TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Bruce Bernard, Public Works/Capital Projects Director, (954) 797-1240

PREPARED BY: Carol Knutsen, Administrative Aide

SUBJECT: Resolution

AFFECTED DISTRICT: All Districts

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH POST, BUCKLEY, SCHUH & JERNIGAN, INC. FOR MONITORING DISASTER DEBRIS COLLECTION AND DISPOSAL OPERATIONS

REPORT IN BRIEF: Town to enter into agreement for debris monitoring at total reduction sites and assigned locations Townwide. Monitoring process is requirement of FEMA for reimbursement requirement. Contractor will be supervised by Town personnel with cost recovered from FEMA funding.

PREVIOUS ACTIONS:

CONCURRENCES: N/A

FISCAL IMPACT: Costs are reimbursable by FEMA

RECOMMENDATION(S): Adopt resolution

Attachment(s): Resolution with Exhibit

RESOLUTION _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH POST, BUCKLEY, SCHUH & JERNIGAN, INC. FOR MONITORING DISASTER DEBRIS COLLECTION AND DISPOSAL OPERATIONS.

WHEREAS, the Town has the need to procure the services of a qualified contractor to provide monitoring of disaster debris collection and disposal operations; and

WHEREAS, Broward County, Florida competitively bid for disaster debris monitoring, RLI #20030207-0-IWAO-01; and

WHEREAS, Contractor submitted a bid in response to the Broward County Request for Letters of Intent (RLI); and

WHEREAS, after receipt of said proposal from Contractor, Broward County entered into a contract with Contractor to provide Disaster Debris Monitoring, said Contract dated August 19, 2003, and attached hereto and made part hereof as Exhibit "1" (Broward County Contract); and

WHEREAS, the Town of Davie 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 the Town to provide disaster debris monitoring services to the Town of Davie; and

WHEREAS, Section 4.1.3 of the Broward County Contract authorizes the Contractor to enter into an agreement for disaster debris monitoring with the Town under an arrangement where the Town establishes this agreement based on the contract developed and executed by Broward County, and Section 2-305.1(3) of the Code of the Town of Davie, Florida authorizes the Town to procure these services through such an arrangement; and

WHEREAS, Contractor has agreement to honor the prices and terms and conditions of the Broward County Contract in performing disaster debris monitoring services for the Town; and

WHEREAS, Town desires to retain the services of Contractor establishing this agreement based on the contract developed and executed by Broward County, Florida, and

WHEREAS, at its meeting of September 1, 2004, the Town Council of the Town of Davie authorized the proper Town officials to enter into an Agreement with Contractor by establishing this agreement based on the contract developed and executed by Broward County, Florida; and

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The foregoing recitals are true and correct and hare hereby incorporated into this Agreement.

SECTION 2. Attached hereto and made a part hereof by reference as Exhibit "1" is the Broward County Contract dated August 19, 2003, referred to above. The prices, terms and conditions of this Broward County Contract shall govern the relationship between the Town and Contractor, except as amended below:

A. The Scope of Services for work to be performed under this Agreement shall be as set forth in Exhibit "A", except said services shall be performed in and for the Town of Davie.

B. Contractor shall perform the services in and for the Town of Davie as detailed in the Broward County Contract (Exhibit "A") utilizing the prices set forth in the Broward County Contract.

C. The Contract Administrator shall be the Town Administrator of Town or his designee.

D. The term "County Attorney" in the Broward County Contract shall be replaced with the term "Town Attorney", who shall be defined as the appointed legal counsel of the Town as defined by the Charter of the Town of Davie.

E. The Contract expiration date is December 31, 2005; however the Contract may be extended for two additional one (1) year periods upon the approval of the Town and the Contractor. See Section 3.1 of the Broward County Contract.

F. Contractor shall provide the Contract Administrator with proof of insurance as required by Section 7.7 of the Broward County Contract.

G. Notice to the Town, for purposes of Section 10.7 of the Broward County Contract shall be sent to:

Town Administrator
6591 SW 45 Street
Davie, Florida 33314

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 OF THE FOREGOING, the parties have hereunto set their hands and seals on the dates written below.

PASSED AND ADOPTED THIS _____ DAY OF_____, 2004.

_____
MAYOR/COUNCILMEMBER

ATTEST:

_____
TOWN CLERK

APPROVED THIS _____ DAY OF_____, 2004

AGREEMENT

Between

BROWARD COUNTY

and

POST, BUCKLEY, SCHUH AND JERNIGAN, INC.

for

DISASTER DEBRIS MONITORING

RLI # 20030207-0-IWAO-01

AGREEMENT

Between

BROWARD COUNTY

and

POST, BUCKLEY, SCHUH AND JERNIGAN, INC.

for

DISASTER DEBRIS MONITORING

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

AND

POST, BUCKLEY, SCHUH AND JERNIGAN, INC., a corporation authorized to do business in the State of Florida, hereinafter referred to as "CONTRACTOR."

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

WHEREAS, CONTRACTOR's proposal was chosen through the procurement process to provide disaster debris monitoring; NOW THEREFORE,

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

ARTICLE 1
DEFINITIONS AND IDENTIFICATIONS

Agreement - means this document, Articles 1 through 10, 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.

Contract Administrator - The Broward County Administrator, the Director of the Broward Emergency Management Agency, or the designee of such County

Administrator or Director. The primary responsibilities of the Contract Administrator are to coordinate and communicate with CONTRACTOR and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. 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** - The Board as defined in Section 1.2 unless expressly provided otherwise.

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 **Project** - The Project consists of the services described in Article 2.

1.7 **Task Authorization** - An enhanced description of a specific task that has been approved by the Contract Administrator, and accepted by the CONTRACTOR, that supplements the Scope of Services, Exhibit "A" with functional detail and limits on expense and date of completion for that specific task.

1.8 **SDBE** - shall be as defined by COUNTY administrative rules and regulations, as may be amended from time to time.

ARTICLE 2
SCOPE OF SERVICES

2.1 CONTRACTOR shall perform all work identified in this Agreement and Exhibit "A." The parties agree that the scope of services is a description of CONTRACTOR'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 CONTRACTOR impractical, illogical, or unconscionable. No work shall begin nor any costs incurred for any part of this Project without an approved Task Authorization. The Task Authorization will describe and define Exhibit "A" Scope of Work items in operational terms and will identify a maximum amount of compensation to the CONTRACTOR for completion of the Task Authorization. The Task Authorization must be approved by the Contract Administrator to be valid. Each Task Authorization will designate either a lump sum or time and expenses method for compensation and the maximum amount that can be incurred for the specific task. A time and expense Task Authorization will specifically identify and estimate all expenses and time by staff member. Billing for staff time will apply the staff rate as identified in Exhibit "C" times the number of hours worked on the task.

Expenses will consist of the actual costs as demonstrated by receipt. No expenses or staff charges will be accepted for items not pre approved within a Task Authorization.

CONTRACTOR acknowledges and agrees that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement, except as expressly authorized by the Broward County Procurement Code (Chapter 21 of the Broward County Administrative Code).

All work will be described by a Task Authorization form that will be signed by the Contract Administrator and shall describe the extent and limits of each task. No work shall be compensated that is not in accordance with an approved work authorization. The prescribed Task Authorization form is attached as Exhibit "B."

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 December 31, 2005; provided, however, this Agreement may be extended for two additional one (1) year periods with the approval of the Broward County Purchasing Director and the CONTRACTOR, and provided 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 the appropriation and availability of funds in accordance with Chapter 129, Florida Statutes.

3.2 All duties, obligations, and responsibilities of CONTRACTOR required by this Agreement shall be completed no later than the deadlines established by the Contract Administrator. Time shall be deemed to be of the essence in performing the duties, obligations and responsibilities required by this Agreement.

ARTICLE 4
COMPENSATION

4.1 COUNTY agrees to pay CONTRACTOR, in the manner specified in Section 4.4, as compensation for work actually performed and completed pursuant to this Agreement and as detailed in an approved Task Authorization, (Exhibit "B"), Salary Costs as described in Section 4.2 and to reimburse CONTRACTOR for Reimbursables as described in Section 4.3, which amounts shall be accepted by CONTRACTOR as full compensation for all such work. It is acknowledged and agreed by CONTRACTOR that this amount is the maximum payable and constitutes a limitation upon COUNTY's obligation to compensate CONTRACTOR for its services related to this Agreement. This maximum amount, however, does not constitute a limitation, of any sort, upon CONTRACTOR's obligation to perform all

items of work required by or which can be reasonably inferred from the Scope of Services. Amounts paid to CONTRACTOR to reimburse its expenses must be pre-approved within a Task Authorization and documented to show actual costs. In the event that additional funds become available to COUNTY for enhancements to the Project, this Agreement can be amended for the task to reflect the addition.

4.1.1 Task Authorization costs connected to Exhibit "A" shall be payable based on a standard of reasonableness, provided, however, that under no circumstances will costs that exceed reimbursable limits acceptable to the Federal Emergency Management Agency (FEMA) be proposed or approved in a Task Authorization.

4.1.2 The COUNTY has budgeted certain funds for the Project. Payment under a Task Authorization shall not exceed the budgeted amount. 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 the availability of funds from COUNTY in accordance with Chapter 129, Florida Statutes, as it may be amended.

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

4.2 SALARY COSTS

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

4.2.1 If the method of compensation between COUNTY and CONTRACTOR is a maximum amount not-to-exceed and CONTRACTOR has "lump sum" agreements with any subcontractor(s), then CONTRACTOR shall bill all "lump sum" subcontractor fees as Salary Costs. Subcontractor Salary Costs shall not exceed the rates listed on Exhibit "C."

4.3 REIMBURSABLES

4.3.1 In accordance with and pursuant to the Broward County Procurement Code, direct nonsalary expenses, entitled Reimbursables, directly attributable to the Project will be charged at actual cost, and shall be limited to the following:

a) Identifiable transportation expenses in connection with the Project, subject to the limitations of Section 112.061, Florida Statutes. Transportation expenses from locations inside the Dade-Broward-Palm Beach County area to locations inside the Dade-Broward-Palm Beach County area will not be reimbursed. Transportation expenses to locations outside the Dade-Broward-Palm Beach County area or from locations outside the Dade-Broward-Palm Beach County area will not be reimbursed unless specifically pre-authorized in writing by the Contract Administrator.

b) Identifiable per diem, meals and lodgings, taxi fares and miscellaneous travel-connected expenses for CONTRACTOR's personnel subject to the limitations of Section 112.061 Florida Statutes. Meals for class C travel inside Broward County will not be reimbursed. Lodging will be reimbursed only for room rates equivalent to Holiday Inn, Howard Johnson or Ramada Inn. **Reimbursables covered hereby must have the written approval of the Contract Administrator prior to being incurred.**

c) Identifiable communication expenses approved by Contract Administrator, long distance telephone, courier and express mail between the CONTRACTOR's various permanent offices. The CONTRACTOR's field office at the Project site is not considered a permanent office. **Reimbursables covered hereby must have the written approval of the Contract Administrator prior to payment of same.**

d) Cost of printing, reproduction or photography which is required by or of CONTRACTOR to deliver services set forth in this Agreement. **Reimbursables covered hereby must have the written approval of the Contact Administrator prior to payment of same.**

e) Identifiable testing costs **pre-authorized in writing** by Contract Administrator.

f) All permit fees paid to regulatory agencies for approvals directly attributable to the Project, **pre-authorized in writing by the Contract Administrator.** These permit fees do not include those permits required for the construction contractor.

4.3.2 Reimbursable subcontractor expenses are limited to the items described above when the subcontractor agreement provides for reimbursable expenses.

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

4.4 METHOD OF BILLING AND PAYMENT

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

4.4.2 COUNTY shall pay CONTRACTOR within thirty (30) calendar days of receipt of CONTRACTOR'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. Payment may be withheld for failure of CONTRACTOR to comply with a term, condition, or requirement of this Agreement.

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

Payment will be made to CONTRACTOR at:

John DeLoach, Project Manager
CONTRACTOR
5665 New Northside Drive, Suite 400
Atlanta, GA 30328

ARTICLE 5
CHANGE IN SCOPE OF SERVICES

Any change to the Scope of Services must be accomplished by a written amendment, executed by the parties in accordance with Section 10.16 below.

ARTICLE 6
INDEMNIFICATION

6.1 CONTRACTOR shall at all times hereafter indemnify, hold harmless and, at County Attorney's option, defend or pay for an attorney selected by County Attorney to defend COUNTY, its officers, agents, servants, and employees against any and all claims, losses, liabilities, and expenditures of any kind, including attorney fees, court costs, and expenses, caused by negligent act or omission of CONTRACTOR, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, demands, or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. The provisions of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by Contract Administrator and County Attorney, any sums due CONTRACTOR 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 7
INSURANCE

7.1 To ensure the indemnification obligation contained above, CONTRACTOR shall, at a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement (unless otherwise provided), the insurance coverages set forth in Sections 7.3, 7.4, 7.5 and 7.6, in accordance with the terms and conditions required by this Article. Each insurance policy shall clearly identify the foregoing indemnification as insured.

7.2 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. CONTRACTOR 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 Comprehensive General Liability Policy only.

7.3 Comprehensive General Liability Insurance. A Comprehensive General 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. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include:

Premises and/or operations.

Independent contractors.

Products and/or Completed Operations for contracts.

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

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

7.4 Business Automobile Liability. Business Automobile Liability shall be provided with minimum limits of Three Hundred Thousand Dollars ($300,000.00) 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.

7.5 Workers' Compensation Insurance. Workers' Compensation insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(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.

Professional Liability Insurance with the limits of liability provided by such policy to be no less than Ten Thousand Dollars ($10,000.00) with a maximum deductible of Five Hundred Dollars ($500.00).

CONTRACTOR shall notify COUNTY in writing within thirty (30) days of any claims filed or made against the Professional Liability Insurance Policy.

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

Coverage is not to cease and is to remain in force (subject to cancellation notice) until all performance required of CONTRACTOR is completed. All policies must be endorsed to provide COUNTY with at least thirty (30) days' notice of cancellation and/or restriction. If any of the insurance 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.

ARTICLE 8
TERMINATION

8.1 This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within fourteen calendar (14) days after written notice from the aggrieved party identifying the breach, or for convenience by action of the Board upon not less than thirty (30) days' written notice. This Agreement may also be terminated by Contract Administrator upon such notice as Contract Administrator deems appropriate under the circumstances in the event Contract Administrator determines that termination is necessary to protect the public health or safety. An erroneous termination for cause shall be considered a termination for convenience.

8.2 Termination of this Agreement for cause by COUNTY shall include, but not be limited to, negligent, intentional, or repeated submission for payment of false or incorrect bills or invoices, failure to suitably perform the work, failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement, or multiple breach of this Agreement which has a material adverse effect on the efficient administration of the Project notwithstanding whether any such breach was previously waived or cured.

Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by Contract Administrator which Contract Administrator deems necessary to protect the public health, safety, or welfare may be verbal notice which shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.

In the event this Agreement is terminated for convenience, CONTRACTOR shall be paid for any services properly performed to the date the Agreement is terminated; however, upon being notified of COUNTY's election to terminate, CONTRACTOR shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. CONTRACTOR acknowledges and agrees that ten dollars ($10.00) of the compensation to be paid by COUNTY, the receipt and adequacy of which is hereby acknowledged by CONTRACTOR, is given as specific consideration to CONTRACTOR for COUNTY's right to terminate this Agreement for convenience.

8.5 In the event this Agreement is terminated, any compensation payable by COUNTY shall be withheld until all documents are provided to COUNTY pursuant to Section 10.1 of Article 10.

ARTICLE 9
EEO COMPLIANCE

9.1 EEO COMPLIANCE

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

CONTRACTOR's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation (Broward County Code, Chapter 16½), national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery.

CONTRACTOR shall not engage in or commit any discriminatory practice in violation of the Broward County Human Rights Act (Broward County Code, Chapter 16½) in performing any services pursuant to this Agreement.

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

9.2 SMALL DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

9.2.1 In completing this Project, CONTRACTOR agrees to and shall comply with COUNTY's Small Disadvantaged Business Enterprise (SDBE) Affirmative Action Program, requiring goals in all County procurement activity at One Hundred Fifty-Thousand Dollars ($150,000) or above for construction services; Seventy-Five Thousand Dollars ($75,000) or above in total contract value for architectural/engineering and related services; and Fifty Thousand Dollars ($50,000) or above in total contract value for all other goods and services.

COUNTY and CONTRACTOR agree that subcontract awards to Small Disadvantaged Business Enterprises and Minority - Majority Joint Ventures are crucial to the achievement of the Project's SDBE participation goals. In an effort to assist COUNTY in achieving its established goals for this Project, CONTRACTOR agrees to meet the current SDBE participation goals established in Section 9.2.3.

The total assigned SDBE goal for this Project is: None

ARTICLE 10
MISCELLANEOUS

10.1 OWNERSHIP OF DOCUMENTS

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

10.2 AUDIT RIGHT AND RETENTION OF RECORDS

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

CONTRACTOR shall preserve and make available, at reasonable times for examination and audit by COUNTY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), 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 CONTRACTOR's records, CONTRACTOR shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CONTRACTOR. 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.

10.3 LIVING WAGE REQUIREMENT

To the extent CONTRACTOR is a "covered employer" within the meaning of Broward County Ordinance No. 2002-45, as may be amended from time to time, CONTRACTOR agrees to and shall pay to all of its employees providing "covered services," as defined therein, a living wage as required by such ordinance, and CONTRACTOR shall fully comply with the requirements of such ordinance and shall satisfy, comply with, and complete all of the obligations set forth therein. CONTRACTOR shall be responsible for and shall ensure that all of its subcontractors that qualify as covered employers fully comply with the requirements of such ordinance and satisfy, comply with, and complete all of the obligations set forth therein.

Broward County Ordinance No. 2002-45 becomes effective October 1, 2003. CONTRACTOR is not required to comply with the requirements of the ordinance unless this Agreement is entered into after the effective date of the ordinance; however, CONTRACTOR shall comply with all requirements of the ordinance effective upon the beginning of any renewal or extension period if this Agreement

is renewed or extended for an additional period of time beyond the effective date of the ordinance.

10.4 PUBLIC ENTITY CRIME ACT

CONTRACTOR represents that the execution of this Agreement will not violate the Public Entity Crime Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant, or other provider 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, 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, CONTRACTOR 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 CONTRACTOR has been placed on the convicted vendor list.

10.5 INDEPENDENT CONTRACTOR

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

10.6 THIRD PARTY BENEFICIARIES

Neither CONTRACTOR nor COUNTY intend 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.

10.7 NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR BROWARD COUNTY:

Broward County Office of Integrated Waste Management
Recycling and Contract Administration Division
One North University Drive, Suite 400-B
Plantation, Florida 33324

FOR CONTRACTOR:

John DeLoach, Project Manager
CONTRACTOR
5665 New Northside Drive, Suite 400
Atlanta, GA 30328

10.8 ASSIGNMENT AND PERFORMANCE

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

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

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

10.9 CONFLICTS

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

CONTRACTOR further agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against COUNTY in any legal or administrative proceeding in which he, she, or CONTRACTOR is not a party, unless compelled by court process. Further, CONTRACTOR agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or 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 CONTRACTOR 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 CONTRACTOR is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, CONTRACTOR agrees to require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as CONTRACTOR.

10.10 MATERIALITY AND WAIVER OF BREACH

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

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

10.11 COMPLIANCE WITH LAWS

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

10.12 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 CONTRACTOR elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

10.13 JOINT PREPARATION

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

10.14 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 10 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 10 shall prevail and be given effect.

10.15 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. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the state courts of the Seventeenth Judicial Circuit and venue for litigation arising out of this Agreement shall be in such state courts. By entering into this Agreement, CONTRACTOR and COUNTY hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to this Agreement.

10.16 AMENDMENTS

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

10.17 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.

10.18 DRUG-FREE WORKPLACE

It is a requirement of COUNTY that it enter into contracts only with firms that certify the establishment of a drug-free work place in accordance with Chapter 21.31(a)(2) of the Broward County Procurement Code. Execution of this Agreement by CONTRACTOR shall serve as CONTRACTOR's required certification that it either has or that it will establish a drug-free work place in accordance with Chapter 21.31(a)(2) of the Broward County Procurement Code.

10.19 HIPAA COMPLIANCE

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

10.20 NO INTEREST

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

10.21 INCORPORATION BY REFERENCE

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

10.22 REPRESENTATION OF AUTHORITY

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

10.23 CONTINGENCY FEE

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

10.24 MULTIPLE ORIGINALS

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

(The remainder of this page is intentionally left blank.)

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 _____ day of _____, 20__, and CONTRACTOR, signing by and through its _____, duly authorized to execute same.

COUNTY

ATTEST:

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 _____
Mayor

19th day of August, 2003

Approved as to form by
Office of the County Attorney
for Broward County, Florida
EDWARD A. DION, County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

Insurance requirements
approved by Broward County
Risk Management Division

By _____ 8/11/03
(Date)

By _____
Yasmi Govin (Date)
Assistant County Attorney

AGREEMENT BETWEEN BROWARD COUNTY AND POST, BUCKLEY, SCHUH AND JERNIGAN, INC., FOR DISASTER DEBRIS MONITORING

CONTRACTOR

Post, Buckley, Schuh and Jernigan, Inc.

WITNESSES:

Becky S. Schaffer, Secretary

Deborah Lynn Shimel

By _____
Richard A. Wickett
Chairman of the Board
5th day of August, 2003

(SEAL)

YYG:dmv
06/24/03
H:DATA\DIV4\AGREE\DEBRIS.A01

Exhibit "A"

SCOPE OF SERVICES

Pre-event

Overview: The Contractor provides assistance in the preparation for disasters through participation in meetings, workshops, and the establishment of data management and other integrated systems.

Task 1 Information updates

Within 30 days of contract execution and annually thereafter before June 1st, the contractor will, at no cost:

Provide lists of key personnel and temporary service agencies that may be involved in Broward County disaster debris monitoring

- Provide and maintain current contact names for project director(s), their phone, fax and cell phone numbers, and e-mail addresses.

Task 2 Workshops

Participate in pre-hurricane annual workshop or planning meeting with County and Municipal representatives, Clean-up Contractors, and other to establish/review applicable policies and procedures.

Task 3 Training

Conduct 1-2 day training on debris monitoring for county and municipal agencies.

Task 4 Debris estimations

Calibrate and updated debris estimation model and provide estimates for each community and analyze collection areas scenarios, including mapping pre-established sites and estimations for material types and quantities.

Task 5 Other technical assistance

Provide technical assistance related to pre-event planning, including but not limited to: Temporary Debris Management Site (TDMS) review, baseline assessment, private property identification / negotiations, operational permits and / or protocols.

Post- Event

Overview

As a result of hurricane or other disaster the Contractor provides assistance with load inspections regarding storm debris cleanup being performed by one or more collection contractor or municipal agencies.

Task 1 Collection Monitoring

Contractor will perform work area inspections of storm debris collection – Work Areas as directed by the Contract Administrator. The Contractor will provide field inspections of debris collected in assigned work areas utilizing load tickets and other documentation processes. These services include:

- Responsible for monitoring work with multiple truck pickups.
- Issue load tickets in the field for each fully-loaded debris removal truck.
- Generally monitor the work performance and productivity of the trucks. Make photographic records as appropriate.
- Remain in contact with the central dispatch/staging operation.
- Initial each load ticket before allowing truck to leave the work area and proceed to the disposal site, noting volume of load / %full.
- Coordinate with each truck in order to determine the location for the truck to return immediately following the delivery of its full load to the disposal location.
- Troubleshoot questions and problems in the work area and identify issues that could impact eligibility for cost reimbursements.
- Make sure truck is tarped and all debris is safely confined within the truck bed prior to leaving the work area.
- Survey and record the areas in which larger items such as tree stumps, hazard trees, construction & demolition debris require special pick-up. Identify potential problems and maintain a location list of these areas for review at the close of each day.
- Record on maps the streets in which debris was previously collected for disposal.
- Perform other duties as directed by debris management operational office or designated County personnel.

Task 2 Monitor Temporary Debris Management Sites (TDMS)

Contractor will provide TDMS inspection and recordation services related to debris collected and delivered to the TDMS, including but not limited to:

- Responsible for monitoring multiple contractors and multiple trucks delivering materials to the TDMS.
- Verify that each truck that delivers to the TDMS matches its manifest ticket truck and maximum capacity.
- Make sure truck is properly tarped when arriving at the TDMS.
- Photograph each loaded truck bed and attach Polaroid photograph to truck's manifest ticket or link with digital photographic records, as applicable.
- Review truck manifest and observe the truck bed to confirm that the truck was loaded to capacity or as described on manifest ticket, and completely empty on departure.
- Maintain manifest tickets in an organized manner for proper record review and storage.
- Initial load tickets before permitting truck to leave the TDMS check-in area to empty its load.
- Troubleshoot questions and problems at the TDMS and identify issues that could impact eligibility for cost reimbursements.
- Remain in contact with the central office/staging operation command center.
- Perform other duties as directed by County personnel, e.g. conduct final inspections and issue closeout reports.

Task 3 Data Management

Contractor will coordinate data recordation and information management systems, including but not limited to:

- Prepare detailed estimates and submit to FDEM and FEMA for use in Project Worksheet preparation.
- Implement and maintain a disaster debris management system linking load ticket and TDMS information, including reconciliation and photographic documentation processes.
- Provide daily, weekly or other periodic reports for County and / or municipal debris managers noting work progress and efficiency, current/revised estimates, project completion and other schedule forecasts /updates.

Task 4 Other technical assistance

Provide technical assistance related to post-event response, including but not limited to: route mapping, traffic management, TDMS review, baseline assessment, private property identification / negotiations, contractor management and / or FEMA negotiations.

EXHIBIT "B"

DISASTER DEBRIS MONITORING

TASK AUTHORIZATION NO. _____ Page 1 of

This Task Authorization is issued between Broward County and CONTRACTOR as required pursuant to the Agreement for Disaster Debris Monitoring Services approved by the Broward County Board of County Commissioners on _____, 2003.

This Task Authorization provides for services in accordance with Exhibit "_ _" of the Agreement and further detailed in the Scope of Work below.

Payment(s) for such service shall be in accordance with Article 4 of the Agreement, and must not exceed reasonable limits acceptable to the Federal Emergency Management Agency (FEMA). Total costs for this Task Authorization shall not exceed $_____.

SCOPE OF WORK:

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

(Attach additional description as required)

Time is of the essence and work will be completed as soon as possible. Work must be completed prior to _____.

Broward County
Project Administrator
Reference No.

_____

Date _____

PBS&J/CONTRACTOR
Authorized Officer

_____

Date _____

EXHIBIT "C"

Disaster Debris Monitoring

	cost / hour
Principal / Officer	
Project Mgr	$120
Field Coordinator (Technical)	$70
Field Inspector	
Staging Monitor	
Envir Scientist	$70
Grants Mgr.	
DROMS Analyst	
GIS Operator (Technical)	
Data Entry (clerical)	

Notes:

Full labor rates include all audited company overhead, fringe and routine oerational expenses, e.g copies, reproductions, shipping, communications, and computer charges

Contractor's full-time employees are eligible for lodging, per diem and initial travel costs, invoiced on actual cost not to excced the Federal rates or county standards as applicable.

Costs for professional associates, subconsultants and/or temp contract labor shall be charged at actual costs.

Temp contract labor, trained and supervised by CONTRACTOR, shall be utilized to the maximum extent practical for field monitoring and staging monitoring.

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