "CITY") and O'Brien's Management and recovery Management, Inc., a Florida corporation, with its permanent post office address at 2929 E. Imperial Highway, Suite 290, Brea, California 92821 (hereinafter referred to as "CONTRACTOR"):

**WITNESSETH:**

WHEREAS, the CITY has the need to contract for disaster management and recovery services; and

WHEREAS, City of Cooper City, Florida competitively bid for disaster management and recovery services (RFP No. 2009-7) which is attached hereto and incorporated herein as Exhibit A; and

WHEREAS, CONTRACTOR submitted a Response to Cooper City; and

WHEREAS, after receipt of said Response from CONTRACTOR, Cooper City entered into a Contract with CONTRACTOR to provide disaster management and recovery services; and

WHEREAS, said Contract is dated March 10, 2010 and is attached hereto and incorporated herein as Exhibit B (Cooper City Contract); and

WHEREAS, the CITY has reviewed the Scope of Services of the competitively bid Cooper City Contract and has determined that it is an Agreement that can be utilized by CITY to provide disaster management and recovery services; and

WHEREAS, CONTRACTOR has agreed to honor the prices, terms and conditions of Cooper City's Contract in performing disaster management and recovery services for the CITY; and

WHEREAS, the CITY desires to retain the services of CONTRACTOR established in this Agreement based on the Contract developed and executed by Cooper City, Florida; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

**Section 1.** The foregoing recitals are true and correct and are hereby incorporated into this Agreement.

**Section 2.** Attached hereto and made a part hereof by reference as Exhibits A & B are RFP 2009-7 and Cooper City's Contract referred to above. The prices, terms and conditions of Cooper City's Contract shall govern the relationship between CITY and CONTRACTOR, except as amended below:

- a. The Scope of Services to be performed under this Agreement shall be as set forth in the Cooper City Contract and the Cooper City Request for Proposals, except said services shall be performed in and for CITY.
- b. CONTRACTOR shall perform the services in and for CITY as detailed in the Cooper City Contract utilizing the prices as set forth in the Contract.
- c. The Contract Administrator shall be the Public Works Director of the CITY or his designee.
- d. The Cooper City Contract is amended as follows:
  - i. II.A.(o) Separately track, document, report. And invoice all debris removal monitoring activities occurring during the first pass on Federal Aid roadway system (FAS) to include, but not limited to, data managers, supervisors, overhead, ect. This document process includes denoting on all debris load tickets or loads collected on FAS to state "FIRST PASS". Bill under separate invoice which clearly states that the work was on FAS roads for first pass
  - ii. II.A.(p). Keep records of contract hauler's trucks, to include number of trucks and crews operating, the number of cubic yardages or load weight and types of debris collected, time in and out, number of loads per day, how much each TDS site receives, how many monitors were in the field and at the sites, and other data as requested by the designated city staff. In case a First Push of debris is required, monitor and confirm times worked and equipment used.
  - iii. II.A.(q) Determine truck assignment and provide the necessary vehicle decals or placards for case of identification and tracking.
  - iv. II.C.(o) Contractor shall establish a telephone claim reporting system with a local or toll free number and provide staff for the professional management for receiving phone complaints or damage claims from the local residents.
  - v. II.C.(p) The contractor shall investigate and assist in documentation of claims if requested by the City.
  - vi. II.C.(q) Produce an after action report at the end of the project highlighting the major points, problems, issues, successes, and lessons learned.

- e. This Agreement is for a term of three years beginning the Effective Date and providing for two additional one year option to extend, which must be approved by the City Council.
- f. Notice to CITY shall be sent to: Director of Public Works, City of Marathon, at 9805 Overseas Highway, Marathon, Florida, 33050, with a copy to the City Manager at the same address.
- g. Regarding governing law and venue, the validity, construction and effect of this Agreement shall be governed by the laws of the State of Florida. Any claim, objection, dispute or otherwise arising out of the terms of this Agreement shall be litigated in the Sixteenth Judicial Circuit in and for Monroe County, Florida.

**Section 3.** In all other respects, the terms and conditions of the Cooper City Contract are hereby ratified and shall remain in full force and effect under this Agreement as provided by their terms.

IN WITNESS WHEREOF, CITY and CONTRACTOR have set their hands and seals, as of the day and year first above written.

ATTEST:

CITY OF MARATHON, FLORIDA


  
 \_\_\_\_\_  
 DIANE CLAVIER  
 CITY CLERK

  
 \_\_\_\_\_  
 ROGER HERNSTADT  
 CITY MANAGER

APPROVED AS TO FORM:

  
 \_\_\_\_\_  
 CITY ATTORNEY

O'BRIEN'S RESPONSE  
 MANAGEMENT, INC.

  
 \_\_\_\_\_  
 Printed Name: K. Tim PERKINS  
 Title: CEO  
 Dated: 7/9/10

## EXHIBIT A

### CONTRACT FOR DISASTER MANAGEMENT & RECOVERY SERVICES RFP # 2009-7

This Contract for Disaster Management & Recovery Services ("Contract") is entered into by and between The City of Cooper City, Florida ("Cooper City" or "City") and O'Brien's Response Management Inc. ("Contractor" or "O'Brien'sRM"), each of which may be referred to individually as "Party" or collectively as the "Parties".

#### *Recitals*

WHEREAS, the City issued a Disaster Management & Recovery Services RFP #2009-7 ("RFP"), and Solid Resources, Inc. submitted a response to this RFP;

WHEREAS, the City awarded the contract for Disaster Management & Recovery Services to Solid Resources, Inc.;

WHEREAS, Solid Resources, Inc. merged into O'Brien's Response Management Inc. effective January 1, 2010;

WHEREAS, O'Brien's Response Management Inc. is an environmental and emergency management services firm that is registered as a corporation in good standing with the State of Florida;

WHEREAS, O'Brien's Response Management Inc., by operation on law, is the successor in interest and has assumed all of the obligations of Solid Resources, Inc.;

WHEREAS, the Parties enter into this Contract to provide for the agreed-upon terms and conditions as detailed in the RFP.

NOW THEREFORE, in accordance with the specifications and requirements of the RFP, the Parties agree to the following:

1. **Recitals.** The Parties agree that the above-referenced recitals are incorporated herein. The Parties also agree that the Disaster Management & Recovery Services RFP # 2009-7 and the response submitted by O'Brien'sRM (collectively the "RFP") are hereby incorporated into the Contract. Notwithstanding the foregoing, this Contract shall control over any conflicting provision of the RFP.

2. **Engagement.** The City hereby engages Contractor, and Contractor hereby accepts such engagement, to provide Disaster Management and Recovery Services (as defined herein) in accordance with the terms, and subject to the conditions, of this Contract.

3. **Services.** During the Term (as defined herein) and as requested by the Client, the Contractor shall provide the City with Disaster Management & Recovery Services that shall include those services described in Attachment A, which is incorporated herein ("Services").

3. **Term.** The Term of this Contract shall commence on the day the Contract is signed by the City, provided both Parties have signed the Contract ("Effective Date") and shall be in effect for a period of three years ("Initial Term"), unless otherwise terminated earlier as provided herein. At the end of the Initial Term, upon the request of the City, the Parties can renew the Contract for two (2) additional one (1) year renewal term

("Renewal Term"). Both the "Initial Term" and any "Renewal Term(s)" may be collectively referred to as "Term."

4. **Independent Contractor.** It is expressly acknowledged by the Parties that Contractor is an "independent contractor" and nothing contained in this Contract is intended, or shall be construed, to create a partnership between the Parties, to cause either Party to be responsible in any way for the debts, liabilities, or obligations of the other Party, or to constitute an employer-employee relationship between the Parties.

5. **Insurance.** During the Term, the Contractor agrees to obtain or possess the following insurance coverage, and will provide Certificates of Insurance to the City to verify such coverage.

- a) **Workers' Compensation.** The Contractor shall provide coverage for its employees with statutory workers' compensation limits, and no less than \$1,000,000 for the Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the City and its agents, employees, and officials.
- b) **Commercial General Liability.** The Contractor shall provide coverage for all operations including, but not limited to Contractual, Products, and Completed Operations, and Personal Injury. The limits shall be no less than \$1,000,000 per occurrence, with a \$2,000,000 aggregate.
- c) **Business Automobile Liability.** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with limits of not less than \$1,000,000 per occurrence, Combined Single Limits (CSL) or its equivalent.
- d) **Professional Liability (Errors & Omissions).** The Contractor shall provide coverage for all claims arising out of the Services performed with limits not less than \$1,000,000 per claim. The aggregate limit shall either apply separately to this contract or shall be at least twice the required per claim limit.

6. **Notice.** All notices from the Contractor to the City, or from City to the Contractor must be in writing, and, shall be deemed duly served if mailed by U.S. mail, e-mailed, or faxed to the other Party at the following:

City of Cooper City  
Kerri Anne Fisher,  
Purchasing Agent  
PO Box 290910  
Cooper City, FL 33329-0910

Tel: (954) 434-4300 ext 268  
Fax: (954) 434-5099  
E-mail: [Purchasing@CooperCityFL.org](mailto:Purchasing@CooperCityFL.org)

O'Brien's Response Management Inc.  
Gary Stankovich  
555 Winderley Place  
Suite 220  
Maitland, Florida, 32751

Tel: (407) 702-1172  
Fax: (407) 702-1764  
E-mail: [gstankovich@solid-resources.com](mailto:gstankovich@solid-resources.com)

The Parties may change the above addresses or fax numbers at any time upon giving the other Party written notice.

7. Compensation.

7.1 Invoices. The Contractor shall provide an invoice ("Invoice") to City on a monthly basis that shall include the Services rendered, and the compensation for Services shall be in accordance with the schedule provided in Attachment B, which is incorporated herein. The compensation for Services may not be modified, unless otherwise agreed upon by the Parties in writing. The Parties agree that payment for such Services shall be due thirty (30) days upon receipt of the Invoice.

7.2 Non-Contingency. Pursuant to the terms and conditions of this Contract, Contractor shall provide Services to the City in accordance with federal, state, and local laws, rules, and regulations, FEMA Policy and Guidance, and FHWA requirements including those requirements in Attachment C, which is incorporated herein. The payment for Services shall not be contingent upon any funding amount approved, or provided by, FEMA or FHWA to the City.

7.3 Records Maintenance. The Contractor shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the Services for at least three (3) years after completion of the Contract. All records, documents, and information collected and/or maintained by others in the course of the administration of the Contract shall be transferred to electronic data storage media and copies given to the City to retain for its use. The information shall be made accessible at the Contractor's place of business to the City, including the Comptroller's Office and/or its designees, for purposes of inspection, reproduction, and audit without restriction.

8. Termination.

8.1 For Default. If Contractor defaults in its performance under the Contract and does not cure the default within 30 days after written notice of default, the City Manager may terminate the Contract, in whole or in part, upon written notice without penalty to the City. In such event, the City may hold the Contractor liable for any damages caused to the City by reason of such default and termination, including the excess cost of procuring similar supplies or services. In the event of such termination, any completed services performed by the Contractor under this Contract shall, at the option of the City, become the City's property and the Contractor shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. The Contractor, however, shall not be relieved of liability to the City for damages sustained by the City by reason of any breach of the Contract by the Contractor, and the City may withhold any payments to the Contractor for the purpose of setoff until such time as the amount of damages due to the City from the Contractor can be determined. The Contractor shall NOT be liable for damages if, (1) it is determined for any reason that the Contractor was not in default or (2) the Contractor's failure to perform is without his or his subcontractor's control, fault or negligence, the termination will be deemed to be a Termination without Cause.

8.2 Without Cause. The City may terminate this Contract without cause by providing Contractor with 7 days written notice of the termination.

8.3 Effects of Termination. Upon receipt of any notice of termination, Contractor shall discontinue providing Services except as otherwise provided in Section 8.1. To the extent that the termination of this Contract is not due to Contractor's breach of its obligations under the Contract, City shall reimburse Contractor for all Services properly furnished in accordance with the requirements of this Contract up and through the date of the notice of termination (or such other time specified in the notice). Notwithstanding any other provisions in the Contract to the contrary, the Contractor shall have no further obligations under this Contract after the effective date of the termination.



9. **Indemnification/Liability.** Contractor agrees to indemnify, defend, and hold City and its officers, directors, officials, employees, and agents ("City Group") harmless from and against all fines, penalties, costs, and expenses (including but not limited to attorney's fees), suits, actions, damages, judgments, claims, demands, liabilities, losses, and causes of action ("Claim(s)") which may be asserted against or suffered or incurred by City, arising out of, incident to, or in connection with the furnishing of the Services by Contractor or any activities by Contractor under this Contract or otherwise based upon the negligence, intentional tort, omissions of, or the breach of this Contract by the Contractor. Contractor shall not be responsible for any portion of a Claim, or Claims, that relate to, or arise out of, the City Group's negligence, intentional torts, or any actions or omissions. Except as otherwise provided in this Contract, no Party shall be liable for special, indirect, punitive, or consequential damages.

10. **Force Majeure.** The Contractor shall not be responsible for any delay resulting from its failure to perform if neither the fault nor the negligence of Contractor or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing if no alternate source of supply is available to Contractor. In case of any delay Contractor believes is excusable, Contractor shall notify the City in writing of the delay or potential delay and describe the cause of the delay either (1) within 10 days after the cause that creates or will create the delay first arose, if Contractor could reasonably foresee that a delay could occur as a result, or (2) if a delay is not reasonably foreseeable, within 5 days after the date Contractor first had reason to believe that a delay could result. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist Contractor shall continue to perform in accordance with the Contract. The Parties shall mutually determine whether additional compensation is warranted.

11. **General Provisions.**

11.1 **Agreement.** This Contract and the RFP constitute the entire agreement between the Parties. No oral agreements or representations shall be valid or binding upon the Parties.

11.2 **Assignment.** The Contractor shall not sell, assign, or transfer any of its rights, duties, or obligations under the Contract, or under any purchase order issued pursuant to the Contract, without the prior written consent of the City.

11.3 **Venue; Governing Law; and Waiver of Jury Trial.** The exclusive venue of any legal or equitable action that arises out of or relates to the Contract shall be the appropriate state court in Broward County, Florida. In any such action, Florida law shall apply and the Parties hereby waive any right to jury trial.

11.4 **Safety.** The Contractor agrees that it shall comply with all Occupational Safety and Health Administration (OSHA), State and City Safety and Occupational Health Standards and any other applicable rules and regulations relating to occupational safety.

11.5 **Modification of Terms.** The Contract contains all the terms and conditions agreed upon by the Parties, which terms and conditions shall govern all transactions between the City and Contractor. The Contract may only be modified or amended upon mutual written agreement of the Parties.

11.6 **Execution in Counterparts.** The Contract may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

11.7 **Severability.** If a court deems any provision of the Contract void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable and all other provisions shall remain in full force and effect.

11.8 **Authority.** Each person signing the Contract represents that he or she is duly authorized to do so and to bind the respective Party to the Contract.

11.9 **Waiver.** The failure of either Party to this Contract to object to, or to take affirmative action with respect to, any conduct of the other which is in violation of the terms of this Contract, shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

11.10 **Survival of Provisions.** Any terms or conditions of this Contract that require acts beyond the date of the Term of this Contract, shall survive termination of the Contract, shall remain in full force and effect, unless and until the terms or conditions are completed and shall be fully enforceable by either Party.

IN WITNESS WHEREOF, the Parties have executed this Contract as written above.

City of Cooper City, Florida

By: Bruce B. Loucks

Title: City Manager


Signature: 

Date: 3-10-2010

O'Brien's Response Management Inc.

By: Gary J. Stankovich

Title: Executive Vice President, Government Services

Signature: 

Date: 3-10-2010

**ATTACHMENT A**  
**DISASTER MANAGEMENT & RECOVERY SERVICES**  
**SCOPE OF SERVICES RFP # 2009-7**

**A. DISASTER DEBRIS MONITORING SERVICES**

Contractor shall provide disaster debris monitoring services to include debris generated from the public rights-of-way, private property, drainage areas/canals, waterways, and other public, eligible, or designated areas. Specific services may include:

- a) Coordinating daily briefings, work progress, staffing, and other key items with the City.
- b) Selection and permitting of TDSR locations and any other permitting/regulatory issues as necessary.
- c) Scheduling work for all team members and contractors on a daily basis.
- d) Hiring, scheduling, and managing field staff.
- e) Monitoring recovery contractor's operations and making/implementing recommendations to improve efficiency and speed up recovery work.
- f) Assisting the City with responding to public concerns and comments.
- g) Certifying contractor vehicles for debris removal using methodology and documentation practices appropriate for contract monitoring.
- h) Entering load tickets into a database application.
- i) Digitization of source documentation (such as load tickets).
- j) Developing daily operational reports to keep the City informed of work progress.
- k) Development of maps, GIS applications, etc. as necessary.
- l) Comprehensive review, reconciliation, and validation of debris removal contractor(s) invoices prior to submission to the City for processing.
- m) Project Worksheet and other pertinent report preparation required for reimbursement by FEMA, FHWA and any other applicable agency for disaster recovery efforts by City staff and designated debris removal contractors.
- n) Final report and appeal preparation and assistance.

**B. EMERGENCY MANAGEMENT PLANNING AND TRAINING**

As directed by the City, the Contractor shall provide:

- a) Comprehensive emergency plans (e.g. COOP, EOP) to include plan development; review, and revisions.
- b) Comprehensive mitigation programs to include development of mitigation plan(s), staff training, cost benefit analysis, project management, environmental review and staff augmentation.
- c) Development of a debris management plan-including identification of an adequate number of TDSR locations. Staff training as necessary.
- d) Procurement assistance for debris removal contractors and other services as requested.
- e) Project management to include the formulation and management of permanent work projects, task force management, and City Commissions, Board and Panels.
- f) Technical support and assistance in developing public information.
- g) Other training and assistance as requested by the City.
- h) Other reports and data as required by the City.
- i) Other emergency management and consulting services identified and required by the City.

**C. PUBLIC ASSISTANCE CONSULTING SERVICES**

As directed by the City, the Contractor shall provide:

- a) Identification of eligible emergency and permanent work (Category A-G);
- b) Damage Assessment;
- c) Assistance in attaining Immediate Needs Funding;
- d) Prioritization of recovery workload;
- e) Loss measurement and categorization;
- f) Insurance evaluation, documentation adjusting and settlement services;
- g) Project Worksheet generation and review;
- h) FEMA, FHWA and NRCS reimbursement support;
- i) Staff augmentation with experienced Public Assistance Coordinators and Project Officers;
- j) Interim inspections, final inspections, supplemental Project Worksheet generation and final review;
- k) Appeal services and negotiations;
- l) Reconstruction and long-term infrastructure planning; and
- m) Final review of all emergency and permanent work performed.

ATTACHMENT B  
FEE SCHEDULE

The hourly labor rates shall include all applicable overhead and profit. All non-labor related project costs will be billed to the City at cost without mark-up.

| <u>Positions</u>                                    | <u>Estimated Hours (1)</u> | <u>Hourly Rates (2)</u> |
|---|----------------------------|-------------------------|
| Project Manager                                     | 200                        | \$90                    |
| Operations Manager                                  | 250                        | \$75                    |
| Scheduler/Expeditors                                | 250                        | \$35                    |
| GIS Analyst   | 40                         | \$70                    |
| Field Supervisors                                   | 550                        | \$62                    |
| Debris Site/Tower Monitors                          | 4,500                      | \$37                    |
| Environmental Specialist                            | 40                         | \$80                    |
| Project Inspectors (Citizen Drop-Off Site Monitors) | 10,000                     | \$37                    |
| Field Coordinators (Crew Monitors)                  | 20,000                     | \$37                    |
| Load Ticket Data Entry Clerks (QA/QC)               | 5,000                      | \$25                    |
| Billing/Invoice Analysts                            | 150                        | \$45                    |
| Project Coordinators                                | 150                        | \$40                    |
| Data Manager  | 50                         | \$45                    |
| Public Assistance Coordinator                       |                            | \$115                   |
| Project Officer                                     |                            | \$98                    |
| FEMA/FHWA Specialist                                |                            | \$98                    |

NOTES:

- 1) Estimated hours are NOT intended to represent the actual contract amount, but are an estimate of a typical work month and will be used for the sole purpose of evaluating proposals.
- 2) Rates are subject to a 2.5% increase for each annual renewal exercised under the Bid Specifications of the RFP.

ATTACHMENT C  
REQUIRED FEDERAL PROVISIONS FOR  
EMERGENCY RELIEF PROGRAM  
DEBRIS MONITORING CONTRACT

**1.0 Limits on Federal Participation:** Federal-aid funds shall not participate in any cost which is not incurred in conformity with applicable Federal and State laws, the regulations in 23 Code of Federal Regulations (C.F.R.) and 49 C.F.R., and policies and procedures prescribed by the Division Administrator of FHWA. If FHWA or the Department of Transportation determines that any amount claimed is not eligible, federal participation may be approved in the amount determined to be adequately supported and the Agency shall notify the Contractor in writing citing the reasons why items and amounts are not eligible for federal participation. Where correctable non-compliance with provisions of law or FHWA requirements exist, funds may be withheld until compliance is obtained. Where non-compliance is not correctable, the Agency may deny participation in project costs in part or in total.

**2.0 Records:**

**2.1 Establishment of Maintenance of Accounting Records:** Records of costs incurred under the terms of this agreement shall be maintained and made available upon request to the Agency at all time during the period of this agreement and for five years after the Department of Transportation has closed out an Emergency Event with the Florida Division of Emergency Management. Records of costs incurred include the Contractor's general accounting records and the project records, together with supporting documents and records, of all subcontractors performing work on the project, and all other records of the contractor and subcontractors considered necessary by the Department of Transportation for a proper audit of costs.

**2.2 Documentation of Project Costs:** All costs charged to the project shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers, and any other documentation evidencing in proper detail the nature and propriety of the charges.

**2.3 Inspection:** The Contractor, the Agency and Department authorized representatives shall permit authorized agents of FHWA to inspect all work, workmanship, materials, payrolls, and records and to audit the books, records, and accounts pertaining to the financing and development of the project. The Agency reserves the right to unilaterally cancel this agreement for refusal by the Contractor, subcontractor or materials vendor to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received in conjunction with this Contract (Section 287.058(1) (c), Florida Statutes).

**3.0 Disadvantaged Business Enterprise (DBE) Policy and Obligation:** It is the policy of the Agency that DBEs, 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 Emergency Relief Program funds under this Contract. The DBE requirements of applicable federal and state laws and regulations apply to this Contract.

The Contractor agrees to ensure that DBEs have the opportunity to participate in the performance of this agreement. In this regard, all Contractors shall take all necessary and reasonable steps in accordance with applicable federal and state laws and regulations to ensure that the DBEs have the opportunity to

compete for and perform contracts. The Contractor 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. Furthermore, the Contractor agrees that each contract signed with a recipient subcontractor must include the following assurance: Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Subcontractor shall carry out applicable requirements of 49C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contractor such other remedy as the Agency deems appropriate.

#### **4.0 Restrictions, Prohibitions, Controls, and Labor Provisions:**

**4.1 Equal Employment Opportunity:** In connection with the carrying out of the project, the Contractor shall not discriminate against any employee or applicant for employment because of race, age, religion, color, sex, national origin, disability or marital status. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. 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.

**4.2 Title VI - Civil Rights Act of 1964:** The Contractor will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964, the regulations of the U.S. Department of Transportation issued thereunder, and the assurance by the Contractor pursuant thereto. The Contractor shall include provisions in all contracts with third parties that ensure compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R. Part 21, and related statutes and regulations.

**4.3 Americans with Disabilities Act of 1990 (ADA):** The Contractor will comply with all the requirements as imposed by the ADA, the regulations of the Federal government issued thereunder.

**4.4 Restrictions on Lobbying:** The Contractor agrees that no federally-appropriated funds have been paid, or will be paid by or on behalf of the Contractor, to any person for influencing or attempting to influence any officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or any 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.

If any funds other than federally-appropriated funds have been paid by the Contractor to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or any employee of a Member of Congress in connection with this Contract, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

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