

**HARDIN COUNTY FISCAL COURT
RESOLUTION NO. 2012-081**

BE IT RESOLVED, upon recommendation of Judge/Executive Harry L. Berry, to approve a Professional Services Agreement for Design and Construction Services at the Pearl Hollow and Springfield Road Landfills with Tetra Tech, Inc. for the period January 1, 2012 through December 31, 2016.

ADOPTED, by Hardin County Fiscal Court in its regular meeting on 12 June, 2012.



Harry L. Berry
Hardin County Judge/Executive

ATTEST



DC

Kenneth L. Tabb
Hardin County Clerk



Tetra Tech, Inc.
Professional Services Agreement for Design and Construction Services
A-WOC344-01-12

This Agreement is made and becomes effective this 1st day of January, 2012, between **Hardin County Fiscal Court** (Client) and **Tetra Tech, Inc.** (Consultant), a Delaware corporation.

Client hereby retains Consultant to perform design and construction services for Client as described in individual work orders that shall be issued for each engagement or Project. Work orders issued under this Agreement shall contain a description of the services (the Scope of Work) and shall state the compensation (the Fee) to be paid to Consultant by Client, and shall include a Schedule for completing the services. Each work order so issued shall become a part of this Agreement. Client acknowledges that Consultant will develop the Scope of Work, Fee, and Schedule for each engagement or Project based on available information and various assumptions. Client further acknowledges that adjustments to the schedule and compensation may be agreed upon by both parties, as deemed necessary by both the Client and the Consultant, and that such adjustment to the schedule and/or compensation shall be done by written agreement of both parties. Consultant agrees to perform the services in consideration of the compensation described in each work order and in accordance with the terms described in the attached Standard Terms and Conditions.

This Agreement consists of this document together with Attachment A – Work Orders issued under this Agreement, any attachments referenced therein, and the attached Standard Terms and Conditions. This agreement between the Client and Consultant supersedes all prior written and oral understandings. This agreement may only be amended, supplemented, modified, or cancelled by a duly executed written instrument. Signature by facsimile or e-mail shall be deemed original.

Period of Service This Agreement shall become effective on the date written above and shall continue in full force and effect through December 31, 2016, unless earlier terminated by either party as set forth in the Termination provision of this Agreement. This Agreement may be renewed for additional one (1) year terms upon agreement in writing by both parties.

In executing this Agreement, the undersigned also acknowledge their authority to bind the parties to all terms and conditions.

In witness whereof, the parties hereto have made and executed this Agreement as of the day and year first written.

Hardin County Fiscal Court
 100 Public Square
 Elizabethtown, Kentucky 42701

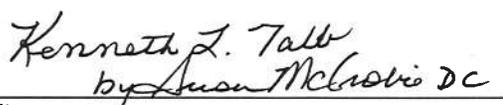
Tetra Tech, Inc.
 800 Corporate Drive, Suite 200
 Lexington, Kentucky 40503
 859.223.8000

By 
 Client's Authorized Signature

By _____
 Consultant's Authorized Signature

Harry L. Berry
 Judge Executive

Roger Blair, P.E.
 Senior Project Manager


 Witness Kenneth L. Tabb, County Clerk

 Witness



Professional Services Agreement
Attachment A – Work Order

WORK ORDER NO. _____
UNDER
TETRA TECH, INC.
WORK ORDER CONTRACT NO. _____ FOR
DESIGN AND CONSTRUCTION SERVICES DATED _____

CONSULTANT

CLIENT

Name	_____	_____
Street Address	_____	_____
City, State, Zip	_____	_____
Contact Person	_____	_____
Telephone	_____	_____
Fax	_____	_____
E-Mail	_____	_____

Work Order Date: _____

Project Identification: Name: _____

Tt Project No: _____ Location: _____

SCOPE OF WORK (attach sheet if necessary to describe)

SCHEDULE OF WORK (attach sheet if necessary to describe)

FEE

ACCEPTED BY:

AUTHORIZED BY:

Consultant's Authorized Signature

Client's Authorized Signature

Printed Name

Printed Name

Title

Title

Date Executed

Two originals of this work order shall be executed by the Client and returned to Tetra Tech, Inc. A fully executed copy will be returned to the Client.



Tetra Tech, Inc.

Design and Construction Standard Terms & Conditions

Services Consultant will perform services for the Project as set forth in the provisions for Scope of Work/Fee/Schedule in individual Work Orders and in accordance with these Terms & Conditions. Consultant has developed the Project scope of service, schedule, and compensation based on available information and various assumptions. The Client acknowledges that adjustments to the schedule and compensation may be necessary based on the actual circumstances encountered by Consultant in performing their services. Consultant is authorized to proceed with services upon receipt of an executed Agreement.

Compensation In consideration of the services performed by Consultant, the Client shall pay Consultant in the manner set forth above. The parties acknowledge that terms of compensation are based on an orderly and continuous progress of the Project. Compensation shall be equitably adjusted for delays or extensions of time beyond the control of Consultant. Where total project compensation has been separately identified for various tasks, Consultant may adjust the amounts allocated between tasks as the work progresses so long as the total compensation amount for the project is not exceeded.

Fee Definitions The following fee types shall apply to methods of payment:

- **Salary Cost** is defined as the individual's base salary plus customary and statutory benefits. Statutory benefits shall be as prescribed by law and customary benefits shall be as established by Consultant employment policy.
- **Cost Plus** is defined as the individual's base salary plus actual overhead plus professional fee. Overhead shall include customary and statutory benefits, administrative expense, and non-project operating costs.
- **Lump Sum** is defined as a fixed price amount for the scope of services described.
- **Standard Rates** is defined as individual time multiplied by standard billing rates for that individual.
- **Subcontracted Services** are defined as Project-related services provided by other parties to Consultant.
- **Reimbursable Expenses** are defined as actual expenses incurred in connection with the Project.

Payment Terms Consultant shall submit invoices at least once per month for services performed and Client shall pay the full invoice amount within 30 days of the invoice date. Invoices will be considered correct if not questioned in writing within 10 days of the invoice date. Client payment to Consultant is not contingent on arrangement of project financing or receipt of funds from a third party. In the event the Client disputes the invoice or any portion thereof, the undisputed portion shall be paid to Consultant based on terms of this Agreement. Invoices not in dispute and unpaid after 30 days shall accrue interest at the rate of one and one-half percent per month (or the maximum percentage allowed by law, whichever is the lesser). Invoice payment delayed beyond 60 days shall give Consultant the right to stop work until payments are current. Non-payment beyond 70 days shall be just cause for termination by Consultant.

Additional Services The Client and Consultant acknowledge that additional services may be necessary for the Project to address issues that may not be known at Project initiation or that may be required to address circumstances that were not foreseen. In that event, Consultant shall notify the Client of the need for additional services and the Client shall pay for such additional services in an amount and manner as the parties may subsequently agree.

Site Access The Client shall obtain all necessary approvals for Consultant to access the Project site(s).

Underground Facilities Consultant and/or its authorized subcontractor will conduct research and perform site reconnaissance in an effort to discover the location of existing underground facilities prior to developing boring plans, conducting borings, or undertaking invasive subsurface investigations. Client recognizes that accurate drawings or knowledge of the location of such facilities may not exist, or that research may reveal as-built drawings or other documents that may inaccurately show, or not show, the location of existing underground facilities. In such events, except for the sole negligence, willful misconduct, or practice not conforming to the Standard of Care cited in this Agreement, Client agrees to indemnify and hold Consultant and/or its Subcontractor harmless from any and all property damage, injury, or economic loss arising or allegedly arising from borings or other subsurface penetrations.

Regulated Wastes Client is responsible for the disposal of all regulated wastes generated as a result of services provided under this Agreement. Consultant and Client mutually agree that Consultant assumes no responsibility for the waste or disposal thereof.

Contractor Selection Consultant may make recommendations concerning award of construction contracts and products. The Client acknowledges that the final selection of construction contractors and products is the Client's sole responsibility.

Ownership of Documents Drawings, specifications, reports, programs, manuals, or other documents, including all documents on electronic media, prepared under this Agreement are instruments of service and are, and shall remain, the property of Consultant. Record documents of service shall be based on the printed copy. Consultant will retain all common law, statutory, and other reserved rights, including the copyright thereto. Consultant will furnish documents electronically; however, the Client releases Consultant from any liability that may result from documents used in this form. Consultant shall not be held liable for reuse of documents or

modifications thereof by the Client or its representatives for any purpose other than the original intent of this Agreement, without written authorization of and appropriate compensation to Consultant.

Standard of Care Services provided by Consultant under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Consultant makes no warranty or guaranty, either express or implied. Consultant will not be liable for the cost of any omission that adds value to the Project.

Period of Service Consultant shall perform the services for the Project in a timely manner consistent with sound professional practice. Consultant will strive to perform its services according to the Project schedule set forth in the provisions for Scope of Work/Fee/Schedule above. The services of each task shall be considered complete when deliverables for the task have been presented to the Client. Consultant shall be entitled to an extension of time and compensation adjustment for any delay beyond Consultant control.

Insurance and Liability Consultant shall maintain the following insurance and coverage limits during the period of service. The Client will be named as an additional insured on the Commercial General Liability and Automobile Liability insurance policies.

Worker's Compensation – as required by applicable state statute
Commercial General Liability - \$1,000,000 per occurrence for bodily injury, including death and property damage, and \$2,000,000 in the aggregate
Automobile Liability – \$1,000,000 combined single limit for bodily injury and property damage
Professional Liability (E&O) - \$1,000,000 each claim and in the aggregate

The Client shall make arrangements for Builder's Risk, Protective Liability, Pollution Prevention, and other specific insurance coverage warranted for the Project in amounts appropriate to the Project value and risks. Consultant shall be a named insured on those policies where Consultant may be at risk. The Client shall obtain the counsel of others in setting insurance limits for construction contracts.

Indemnification Consultant shall indemnify and hold harmless the Client and its employees from any liability, settlements, loss, or costs (including reasonable attorneys' fees and costs of defense) to the extent caused solely by the negligent act, error, or omission of Consultant in the performance of services under this Agreement. If such damage results in part by the negligence of another party, Consultant shall be liable only to the extent of Consultant's proportional negligence.

Dispute Resolution The Client and Consultant agree that they shall diligently pursue resolution of all disagreements within 45 days of either party's written notice using a mutually acceptable form of mediated dispute resolution prior to exercising their rights under law. Consultant shall continue to perform services for the Project and the Client shall pay for such services during the dispute resolution process unless the Client issues a written notice to suspend work.

Suspension of Work The Client may suspend services performed by Consultant with cause upon fourteen (14) days written notice. Consultant shall submit an invoice for services performed up to the effective date of the work suspension and the Client shall pay Consultant all outstanding invoices within fourteen (14) days. If the work suspension exceeds thirty (30) days from the effective work suspension date, Consultant shall be entitled to renegotiate the Project schedule and the compensation terms for the Project.

Termination The Client or Consultant may terminate services on the Project upon seven (7) days written notice without cause or in the event of substantial failure by the other party to fulfill its obligations of the terms hereunder. Consultant shall submit an invoice for services performed up to the effective date of termination and the Client shall pay Consultant all outstanding invoices within fourteen (14) days. The Client may withhold an amount for services that may be in dispute provided that the Client furnishes a written notice of the basis for their dispute and that the amount withheld represents a reasonable value.

Authorized Representative The Project Manager assigned to the Project by Consultant is authorized to make decisions or commitments related to the project on behalf of Consultant. Only authorized representatives of Consultant are authorized to execute contracts and/or work orders on behalf of Consultant. The Client shall designate a representative with similar authority.

Project Requirements The Client shall confirm the objectives, requirements, constraints, and criteria for the Project at its inception. If the Client has established design standards, they shall be furnished to Consultant at Project inception. Consultant will review the Client design standards and may recommend alternate standards considering the standard of care provision.

Independent Consultant Consultant is and shall be at all times during the term of this Agreement an independent consultant and not an employee or agent of the Client. Consultant shall retain control over the means and methods used in performing Consultant's services and may retain subconsultants to perform certain services as determined by Consultant.

Compliance with Laws Consultant shall perform its services consistent with sound professional practice and endeavor to incorporate laws, regulations, codes, and standards applicable at the time the work is performed. In the event that standards of practice change during the Project, Consultant shall be entitled to additional compensation where additional services are needed to conform to the standard of practice.

Permits and Approvals Consultant will assist the Client in preparing applications and supporting documents for the Client to secure permits and approvals from agencies having jurisdiction over the Project. The Client agrees to pay all application and review fees.

Limitation of Liability In recognition of the relative risks and benefits of the project to both the Client and Consultant, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of Consultant and its subconsultants to the Client and to all construction contractors and subcontractors on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that the total aggregate liability of Consultant and its subconsultants to all those named shall not exceed \$50,000 or the amount of Consultant's total fee paid by the Client for services under this Agreement, whichever is the greater. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contract or warranty.

Consequential Damages Neither the Client nor Consultant shall be liable to the other for any consequential damages regardless of the nature or fault.

Waiver of Subrogation Consultant shall endeavor to obtain a waiver of subrogation against the Client, if requested in writing by the Client, provided that Consultant will not increase its exposure to risk and Client will pay the cost associated with any premium increase or special fees.

Environmental Matters The Client warrants that they have disclosed all potential hazardous materials that may be encountered on the Project. In the event unknown hazardous materials are encountered, Consultant shall be entitled to additional compensation for appropriate actions to protect the health and safety of its personnel, and for additional services required to comply with applicable laws. The Client shall indemnify Consultant from any claim related to hazardous materials encountered on the Project except for those events caused by negligent acts of Consultant.

Cost Opinions Consultant shall prepare cost opinions for the Project based on historical information that represents the judgment of a qualified professional. The Client and Consultant acknowledge that actual costs may vary from the cost opinions prepared and that Consultant offers no guarantee related to the Project cost.

Contingency Fund The Client acknowledges the potential for changes in the work during construction and the Client agrees to include a contingency fund in the Project budget appropriate to the potential risks and uncertainties associated with the Project. Consultant may offer advice concerning the value of the contingency fund; however, Consultant shall not be liable for additional costs that the Client may incur beyond the contingency fund they select unless such additional cost results from a negligent act, error, or omission related to services performed by Consultant.

Shop Drawing Review If included in the scope of service, Consultant shall review shop-drawing submittals from the contractor solely for their conformance with the design intent of and performance criteria specified for the Project. Consultant shall not be liable for the performance of or consequential damages of any equipment furnished by the contractor under the Project.

Construction Review If included in the scope of service, Consultant shall observe the progress and content of the work to determine if the work is proceeding in general accordance with the Contract Documents. This construction review is intended to observe, document, and report information concerning the construction process. Observation of work at the Project site shall not make Consultant responsible for the work performed by another party, the means, methods, techniques, sequences, or procedures selected by another party, nor the safety precautions or programs of another party.

Rejection of Work Consultant may recommend that the Client reject work by construction contractors that does not conform to the requirements of the Project.

Safety Consultant shall be responsible solely for the safety precautions or programs of its employees and no other party.

Information from Other Parties The Client and Consultant acknowledge that Consultant will rely on information furnished by other parties in performing its services under the Project. Consultant shall not be liable for any damages that may be incurred by the Client in the use of third party information.

Construction Record Drawings If included in the scope of service, Consultant will deliver drawings to the Client incorporating information furnished by construction contractors. In that construction record drawings are based on information provided by others, Consultant cannot and does not warrant their accuracy.

Site Visits/Observation If included in the scope of service, Consultant shall visit the project and/or construction site at appropriate intervals to become generally familiar with the progress, quality of work (contractors' work), and to determine if the work is proceeding in general accordance with the Contract Documents. Visits to the project site and observations made by Consultant as part of services during construction under this Agreement shall not make Consultant responsible for, nor relieve the construction contractor(s) of the obligation to conduct comprehensive monitoring of the work sufficient to ensure conformance with the intent of the Contract Documents, and shall not make Consultant responsible for, nor relieve the construction contractor(s) of the full responsibility for all construction means, methods, techniques, sequences, and procedures necessary for

coordinating and completing all portions of the work under the construction contract(s) and for all safety precautions incidental thereto.

Performance Specifications Consultant may incorporate "performance specifications" as a component of Construction Documents. Performance Specifications rely upon a statement of systems, equipment, and/or materials to be incorporated into the project in terms of required results, without mandating specific means for achieving the required results. Performance Specifications establish minimum standards that must be met by defining the functional requirements, the operating conditions, and/or the environment in which it must operate and/or related matters such as general standards which must be satisfied, warranty requirements, etc. Where performance specifications are used, they will be identified as such.

Where Performance Specifications are used, the Contractor, subcontractors, manufacturer, and/or supplier of the materials or equipment to be furnished assume design responsibility and liability for the applicable systems, equipment, or materials. The Contractor, their subcontractors, and others who actually manufacture and supply the items will be the sole parties liable to the Owner for loss or damage caused by defective or deficient design, manufacture, or performance. Consultant's shop drawing review is strictly to determine that manufacturers and suppliers have referenced the appropriate operating conditions and environment.

Force Majeure Consultant shall not be liable for any damages caused by any delay that is beyond Consultant's reasonable control.

Waiver of Rights The failure of either party to enforce any provision of these terms and conditions shall not constitute a waiver of such provision nor diminish the right of either party to the remedies of such provision.

Warranty Consultant warrants that it will deliver services under the Agreement within the standard of care. No other expressed or implied warranty is provided by Consultant.

Severability Any provision of these terms later held to violate any law shall be deemed void and all remaining provisions shall continue in force. In such event, the Client and Consultant will work in good faith to replace an invalid provision with one that is valid with as close to the original meaning as possible.

Survival All provisions of these terms that allocate responsibility or liability between the Client and Consultant shall survive the completion or termination of services for the Project.

Assignments Neither party shall assign its rights, interests, or obligations under the Agreement without the express written consent of the other party.

Governing Law The terms of agreement shall be governed by the laws of the state where the services are performed provided that nothing contained herein shall be interpreted in such a manner as to render it unenforceable under the laws of the state in which the Project resides.

Collection Costs In the event that legal action is necessary to enforce the payment provisions of this Agreement if Client fails to make payment within sixty (60) days of the invoice date, Consultant shall be entitled to collect from the Client any judgment or settlement sums due, reasonable attorneys' fees, court costs, and expenses incurred by Consultant in connection therewith and, in addition, the reasonable value of Consultant's time and expenses spent in connection with such collection action, computed at Consultant's prevailing fee schedule and expense policies.

Equal Employment Opportunity Consultant will comply with federal regulations pertaining to Equal Employment Opportunity. Consultant is in compliance with applicable local, state, and federal regulations concerning minority hiring. It is Consultant's policy to ensure that applicants and employees are treated equally without regard to race, creed, sex, color, religion, veteran status, ancestry, citizenship status, national origin, marital status, sexual orientation, or disability. Consultant expressly assures all employees, applicants for employment, and the community of its continuous commitment to equal opportunity and fair employment practices.

Attorney Fees Should there be any suit or action instituted to enforce any right granted in this contract, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney fees from the other party. The party that is awarded a net recovery against the other party shall be deemed the substantially prevailing party unless such other party has previously made a bona fide offer of payment in settlement and the amount of recovery is the same or less than the amount offered in settlement. Reasonable attorney fees may be recovered regardless of the forum in which the dispute is heard, including an appeal.

Third Party Beneficiaries Nothing in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Consultant. The Consultant's services under this Agreement are being performed solely for the Client's benefit, and no other entity shall have any claim against the Consultant because of this Agreement or the performance or nonperformance of services hereunder. The Client agrees to include a provision in all contracts with contractors and other entities involved in this project to carry out the intent of this paragraph.

Captions The captions herein are for convenience only and are not to be construed as part of this Agreement, nor shall the same be construed as defining or limiting in any way the scope or intent of the provisions hereof.