

REVISED
CONSULTING AGREEMENT FOR PROFESSIONAL
GEOTECHNICAL ENGINEERING AND TESTING
Term and Supply Contract

THIS AGREEMENT, made and entered into this 2nd day of December, 2014, by and between the **JACKSON COUNTY, MISSOURI** hereinafter referred to as "County" and **Tetra Tech, Inc.**, 415 Oak Street, Kansas City, KS 66106, hereinafter referred to as "Engineer."

WITNESSETH:

WHEREAS, the Environmental Protection Agency has awarded the City of Kansas City a federal brownfields grant and Kansas City has agreed to convey a \$150,000 subgrant to Jackson County Missouri for environmental assessment of the Rock Island Rail Corridor; and,

WHEREAS, the County solicited requests for qualifications for the furnishing of Environmental Site Assessment Services on RFP 49-14 and received five responses thereon; and,

WHEREAS, representatives of Jackson County's Economic Development Department and the Kansas City Brownfields Coalition evaluated the qualifications and has recommended award of a contract to Tetra Tech, Inc. as the most qualified; and,

WHEREAS, Engineer has agreed to perform said services as aforementioned; and,

WHEREAS, Engineer represents that the firm is equipped, competent, and able to undertake such an assignment;

NOW, THEREFORE, in consideration of the mutual covenants and considerations herein contained, IT IS HEREBY AGREED by the parties hereto as follows:

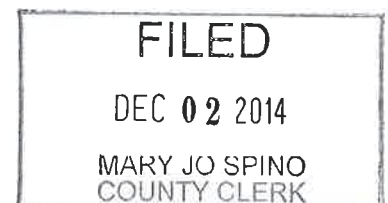
ARTICLE I – SCOPE OF SERVICE TO BE PROVIDED BY THE ENGINEER:

See Exhibit A, RFP 49-14 and addenda thereto, attached hereto and incorporated herein by reference.

ARTICLE II - SCOPE OF SERVICES TO BE PROVIDED BY THE COUNTY:

The County agrees to furnish information and have work done without cost to the Engineer as follows:

1. Provide access to offsite locations as described in Section 3.4 of the Scope of Work.
2. Make available to the Engineer existing records, maps, plans, and other data possessed by County when such are necessary, advisable, or helpful to the Engineer in the completion of his work under this Agreement. The County shall furnish a copy of property ownership information from County tax records.



3. Provide all necessary title work, deeds, plats, etc., as required for the completion of the project and the preparation of the required documents.
4. Provide Standard County forms and/or standard plans as required including contractual sections for bid documents.
5. Designate a representative who will serve as Engineer's primary point of contact and who will be authorized to act for and on behalf of the County throughout completion of the services covered by this Agreement.
6. Examine all studies and drafts developed by the Engineer, obtain reviews by other agencies involved, and render decisions thereon in a prompt manner so as not to delay the Engineer.

ARTICLE III - TERM OF AGREEMENT:

The term of this Agreement shall be effective upon execution, and extend for six (6) months. Consultant or County may terminate this Agreement by giving 30 days' written notice to the other party. This deadline for this agreement may be extended upon acceptance by both parties.

ARTICLE IV - COVENANT AGAINST CONTINGENT FEES:

The Engineer warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Engineer, to solicit or secure this Agreement and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the County shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement the price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee plus reasonable attorney's fees.

ARTICLE V - SUBLETTING ASSIGNMENT:

No portion of the work covered by this Agreement, except as provided herein, shall be sublet or transferred without the written consent of the County. The subletting of the work shall in no way relieve the Engineer of its primary responsibility for the quality and performance of the work.

ARTICLE VI - PROFESSIONAL ENDORSEMENT:

All plans, specifications and other documents shall be endorsed by the Engineer and shall reflect the name and seal of the Professional Engineer endorsing the work.

ARTICLE VII - MISCELLANEOUS PROVISIONS:

The following miscellaneous provisions are agreed to by both parties to this Agreement.

1. Inspection of Documents.

The Engineer shall maintain all records, notes, design documents, cost and accounting records, construction records and other records pertaining to this Agreement and to the project covered by this Agreement, for a period of not less than three (3) years following final payment. An authorized representative of the County shall have access to the records for inspection, during regular working hours at the Engineer's place of business. County shall have the right to audit and inspect Engineer's records and accounts covering costs hereunder at all reasonable times during the performance of the Services and for a period of three (3) years after the acceptance thereof. Engineer shall not be required to keep records of or provide access to those of its costs expressed as fixed rates, a lump sum, or of costs, which are expressed in terms of percentages of other costs.

2. Conferences, Visits to Site, Inspection of Work. A representative of the County shall have the privilege of inspecting and reviewing the work being done by the Engineer and consulting with its staff at any time. Conferences are to be held at the request of the County or the Engineer.
3. Accuracy of Work. The Engineer shall be responsible for the accuracy of the work and shall promptly make necessary revisions or corrections resulting from errors and omissions on the part of the Engineer without additional compensation. Acceptance of the work by the County will not relieve the Engineer of responsibility for subsequent correction of any such errors and the clarification of any ambiguities which may arise during future activities on the site. The Engineer shall give immediate attention to these revisions or corrections so there will be a minimum of delay to the project or to the contractor.
4. Relationship with Others. The Engineer shall cooperate fully with others working on adjacent projects, municipalities, local government officials, public utility companies, and others as may be directed by the County. This shall include attendance at meetings, discussions and hearings, as may be requested by the County; furnishing plans and other data as may be requested from time to time by the County, and compliance with all directives issued by the County.
5. Ownership of Documents. Plans, electronic data, and maps and specifications prepared under this Agreement shall be delivered to and become the property of the County upon termination or completion of work. Basic survey notes, design computations and other data prepared under this Agreement shall be made available to the County upon request. All such information produced under this Agreement shall be available for use by the County without restriction or limitation on its use. If the County incorporates any portion of the work into a project other than that for which it was performed, the County shall save the Engineer harmless from any claims and liabilities resulting from such use.
6. Termination. Engineer or the County may terminate this Agreement by giving written notice to the other party as described in Article III above. Termination of this Agreement shall not constitute a waiver of the rights or obligations, which County or Engineer may be entitled to receive or be obligated to perform under this Agreement. Should this Agreement terminate, all books, brochures, flier, lists, and all other County materials

must be delivered and returned by the Engineer to the County within 15 calendar days of the demand of the County.

If the Agreement is terminated due to the Engineer's service being unsatisfactory in the judgment of the County, or if the Engineer fails to prosecute the work with due diligence, the County may procure completion of the work in such manner as it deems to be in the best interest of the County. The Engineer will be responsible for any excess cost in addition to that provided for in this agreement or any damages the County may sustain by reason of the termination of this Agreement due to unsatisfactory performance or prosecution.

7. Successors and Assigns. The County and the Engineer each bind themselves, their successors, executors, administrators, and assigns to the other party to this Agreement, and to the successors, executors, administrators, and assigns of such other party in respect to all covenants of this Agreement.
8. Responsibility for Claims and Liability. The Engineer shall be responsible for any and all damage to property or persons while performing work under this agreement, and shall indemnify and save harmless the County, its officers, agents, and employees from all suits, claims, actions, or damages of any nature whatsoever resulting from the negligence or willful misconduct of the Engineer in the performance of work under this Agreement.
9. Compliance with Laws. The Engineer shall keep itself fully informed of all existing and current regulations of the County, State, and Federal laws which in any way limit or control the actions or operations of those engaged upon the work, or affecting the materials supplied to or by them. It shall at all times observe and comply with all ordinance, laws, and regulations, and shall protect and indemnify the County against any claims or liability arising from or based on any violations of the same. This Agreement shall be governed by and interpreted in accordance with the laws of Missouri excluding provisions thereof which would apply the laws of another jurisdiction.

The Engineer's attention is directed to Chapter 296, Section 296.010, to Section 296.070, inclusive RSMo 2000, as amended, "Discriminatory Employment Practices," and to Section 644.4, Jackson County Code, 1984, which provides as follows:

644.4 Subcontractors, Agreements with Contractors

The contractor will require that all contracts between it and subcontractors shall contain the following provisions.

a. Not Discriminate

The subcontractor shall not discriminate against any qualified person because of her or his race, color, national origin, religion, age, sex or handicap in recruitment and recruitment advertising, employment, upgrading, promotion, demotion or transfer, lay-off or termination, rates of pay or other forms of compensation, other terms of conditions of employment and selection for training including apprenticeship.

b. Inspection by County Contract Review Officer (CRO)

The subcontractor will permit, on reasonable notice and at reasonable times, the CRO to visit its premises, inspect and copy thereon its business records, survey its work forces and interview its employees, as may be necessary to verify compliance with this chapter and implementation of the affirmative action plan of the Subcontractor. The subcontractor further agrees to furnish such future information as may be reasonably required of it within ten (10) working day of the date it is requested in writing by the CRO.

10. Nondiscrimination. The Engineer, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors. The Engineer will comply with Title VI of the Civil Rights Act of 1964, as amended. More specifically, the Engineer will comply with the regulations of the Department of Transportation relative to nondiscrimination in federally assisted programs of the Department of Transportation, as contained in 49 CFR 21 through Appendix H and 23 CFR 710.405(b), which are herein incorporated by reference and made a part of this agreement. In all solicitations either by competitive bidding or negotiation made by the Engineer for work to be performed under subcontract, including procurement of materials or equipment, each potential subcontractor or supplier shall be notified of the Engineer's obligations under this Agreement and the regulations relative to nondiscrimination on the grounds of color, race or national origin.
11. Independent Contractor. The Engineer shall work as an independent contractor and not as an employee of the County. The Engineer shall be subject to the direction of the County only as to the result to be accomplished and not as to the means and methods for accomplishing the result. The Engineer shall report all earnings received hereunder as gross income, and be responsible for its own Federal, State, and City withholding taxes and all other taxes, and operate its business independent of the business of the County except as required by this Agreement.
12. Severability. If any covenant or other provision of this Agreement is invalid, or incapable of being enforced, by reasons of any rule of law or public policy, all other conditions and provision of this Agreement shall nevertheless remain in full force and effect and no covenant or provision shall be deemed dependent upon any other covenant or provision unless as expressed herein.
13. Incorporation. This Agreement along with the Engineer's proposal, the County's RFP 49-14 and addenda thereto, and the Terms and Conditions of EPA Cooperative Agreement BF-97722301 Applicable to Contractor(s) with required forms incorporate the entire understanding and agreement of the parties. In the event of a conflict among any

provisions of these documents, the provision of the documents listed first in the following order shall prevail:

- 1.) This Agreement,
 - 2.) Terms and Conditions of EPA Cooperative Agreement BF-97722301 with Required Forms (Exhibit C)
 - 2.) RFP 49-14 (Exhibit A) and addenda thereto; and,
 - 3.) Engineer's proposal (Exhibit B)
14. Time of Essence. Timely performance of all duties provided herein is the essence of this Agreement.
15. Decisions under this Agreement. The County will determine the acceptability of work performed under this Agreement, and will decide all questions which may arise concerning the project. The County's decision shall be final and conclusive.
16. Breach of Contract. The prevailing party, in whole or in part, shall be entitled to reimbursement for all costs and reasonable attorneys' fees in any legal action brought against the other party based on a breach of this Agreement.
17. Safety Requirements. Engineer shall make every reasonable effort to perform the Services in a manner complying with all applicable safety legislation and with applicable environmental laws, rules, and regulation in force at the time of development of designs. Engineer shall also be responsible for the safety of its own employees at all times during the performance of any Request for Services.
18. Purchase Orders. In the event the County uses a purchase order form to administer this Agreement, the use of such form shall be for convenience purposes only and any typed provision in conflict with the terms of this Agreement and all-preprinted terms and conditions contained in or on such forms shall be deemed stricken and null and void.

ARTICLE VIII - STANDARD OF CARE:

Engineer warrants that it shall perform the services in accordance with the standards of care and diligence normally practiced by recognized engineering firms in performing services of a similar nature. If, during the two year period following completion of the Services it is shown there is an error in the Services caused solely by the Engineer's failure to meet such standards, and County has promptly notified Engineer of any such error within that period, Engineer shall perform, at Engineer's cost, such corrective engineering services as may be necessary to remedy such error.

ARTICLE IX - INSURANCE AND INDEMNIFICATION:

ENGINEER'S LIABILITY INSURANCE FOR THE COUNTY- At a minimum, Engineer shall purchase and maintain such insurance which:

- 1) Conforms with the requirements described in Exhibit A (RFP 49-14) and addenda thereto, attached hereto; and,
- 2) Will protect itself against loss from its alleged or actual liability to satisfy those claims which are set forth below and which may arise out of or result from Engineer's operations under the Agreement, whether such operations be by itself or by anyone for whose acts it may be liable:

(A) Claims under workers compensation, disability benefits and other similar employee statutes;

(B) claims for damages for bodily injury, occupational sickness or disease, or death of its employees and any person other than its employees;

(C) Claims for damages for personal injury sustained (1) by any person as a result of an act directly or indirectly related to the employment of such person by the Engineer, or (2) by any other person;

(D) Claims for damages for injury to or destruction of tangible property, including loss of use resulting there from; and

(E) Claims for damages for bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle whether it is owned, non-owned, hired or rented.

The insurance required by the proceeding paragraph shall be written for not less than a combined single limit for bodily injury and property damage of \$300,000.00 each person; \$2,000,000.00 each occurrence.

The Engineer will be required to have the County and the City of Kansas City named as an additional insured on all liability policies of insurance.

PROFESSIONAL LIABILITY INSURANCE - The Engineer shall secure professional liability insurance in the amount of \$ 1,000,000.00, minimum, per claim/annual appropriate.

COMMERCIAL GENERAL LIABILITY INSURANCE - The Engineer shall secure a commercial general liability insurance policy with limits of \$1,000,000.00 per occurrence and \$1,000,000.00 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:

- Severability of interests coverage applying to additional insureds.
- Contractual liability.
- Per project aggregate liability limit, or where not available, the aggregate limit shall be \$2,000,000.00.
- Non-contractual liability limitation endorsement.
- Additional insured endorsement, ISO form CG2010, current edition or its equivalent.

CONTRACTUAL LIABILITY INSURANCE - The insurance required by the proceeding paragraph shall include contractual liability insurance applicable to the Engineer's indemnification obligations under other paragraphs of the Agreement.

SUBCONTRACTORS - If Engineer shall subcontract any of this work to a third party, Engineer shall see to it that such third party maintains such insurance and shall furnish evidence thereof to the County. Engineer will cause all such policies of insurance to name the County as additional insured and provide indemnification for the County and the City of Kansas City against liability upon the risks insured thereby to the amount of coverage specified therein for the Engineer.

FILING OF CERTIFICATES OF INSURANCE AND POLICIES WITH THE COUNTY - The Engineer shall file with the County upon request a copy of all policies of insurance required under the Agreement.

Within ten (10) calendar days of the date when requested or before commencement of the work, Engineer shall file with the County's Public Works Director Certificates acceptable to him of the insurance required by the Agreement. These certificates shall contain a provision that coverage's afforded under the policies will not be canceled until at least thirty (30) days prior written notice of cancellation has been given to the County's Public Works Department Director. Failure to so file these certificates is a breach hereof.

INDEMNIFICATION OF THE COUNTY - The Engineer agrees to indemnify, defend and save harmless the County, against all damages to property, structures and utilities together with all claims for damages arising out of personal injury, including accidental death due to the Engineer's negligent acts or the negligent acts of the Engineer's subcontractors, agents or employees, in the performance of work under this Agreement.

INDEMNIFICATION OF THE CITY OF KANSAS CITY - For purposes of this Section only, the following terms shall have the meanings listed:

“Claims” means all claims, damages, liability, losses, costs and expenses, court costs and reasonable attorneys' fees, including attorneys' fees incurred by the City in the enforcement of this indemnity obligation.

“Subgrantee's Agents” means Subgrantee's officers, employees, subconsultants, subcontractors, successors, assigns, invitees, and other agents.

“City” means City and its agents, officials, officers and employees.

“City Agents” does not include contractors or consultants under contract to the City to provide goods or services or perform work in connection with this Agreement.

Subgrantee shall contractually obligate its contractors and subcontractors to save, keep harmless, defend and indemnify the City and all its officers, officials, employees and agents, against any and all claims and costs of whatever kind and nature, including for injury to or death of any person or persons, and for loss or damage to any property (state or other) occurring in connection

with or in any way incident to or arising out of the occupancy, use, service, operation or performance of work in connection with this Agreement or omissions of the Subgrantee's employees, agents or representatives regardless of whether or not caused in part by any act or omission, including negligence, of City. Subgrantee shall ensure this indemnification language is included in all contracts and subcontracts related to work to be done under this Agreement.

Nothing in this section shall apply to indemnification for professional negligence. In no event shall the language in this Section constitute or be construed as a waiver or limitation of the City's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law."

ARTICLE X - PAYMENTS TO THE ENGINEER:

For the Environmental Site Assessment Services performed by Engineer under this Agreement and as full compensation therefore, and for all expenditures made and all expenses incurred by Engineer in connection with this Agreement, except as otherwise expressly provided herein, subject to conformance with all provisions of this Agreement, County will pay Engineer a not-to-exceed amount of **\$167,541.00** in accordance with the Engineer's Proposal (Option A, Tasks 1,2, and 3), dated July 15th, 2014, as set forth in the attached Exhibit B. Partial payments will be based on invoices, submitted to and approved by the County


ARTICLE XI - EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED:


Pursuant to §285.530.1, RSMo, Engineer assures that it does not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the State of Missouri and/or Jackson County, and shall affirm, by sworn affidavit and provision of documentation, its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. Further, Engineer shall sign an affidavit, attached hereto and incorporated herein as Exhibit C, affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

IN WITNESS WHEREOF, Jackson County, Missouri, has caused these presents to be executed in its behalf by its duly authorized agent; and the Engineer has hereunto set it hand and seal.

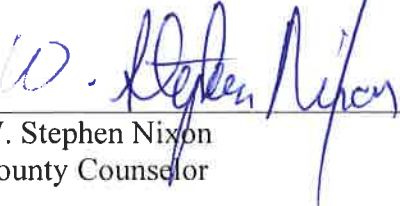
JACKSON COUNTY, MISSOURI

TETRA TECH, INC.

By 
Q. Troy Thomas
Director of Finance and Purchasing

By 
Federal Tax ID 95-4148514

APPROVED AS TO FORM:


W. Stephen Nixon
County Counselor

ATTEST:

Clerk of the County Legislature

REVENUE CERTIFICATE

I hereby certify that there is a balance otherwise unencumbered to the credit of the appropriation to which this Agreement is chargeable, and a cash balance otherwise unencumbered in the treasury from which payment is to be made, each sufficient to meet the obligation of **\$167,541.00** which is hereby authorized.

November 26, 2014 
Date Finance Director

FMS Agreement Number 21112014001

Account Code 004 - 2111 - 56080

Tax ID # _____

WORK AUTHORIZATION AFFIDAVIT

As a condition for any service provided to the County, a business entity shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services.

Business entity, as defined in section 285.525, RSMo pertaining to section 285.530, RSMo, is any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood. The term "business entity" shall include but not be limited to self-employed individuals, partnerships, corporations, contractors, and subcontractors. The term "business entity" shall include any business entity that possesses a business permit, license, or tax certificate issued by the state, any business entity that is exempt by law from obtaining such a business permit, and any business entity that is operating unlawfully without such a business permit.

Every such business entity shall complete the following affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. The completed affidavit must be returned as a part of the contract documentation.

This affidavit affirms that **TETRA TECH, INC.**, is enrolled in, and is currently participating in, E-verify or any other equivalent electronic verification of work authorization operated by the United States Department of Homeland Security under the Immigration Reform and Control Act of 1986 (IRCA); and, **TETRA TECH, INC.**, does not knowingly employ any person who is an unauthorized alien in conjunction with the contracted services.

In Affirmation thereof, the facts stated above are true and correct. (The undersigned understands that false statements made in this filing are subject to the penalties provided under section 575.040, RSMo.)

Kathleen Homer
Authorized Representative's Signature
Operations Manager
Title

Kathleen Homer
Printed Name
11/24/14
Date

Subscribed and sworn before me this 24th day of November, 2014. I am commissioned as a notary public within the County of Platte, State of Missouri, and my commission expires on 07/29/2017.

Karen S. Bollinger
Signature of Notary

11/24/14
Date

