

Attachment 1 to RFQ #2021010

Draft Contract



**4. Attachments and Exhibits.**

The Parties agree to comply with the terms and conditions of the following attachments and exhibits which are hereby incorporated by reference:

<input checked="" type="checkbox"/> Attachment 1: Standard Terms and Conditions for Professional Services
<input checked="" type="checkbox"/> Attachment 2: Special Terms and Conditions
<input checked="" type="checkbox"/> Attachment 3: Scope of Work
<input checked="" type="checkbox"/> Attachment 4: Public Records Requirements
<input checked="" type="checkbox"/> Attachment 5: Price Sheet and Calculation of Costs
<input type="checkbox"/> Attachment 6: Technology Standards
<input type="checkbox"/> Attachment 7: Contractor’s Proposal (RFPs Only)
<input type="checkbox"/> Attachment 8: Contractor’s BAFO (ITNs Only)
<input checked="" type="checkbox"/> Additional Attachments (if necessary): Attachment 9, Contract Provisions for Federally-Funded Contracts
<input checked="" type="checkbox"/> Exhibit A: General Contract Conditions – PUR 1000
<input checked="" type="checkbox"/> Exhibit B: Subcontractor Utilization Report Form
<input checked="" type="checkbox"/> Exhibit C: Contractor Affidavit/Release of Claims Form
<input checked="" type="checkbox"/> Exhibit D: Quality Assurance Requirements for Contracts
<input type="checkbox"/> Exhibit E: Advance Payment Terms and Interest Earned Memo
<input checked="" type="checkbox"/> Additional Exhibits (if necessary) Exhibit F, Truth-in-Negotiation Certificate

**5. Compensation.**

a. As consideration for the services rendered by Contractor under the terms of this Contract, the Department shall pay the Contractor on a fixed price, fixed unit rate, and cost reimbursement basis. It is understood and agreed that the ceiling amount of this Contract shall not exceed \$25,000,000 for the initial five (5) year Contract term. The initial funding increment under this Contract is set at \$\_\_\_\_\_. Based upon continued satisfactory performance, and annual appropriations by the Legislature, the Department reserves the right to provide increments of funding on as “as needed” basis. The Contractor shall not perform services once the authorized funding increment level has been reached. The Contractor shall not commence work on any task assignment that will exceed the balance of the current funding increment level until the Department authorizes an increase in funding. It is the Contractor's responsibility to know when the authorized funding increment level has been reached.

Reimbursement for costs shall be limited to the following budget categories, as defined in the Reference Guide for State Expenditures, as indicated:

<u>Reimbursement</u>	<u>Category</u>
<input checked="" type="checkbox"/>	Salaries
	Overhead/Indirect/General and Administrative Costs:
<input checked="" type="checkbox"/>	a. Fringe Benefits, N/A.
<input checked="" type="checkbox"/>	b. Indirect Costs, N/A.
<input checked="" type="checkbox"/>	Other direct Costs
<input checked="" type="checkbox"/>	Miscellaneous/Other Expenses, as outlined in Attachment 3
<input checked="" type="checkbox"/>	Travel, in accordance with Section 112

- b. Department shall authorize all work assignments by Task Assignment Notification Form (TA) or Task Assignment Change Order Form (TACO).
- c. Contractor, or its subcontractors if authorized under this Contract, shall not commence work until either a TA/TACO has been fully executed, by both Department and Contractor.
- d. In the event services are required that are within the general description of the Scope of Work, but are not specifically identified by name, the Department and Contractor reserve the right to negotiate Task Assignments covering performance of those required services only if there is established pricing in the Contract and such services do not expand the Scope of Work.

- e. Release of Claims. Upon payment for satisfactory completion of any portion of the services performed, the Contractor shall execute and deliver to the Department a release of all claims against the Department arising under, or by virtue of, the services, except claims which are specifically exempted by the Contractor to be set forth therein using Exhibit C, Contractor Affidavit/Release of Claims Form. Receipt by the Department of the Contractor's Release is a condition of final payment under this Contract. Unless otherwise provided in this Contract, by State law or otherwise expressly agreed to by the parties to this Contract, final payment or settlement upon termination of this Contract shall not constitute a release or waiver of the Department's claims against the Contractor, or the Contractor's sureties, subcontractors, successors or assigns under this Contract or as against applicable performance and payment bonds.

IN WITNESS WHEREOF, this Contract shall be effective on the date indicated above or the last date signed below, whichever is later.

**CONTRACTOR NAME**

**FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION**

By: \_\_\_\_\_  
*(Authorized Signature)*

By: \_\_\_\_\_  
 Secretary or Designee

\_\_\_\_\_  
 Date Signed

\_\_\_\_\_  
 Date Signed

\_\_\_\_\_  
 Print Name and Title of Person Signing

\_\_\_\_\_  
 Print Name and Title of Person Signing

FEID No. FEID No.

Additional signatures attached on separate page.

**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
Standard Terms and Conditions for Professional Services**

**ATTACHMENT 1**

**1. Entire Agreement.**

This Contract, including any Attachments and Exhibits referred to herein and/or attached hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to such subject matter. Any terms and conditions included on Contractor's forms or invoices shall be null and void.

**2. Contract Administration.**

- a. Order of Precedence. If there are conflicting provisions among the documents that make up the Contract, the order of precedence for interpretation of the Contract is as follows:
  - i. Standard Contract
  - ii. Attachments other than Attachment 1, in numerical order as designated in the Standard Contract
  - iii. Attachment 1, Standard Terms and Conditions
  - iv. The Exhibits in the order designated in the Standard Contract
- b. All approvals, written or verbal, and other written communication between the parties, including all notices, shall be obtained by or sent to the parties' Contract Managers. All written communication shall be by electronic mail, U.S. Mail, a courier delivery service, or delivered in person. Notices shall be considered delivered when reflected by an electronic mail read receipt, a courier service delivery receipt, other mail service delivery receipt, or when receipt is acknowledged by recipient. If the notice is delivered in multiple ways, the notice will be considered delivered at the earliest delivery time.
- c. If a different Contract Manager is designated by either party after execution of this Contract, notice of the name and contact information of the new Contract Manager will be submitted in writing to the other party and maintained in the respective parties' records. A change of Contract Manager does not require a formal amendment or change order to the Contract.
- d. This Contract may be amended only by a written agreement between both parties. Amendments shall be based on availability of funding. An Administrative Change Order may be used when there is (1) a change in the subcontractor or approval of subcontractors, (2) changes in deliverables due dates that do not change the overall Contract term or increase in the deliverable price or Contract amount, or (3) changes in the price of an individual deliverable in cost reimbursement Contract when the overall Contract amount does not change. All other changes to the Contract shall be done through a formal amendment.
- e. There is no minimum amount of work guaranteed as a result of this Contract. Any and all work assigned will be at the sole discretion of the Florida Department of Environmental Protection ("Department").
- f. The Department reserves the right to suspend or terminate any portion of this Contract or any other contract with the Department, if the Department and Contractor (or any of its affiliates or authorized subcontractors) are adverse in any litigation, administrative proceeding or alternative dispute resolution. The suspension may last until such adverse relationship is resolved either by agreement or by final non-appealable order of a court.
- g. All days in this Contract are calendar days unless otherwise specified.

**3. Contract Duration.**

- a. Term. The term of the Contract shall begin and end on the dates indicated in the Standard Contract, unless extended or terminated earlier in accordance with the applicable terms and conditions.
- b. Renewals. Any renewals provided under the Contract must meet the requirements of Section 287.058(1)(g), Florida Statute (F.S.), which is incorporated herein by reference. If the Standard Contract indicates renewals are available, the Contract may be renewed for those timeframe(s). All renewals are contingent upon satisfactory performance by Contractor. Renewals may be for the entire period or in increments.

**4. Deliverables.**

The Contractor agrees to render the services or otherwise provide deliverables as set forth in Attachment 3, Scope of Work and as otherwise set forth in this Contract. The services and/or deliverables shall be delivered in accordance with the schedule and at the pricing outlined in the Contract. Deliverables may be comprised of activities that must be completed prior to the Department making payment on that deliverable.

## **5. Performance Measures.**

The Contractor warrants that: (1) the services will be performed by qualified personnel; (2) the services will be of the kind and quality described in the Scope of Work; (3) Any and all such equipment, products or materials necessary to perform these services, or requirements shall be supplied by the Contractor; (4) the services will be performed in a professional and workmanlike manner in accordance with industry standards and practices; (5) the services shall not infringe upon the intellectual property rights, or any other proprietary rights, of any third party; and (6) its employees, subcontractors, and/or subgrantees shall comply with any security and safety requirements and processes for work done at the Department or other location(s). The Department reserves the right to investigate or inspect at any time to determine whether the services or qualifications offered by the Contractor meet the Contract requirements. Notwithstanding any provisions herein to the contrary, written acceptance of a particular deliverable does not foreclose Department's remedies in the event deficiencies in the deliverable cannot be readily measured at the time of delivery.

## **6. Acceptance of Deliverables.**

- a. Acceptance Process. All deliverables must be received and accepted in writing by the Department's Contract Manager before payment. If the Department's Contract Manager does not accept the deliverables within 30 days of receipt, they will be deemed rejected.
- b. Rejection of Deliverables. The Department reserves the right to reject deliverables, as outlined in the Scope of Work, as incomplete, inadequate, or unacceptable due, in whole or in part, to the Contractor's lack of satisfactory performance under the terms of this Contract. Failure to fulfill the applicable technical requirements or complete all tasks or activities in accordance with the Scope of Work will result in rejection of the deliverable and the associated invoice. Payment for the rejected deliverable will not be issued unless the rejected deliverable is made acceptable to the Department in accordance with the Contract requirements. The Department, at its option, may allow additional time within which the Contractor may remedy the objections noted by the Department. The Contractor shall work diligently to correct all deficiencies in the deliverable that remain outstanding, within a reasonable timeframe. The Contractor's efforts to correct the rejected deliverables will be at the Contractor's sole expense. The Contractor's failure to make adequate or acceptable deliverables after a reasonable opportunity to do so shall constitute an event of default.

## **7. Financial Consequences for Nonperformance.**

- a. Withholding Payment. In addition to the specific consequences explained in the Scope of Work and/or Special Terms and Conditions, the State of Florida (State) reserves the right to withhold payment when the Contractor has failed to perform/comply with provisions of this Contract. None of the financial consequences for nonperformance in this Contract, as more fully described in the Scope of Work, shall be considered penalties.
- b. Corrective Action Plan. If the Contractor fails to correct all the deficiencies in a rejected deliverable within the specified timeframe, the Department may, in its sole discretion, request that a proposed Corrective Action Plan (CAP) be submitted by the Contractor to the Department. The Department request that the Contractor specify the outstanding deficiencies in the CAP. All CAPs must be able to be implemented and performed in no more than sixty (60) calendar days.
  - i. The Contractor shall submit a CAP within ten (10) calendar days of the date of the written request from the Department. The CAP shall be sent to the Contract Manager for review and approval. Within ten (10) calendar days of receipt of a CAP, the Department shall notify the Contractor in writing whether the proposed CAP has been accepted. If the CAP is not accepted, the Contractor shall have ten (10) calendar days from receipt of the Department letter rejecting the proposal to submit a revised proposed CAP. Failure to obtain the Department approval of a CAP as specified above may result in the Department's termination of this Contract for cause as authorized in this Contract.
  - ii. Upon the Department's notice of acceptance of a proposed CAP, the Contractor shall have ten (10) calendar days to commence implementation of the accepted plan. Acceptance of the proposed CAP by the Department does not relieve the Contractor of any of its obligations under the Contract. In the event the CAP fails to correct or eliminate performance deficiencies by Contractor, the Department shall retain the right to require additional or further remedial steps, or to terminate this Contract for failure to perform. No actions approved by the Department or steps taken by the Contractor shall preclude the Department from subsequently asserting any deficiencies in performance. The Contractor shall continue to implement the CAP until all deficiencies are corrected. Reports on the progress of the CAP will be made to the Department as requested by the Department's Contract Manager.

- iii. Failure to respond to a Department request for a CAP or failure to correct a deficiency in the performance of the Contract as specified by the Department may result in termination of the Contract.

## **8. Payment.**

- a. Payment Process. Subject to the terms and conditions established by the Contract, the pricing per deliverable, and the billing procedures established by the Department, the Department agrees to pay the Contractor for services rendered in accordance with Section 215.422, F.S. Contractor shall submit invoices to the Department within thirty (30) days after the date of the Department's written acceptance of each interim deliverable or the final deliverable specified in the Scope of Work. Invoices and the appropriate documentation shall be submitted via email to the Department's Contract Manager. Contractor's failure to submit invoices within this timeframe may result in forfeiture of retainage suspension or termination of remaining work, or the Contractor's forfeiture of any unpaid balance for such deliverables.
- b. Vendor Rights. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Contractors who may be experiencing Problems in obtaining timely payment(s) from state agencies. The vendor Ombudsman may be reached at (850) 413-5516.
- c. Taxes. The Department is exempted from payment of State sales and use taxes and Federal excise taxes. The Contractor, however, shall not be exempted from paying any taxes that it is subject to, including State sales and use taxes, or for payment by the Contractor to suppliers for taxes on materials used to fulfill its contractual obligations with the Department. The Contractor shall not use the Department's exemption number in securing such materials. The Contractor shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Contract.
- d. Invoice Detail. All charges for services rendered or for reimbursement of expenses authorized by the Department pursuant to the Scope of Work shall be submitted to the Department in sufficient detail for a proper pre-audit and post-audit to be performed. The Contractor shall only invoice the Department for deliverables that are completed in accordance with the Scope of Work.
- e. Multiple Payment Request. Contractor's submitted invoice shall represent a full account of the work done during each invoice period, and include all fees and costs claimed for work done during that period. Department's payment of an invoice shall constitute full payment and a final settlement of all of Contractor's claims for services provided during the invoice period. No subsequently asserted claims or invoices for services performed during a previously invoiced period will be payable by the Department.
- f. Interim Payments. Interim payments may be made by the Department, at its discretion, if the completion of deliverables to date have first been accepted in writing by the Department's Contract Manager.
- g. Final Payment Request. A final payment request should be submitted to the Department no later than sixty (60) calendar days following the completion date of the Contract to ensure the availability of funds for payment. However, all work performed pursuant to the Scope of Work must be performed on or before the completion date of the Contract.
- h. Annual Appropriation Contingency. The State's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Legislature. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of the Department if the Legislature reduces or eliminates appropriations.
- i. Interest Rates. All interest rates charged under the Contract shall be calculated on the prevailing rate used by the State Board of Administration. Interest payments of less than \$1 will not be issued unless Contractor requests such payment. To obtain the applicable interest rate, please refer to: <http://www.myfloridacfo.com/Division/AA/Vendors/default.htm>.
- j. Limitation on Payment. Contractor shall not be compensated for services performed prior to execution of this Contract, for services performed following its expiration, termination, or suspension, nor for services that exceed the funding amount specified herein or in any amendment to this Contract. It is the Contractor's responsibility to know when the authorized compensation amount of the Contract will be reached. Contractor shall not perform, nor be compensated for, any services beyond the services described in the Scope of Work.

## **9. Documentation Required for Cost Reimbursement Contracts.**

If Cost Reimbursement is authorized in the Standard Contract, the following conditions apply. To be eligible for reimbursement, costs and supporting documentation must be in compliance with laws, rules, and regulations governing agreements for services, including, but not limited to, the Reference Guide for State Expenditures, which can be accessed at the following web address:

<https://www.myfloridacfo.com/Division/AA/Manuals/documents/ReferenceGuideforStateExpenditures.pdf>.

Invoices for cost reimbursement shall be supported by an itemized listing of expenditures by category (salary, travel expenses, etc.). Supporting documentation must indicate that the item was paid and indicate the date of service.

**10. Preferred Pricing Clause.**

If this Contract incorporates the PUR 1000, section 4.(b), and it is applicable, or other preferred pricing clause, the Contractor must submit an affidavit, at least annually, attesting that Contract is in compliance with the preferred-pricing clause.

**11. Retainage.**

The following provisions apply if the Department withholds retainage under this Contract:

- a. The Department reserves the right to establish the amount and application of retainage on the work performed under this Contract up to the maximum percentage described in Attachment 2, Special Terms and Conditions. Retainage may be withheld from each payment to Contractor, pending satisfactory completion of work and approval of all deliverables.
- b. The Department reserves the right to withhold payment of retainage for Contractor's failure to respond to or correct identified deficiencies within the timeframe stipulated in the Scope of Work. The Department shall provide written notification to Contractor of identified deficiencies and the Department's intent to withhold retainage. Contractor's failure to rectify the identified deficiency within the timeframe stated in the Department's notice will result in forfeiture of retainage by Contractor.
- c. If Contractor fails to perform the requested work, or fails to perform the work in a satisfactory manner, Contractor shall forfeit its right to payment for the work and the retainage called for under the entire Scope of Work. Failure to perform includes, but is not limited to, failure to submit the required deliverables or failure to provide adequate documentation that the work was actually performed.
- d. No retainage shall be released or paid for incomplete work while this Contract is suspended.
- e. Except as otherwise provided above, Contractor shall be paid the retainage associated with the work, provided Contractor has completed the work and submits an invoice for retainage held in accordance with the invoicing procedures under this Contract.

**12. Insurance.**

- a. Proof of Insurance. Upon execution of this Contract, the Contractor shall provide the Department documentation demonstrating the existence and amount for each type of applicable insurance coverage *prior to* performance of any work under this Contract. Upon receipt of written request from the Department, the Contractor shall furnish the Department with proof of applicable insurance coverage by standard form certificates of insurance, a self-insured authorization, or other certification of self-insurance.
- b. Deductibles. The Department shall be exempt from, and in no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Contractor providing such insurance.
- c. Duty to Maintain Coverage. In the event that any applicable coverage is cancelled by the insurer for any reason, or if Contractor cannot get adequate coverage, the Contractor shall immediately notify the Department of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within ten (10) days after the cancellation of coverage.
- d. Insurance Requirements for Sub-Contractors. The level of insurance to be carried by subcontractors performing work under this Contract shall be at the discretion of Contractor.

**13. Termination.**

- a. Termination for Convenience. When it is in the State's best interest, the Department may, in its sole discretion, terminate the Contract in whole or in part by giving thirty (30) days written notice to the Contractor. The Department shall notify the Contractor of the termination for convenience with instructions as to the effective date of termination or the specific stage of work at which the Contract is to be terminated. The Contractor must submit all invoices for work to be paid under this Contract within thirty (30) days of the effective date of termination. The Department shall not pay any invoices received after thirty (30) days of the effective date of termination.
- b. Termination for Cause. The Department may terminate this Contract if any of the events of default described in the Events of Default provision below occur or in the event that the Contractor fails to fulfill any of its other obligations under this Contract. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Department. The rights and remedies of the Department in this clause are in addition to any other rights and remedies provided by law or under this Contract.
- c. Contractor Obligations upon Notice of Termination. After receipt of a notice of termination or partial termination, unless otherwise directed by the Department, the Contractor shall not furnish any service or deliverable on the



date, and to the extent specified, in the notice. However, the Contractor shall continue work on any portion of the Contract not terminated. If the Contract is terminated before performance is completed, the Contractor shall be paid only for that work satisfactorily performed for which costs can be substantiated. The Contractor shall not be entitled to recover any cancellation charges or lost profits.

- d. Continuation of Prepaid Services. If the Department has paid for any services prior to the expiration, cancellation, or termination of the Contract, the Contractor shall continue to provide the Department with those services for which it has already been paid or, at Department's discretion, Contractor shall provide a refund for services that have been paid for but not rendered.
- e. Transition of Services Upon Termination, Expiration, or Cancellation of the Contract. If services provided under the Contract are being transitioned to another provider(s), the Contractor shall assist in the smooth transition of Contract services to the subsequent provider(s). This requirement is at a minimum an affirmative obligation to cooperate with the new provider(s), however additional requirements may be outlined in the Scope of Work. The Contractor shall not perform any services after Contract expiration or termination, except as necessary to complete the transition or continued portion of the Contract, if any.

#### **14. Step-in Rights.**

If the Contractor is in material breach of its obligation to perform any of the services under the Contract and fails to remedy such breach within ten (10) days after written notice of the breach from the Department, the Department, at its sole discretion, shall have the right to "step-in" (i.e. perform the work itself) or hire another contractor to perform these services. Contractor shall be liable to the Department for any fees or expenses that the Department may incur in exercising its step-in rights or securing a substitute provider to assume completion of those services.

#### **15. Notice of Default.**

If the Contractor defaults in the performance of any covenant or obligation contained in the Contract, including, any of the events of default, the Department shall provide notice to the Contractor and an opportunity to cure that is reasonable under the circumstances. This notice shall state the nature of the failure to perform and provide a time certain for correcting the failure. The notice will also provide that, should the Contractor fail to perform within the time provided, the Contractor will be found in default, and the Department may terminate the Contract effective as of the date of receipt of the default notice.

#### **16. Events of Default Subject to the Notice of Default Provision.**

Provided such failure is not the fault of the Department or outside the reasonable control of the Contractor, the following non-exclusive list of events, acts, or omissions, shall constitute events of default.

- a. The commitment of any material breach of this Contract by the Contractor, including failure to timely deliver a material deliverable, failure to perform the minimal level of services required for a deliverable, discontinuance of the performance of the work, failure to resume work that has been discontinued within a reasonable time after notice to do so, or abandonment of the Contract;
- b. Failure to maintain adequate progress, thus endangering the performance of the Contract;
- c. Failure to honor any term of the Contract;
- d. Failure to abide by any statutory, regulatory, or licensing requirement, including an entry of an order revoking the certificate of authority granted to the Contractor by a state or other licensing authority;
- e. Failure to pay any and all entities, individuals, and furnishing labor or materials, or failure to make payment to any other entities as required by this Contract;
- f. Failure to comply with a preferred-pricing clause required by this Contract, if any, at the Department's discretion;
- g. Failure to maintain the insurance required by this Contract;
- h. One or more of the following circumstances, uncorrected for more than 30 calendar days unless, within the specified 30-day period, the Contractor (including its receiver or trustee in bankruptcy) provides to the Department adequate assurances, reasonably acceptable to the Department, of its continuing ability and willingness to fulfill its obligations under the Contract:
  - i. Entry of an order for relief under Title 11 of the United States Code;
  - ii. The making by the Contractor of a general assignment for the benefit of creditors;
  - iii. The appointment of a general receiver or trustee in bankruptcy of the Contractor's business or property; and/or
  - iv. An action by the Contractor under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation.
- i. **Events of Default that Result in Immediate Termination.**
  - a. The commitment of any material misrepresentation or omission in any materials, or discovery by the Department of such, made by the Contractor in this Contract or in its response to the solicitation;

- b. Employment of an unauthorized alien in the performance of the work, in violation of Section 274 (A) of the Immigration and Nationality Act; and
- c. Department's good faith belief that failure to comply with the Employment Eligibility Verification requirements of this Contract has occurred.

**17. Indemnification.**

Contractor agrees to defend, indemnify and hold harmless the State of Florida, the Department, and the State of Florida Board of Trustees of the Internal Improvement Trust Fund, and their officers, agents, and employees, from liabilities, damages, losses, and costs, either at law or in equity, including, but not limited to reasonable attorney fees and costs and attorney fees and costs on appeal, as a result of any negligent or reckless act or omission or any intentionally wrongful conduct by the Contractor and other persons employed or utilized by the Contractor in the performance of this Agreement. This paragraph shall survive the expiration or termination of this Agreement.

**PURSUANT TO §558.0035, F.S., AN INDIVIDUAL EMPLOYEE OR AGENT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE IF THE CONTRACTOR MAINTAINS THE PROFESSIONAL LIABILITY INSURANCE REQUIRED UNDER THIS AGREEMENT AND ANY DAMAGES ARE SOLELY ECONOMIC IN NATURE AND THE DAMAGES DO NOT EXTEND TO PERSONAL INJURIES OR PROPERTY NOT SUBJECT TO THIS AGREEMENT. THIS PROVISION APPLIES TO ARCHITECTS, INTERIOR DESIGNERS, LANDSCAPE ARCHITECTS, ENGINEERS, SURVEYORS AND GEOLOGISTS, LICENSED IN THE STATE OF FLORIDA.**

**18. Limitation of Liability.**

The Department's liability for any claim arising from this Contract is limited to compensatory damages in an amount no greater than the sum of the unpaid balance of compensation due for goods or services rendered pursuant to and in compliance with the terms of the Contract. Such liability is further limited to a cap of \$100,000.

Unless otherwise specifically enumerated in the Contract, purchase order, or task order, Department shall not be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless the contract or purchase order requires the Contractor to back-up data or records), even if the party has been advised that such damages are possible. Department shall not be liable for lost profits, lost revenue, or lost institutional operating savings. The Department may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them. The Department may set off any liability or other obligation of the Contractor or its affiliates to the Department against any payments due the Contractor under any contract with the State.

**19. Remedies.**

All rights and remedies provided in this Contract are cumulative and not exclusive of any other rights or remedies that may be available to the Department, whether provided by law, equity, statute, in any other agreement between the parties or otherwise. Department shall be entitled to injunctive and other equitable relief, including, but not limited to, specific performance, to prevent a breach, continued breach or threatened breach of this Contract. No remedy or election hereunder shall be deemed exclusive. A failure to exercise or a delay in exercising, on the part of the Department, any right, remedy, power or privilege hereunder shall not operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The Department may, in addition to other remedies available to it at law or in equity and upon notice to the Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against it. Nothing in this Contract shall be construed to make the Contractor liable for force majeure events.

**20. Ownership of Documents.**

All plans, specifications, maps, computer files, databases and/or reports prepared or obtained under this Contract, as well as data collected together with summaries and charts derived therefrom, shall become the property of the Department upon completion or termination of this Contract, without restriction or limitation on their use, and shall be made available upon request to the Department at any time during the performance of such services and/or upon

completion or termination of this Contract. Upon delivery to the Department of said document(s), the Department shall become the custodian thereof in accordance with Chapter 119, F.S. Contractor shall not copyright any material and products or patent any invention developed under this Contract. The Contractor shall not copyright any material and products or patent any invention developed under this Contract.

**21. Professional Seal.**

All documents prepared by the Contractors shall bear the professional's seal/signature as required by the applicable Florida Statute which governs the profession and Administrative Rules promulgated by the Florida Department of Business and Professional Regulation in effect at the time of execution of this Contract.

**22. Professional Quality.**

The Contractor is responsible for the professional quality, technical accuracy, timely completion and coordination of all designs, drawings, specifications, reports and other services furnished by the Contractor under this Contract. The Contractor shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in its designs, drawings, reports and other services.

**23. Department's Use of Plans.**

The Department may use the plans, documents, studies, or other data created pursuant to this Contract, however the Contractor does not warrant the Department's use of plans, documents, studies, or other data for any purposes other than intended by the terms of this Contract.

**24. Truth-in-Negotiation.**

For each task assignment, the original task assignment price and any additions thereto will be adjusted to exclude any significant sums by which the Department determines the task assignment price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such task assignment cost adjustments must be made within 1 year following the end of the task assignment.

**25. Change Orders for Work.**

Due to the nature of the work conducted under this Contract, the need exists for field decisions that can cause an increase in the Contractor's cost or time. The Department may at any time, by written order designated to be a change order, make any change in the work within the general scope of this Contract (Change Order) (e.g., specifications, time, method or manner of performance, requirements, etc.). This type of field decision change shall be evidenced by the use of the Work Change Directive and can be authorized by the Department Contract Manager. All changes are subject to the mutual agreement of both parties as evidenced in the final development of a Change Order which incorporates the changes identified in the Work Change Directive. Any Work Change Directive that causes an increase in the Contractor's cost or time shall ultimately require an appropriate adjustment and modification by a Change Order. Change Orders supported by Work Change Directives will be considered a timely authorization of work performance. For Contracts in which work is assigned on a task assignment basis, the same process shall occur, but on a per-task basis. For Task Assignment-based contracts, Change Orders shall be referred to as Task Assignment Change Orders (TACO). Examples of Work Change Directives, Work Change Orders, or TACOs are available from the Department upon request.

**26. Task Assignment Duration.**

No additional Task Assignments shall be authorized after the Contract term. However, the Contractor may work to complete any tasks assigned during the Contract Term, even after expiration of the Contract. Task Assignment Change Orders may be executed for active Task Assignments that exceed the Contract expiration. The Contractor must comply with all terms of the Contract, even if expired, during the completion of any Task Assignments that extend beyond the expiration of the Contract.

**27. Statutory Notices Relating to Unauthorized Employment and Subcontracts.**

- a. The Department shall consider the employment by any Contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the Contractor/subcontractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Contract. The Contractor shall be responsible for including this provision in all subcontracts with private organizations issued as a result of this Contract.
- b. Pursuant to Sections 287.133 and 287.134, F.S., the following restrictions apply to persons placed on the convicted vendor list or the discriminatory vendor list:
  - i. Convicted Vendors. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Contractor, supplier, subcontractor, or consultant under a contract with any

public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

- ii. **Discriminatory Vendors.** An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
- iii. **Notification.** The Contractor shall notify the Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list or the discriminatory vendor list during the life of the Contract. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and posts the list on its website. Questions regarding the discriminatory vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity, at (850) 487-0915.

#### **28. Employee Eligibility.**

Effective January 1, 2021, Contractor is required to use the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all employees used by the Contractor under this Contract, pursuant to Section 448.095, F.S. Also, the Contractor shall include in related subcontracts, if authorized under this Contract, a requirement that subcontractors performing work or providing services pursuant to this Contract utilize the E-Verify system to verify employment eligibility of all employees used by the subcontractor for the performance of the Work. The subcontractor must provide the Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the Contract. If the Department has a good faith belief that a subcontractor knowingly violated §448.095(1), F.S. and notifies the Contractor of such, but the Contractor otherwise complied with this statute, the Contractor shall immediately terminate the contract with the subcontractor.

#### **29. Compliance with Federal, State and Local Laws.**

- a. The Contractor and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Contractor shall include this provision in all subcontracts issued as a result of this Contract.
- b. No person, on the grounds of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Contract.
- c. This Contract shall be governed by and construed in accordance with the laws of the State.
- d. Any dispute concerning performance of the Contract shall be processed as described herein. Jurisdiction for any damages arising under the terms of the Contract will be in the courts, and venue will be in a court of competent jurisdiction, in Leon County, Florida. Except as otherwise provided by law, the parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Contract.

#### **30. Scrutinized Companies.**

- a. Contractor certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Contract at its sole option if the Contractor or its subcontractors are found to have submitted a false certification; or if the Contractor, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Contract.
- b. If this Contract is for more than one million dollars, the Contractor certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Contract at its sole option if the Contractor, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Contractor, its affiliates, or its subcontractors are placed on the Scrutinized Companies that Boycott the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Contract.
- c. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

### **31. Lobbying and Integrity.**

The Contractor agrees that no funds received by it under this Contract will be expended for the purpose of lobbying the Legislature or a State agency pursuant to Section 216.347, F.S., except that pursuant to the requirements of Section 287.058(6), F.S., during the term of any executed agreement between the Contractor and the State, the Contractor may lobby the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding that agreement. The Contractor shall comply with Sections 11.062 and 216.347, F.S.

### **32. Record Keeping.**

The Contractor shall maintain books, records and documents directly pertinent to performance under this Contract in accordance with United States generally accepted accounting principles (US GAAP) consistently applied. The Department, the State, or their authorized representatives shall have access to such records for audit purposes during the term of this Contract and for five (5) years following the completion date or termination of the Contract. In the event that any work is subcontracted, the Contractor shall similarly require each subcontractor to maintain and allow access to such records for audit purposes. Upon request of the Department's Inspector General, or other authorized State official, the Contractor shall provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor shall retain such records for the longer of: (1) three years after the expiration of the Contract; or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>).

### **33. Audits.**

- a. Inspector General. This Contract is subject to a post performance audit by the Department's or State's Inspector General. The Contractor understands its duty, pursuant to Section 20.055(5), F.S., to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing regarding the Contract. The Contractor will comply with this duty and ensure that its Subcontracts issued under this Contract, if any, impose this requirement, in writing, on its sub-Contractors.
- b. Physical Access and Inspection. Department personnel shall be given access to and may observe and inspect work being performed under this Contract, with reasonable notice and during normal business hours, including by any of the following methods:
  - i. Contractor shall provide access to any location, site, or facility on which Contractor is performing work, or storing or staging equipment, materials or documents;
  - ii. Contractor shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Contract; and,
  - iii. Contractor shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Contract.
- c. Proof of Transactions. In addition to documentation provided to support cost reimbursement as described herein, the Department may periodically request additional proof of a transaction to evaluate the appropriateness of costs to the Contract pursuant to State and Federal guidelines (including cost allocation guidelines). The Department may also request a cost allocation plan in support of Contractor's multipliers (overhead, indirect, general administrative costs, and fringe benefits). The Contractor must provide the additional proof within thirty (30) calendar days of such request.

### **34. Conflict of Interest.**

The Contractor covenants that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of services required.

### **35. Independent Contractor.**

The Contractor is an independent contractor and is not an employee or agent of the Department.

### **36. Subcontracting.**

- a. Unless otherwise specified in the Special Terms and Conditions, all services contracted for are to be performed solely by the Contractor and may not be subcontracted without the prior written consent of the Department.
- b. This Contract is an exclusive contract for services and may not be assigned in whole or in part without the written approval of the Department.
- c. The Department may, for cause, require the replacement of any Contractor's employee, subcontractor, or agent. Shall cause, includes technical or training qualifications, quality of work, change in security clearance, or non-compliance with an applicable Department policy or other requirement.
- d. The Department may, for cause, deny access to the Department's secure information or any facility by any Contractor employee, subcontractor, or agent.

- e. The Department's actions under paragraphs b. or c. shall not relieve the Contractor of its obligation to perform all work in compliance with the Contract. The Contractor shall be responsible for the payment of all monies due under any subcontract. The Department shall not be liable to any subcontractor for any expenses or liabilities incurred under any subcontract and the Contractor shall be solely liable to the subcontractor for all expenses and liabilities incurred under any subcontract.
- f. The Department supports diversity in its procurement program and requests that all subcontracting opportunities afforded by this Contract embrace diversity enthusiastically. The award of subcontracts should reflect the full diversity of the citizens of the State. A list of minority-owned firms that could be offered subcontracting opportunities may be obtained by contacting the Office of Supplier Diversity at (850) 487-0915.
- g. The Contractor shall not be liable for any excess costs for a failure to perform, if the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Contractor and the subcontractor(s), and without the fault or negligence of either, unless the subcontracted products or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

**37. Guarantee of Parent Company.**

In the event the Contractor is sold during the period the Contract is in effect, the Contractor agrees that it will be a requirement of sale that the new parent company guarantee all of the obligations of the Contractor.

**38. Headings.**

The headings contained herein are for convenience only, do not constitute a part of this Contract and shall not be deemed to limit or affect any of the provisions hereof.

**39. Interpretation of Contract.**

- a. Where appropriate: the singular includes the plural and vice versa; references to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; unless otherwise indicated references to Rules are to the adopted rules in the Florida Administrative Code; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation"; unless otherwise indicated references to sections, appendices or schedules are to this Contract; words such as "herein," "hereof" and "hereunder" shall refer to the entire document in which they are contained and not to any particular provision or section; words not otherwise defined which have well-known technical or construction industry meanings, are used in accordance with such recognized meanings; references to Persons include their respective successors and assigns and, in the case of Governmental Persons, Persons succeeding to their respective functions and capacities; and words of any gender used herein shall include each other gender where appropriate.
- b. Contractor acknowledges and agrees that it has independently reviewed this Contract with legal counsel, and that it has the requisite experience and sophistication to understand, interpret and agree to the particular language of the terms. Accordingly, if an ambiguity in (or dispute regarding the interpretation of) this Contract shall arise, the Contract shall not be interpreted or construed against the Department, and, instead, other rules of interpretation and construction shall be used. If the Contract is competitively procured, the Contractor further acknowledges and agrees that it had the opportunity and obligation, prior to submission of its Response, to review the terms and conditions of this Contract and to bring to the attention of the Department any conflicts or ambiguities contained therein.

**40. Modifications Required by Law.**

Department reserves the right to revise this Contract to include additional language required by Federal agency(ies) or other sources awarding funding to the Department in support of this Contract, if applicable, and to include changes required by Florida law or Administrative Code rule changes.

**41. Survival.**

The respective obligations of the parties, which by their nature would continue beyond the termination or expiration of this Contract, including without limitation, the obligations regarding confidentiality, proprietary interests, and public records, shall survive termination, cancellation, or expiration of this Contract.

**42. Third Parties.**

The Department shall not be deemed to assume any liability for the acts, failures to act or negligence of the Contractor, its agents, servants, and employees. The Contractor shall not disclaim its own negligence to the Department or any third party. This Contract does not and is not intended to confer any rights or remedies upon any person other than the parties. If the Department consents to a subcontract, the Contractor will specifically disclose that this Contract does not create any third-party rights. Further, no third parties shall rely upon any of the rights and obligations created under this Contract.

**43. MFMP Transaction Fee.**

The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide e-procurement system. Pursuant to rule 60A-1.031(3)(b), Florida Administrative Code, this Contract shall be exempt from the one percent (1 %) transaction fee.

**44. Procurement of Contract.**

The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this Contract 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 the Contractor any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Contract.

**45. Execution in Counterparts.**

This Contract, any amendments, and/or change orders related to the Contract, may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument. In accordance with the Electronic Signature Act of 1996, electronic signatures, including facsimile transmissions, may be used and shall have the same force and effect as a written signature.

**46. Warranty of Authority to Sign.**

Each person signing this Contract warrants that he or she is duly authorized to do so and to bind the respective party to the Contract.

**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
Special Terms and Conditions**

**ATTACHMENT 2**

These Special Terms and Conditions shall be read together with general terms outlined in the Standard Terms and Conditions, Attachment 1. Where in conflict, these more specific terms shall apply.

**1. Insurance.**

Required Coverage. At all times during the Contract the Contractor, at its sole expense, shall maintain insurance coverage of such types and with such terms and limits described below. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract. All insurance policies shall be through insurers licensed and authorized to issue policies in Florida. Additional insurance requirements for this Contract may be required elsewhere in this Contract, however the minimum insurance requirements applicable to this Contract are:

a. Commercial General Liability Insurance.

The Contractor shall provide adequate commercial general liability insurance coverage and hold such liability insurance at all times during the Contract. The Department, its employees, and officers shall be named as an additional insured on any general liability policies. The minimum limits shall be \$1,000,000 for each occurrence and \$2,000,000 policy aggregate.

b. Commercial Automobile Insurance.

If the Contractor's duties include the use of a commercial vehicle, the Contractor shall maintain automobile liability, bodily injury, and property damage coverage. Insuring clauses for both bodily injury and property damage shall provide coverage on an occurrence basis. The Department, its employees, and officers shall be named as an additional insured on any automobile insurance policy. The minimum limits shall be as follows:

\$200,000/300,000	Automobile Liability for Company-Owned Vehicles, if applicable
\$200,000/300,000	Hired and Non-owned Automobile Liability Coverage

c. Workers' Compensation and Employer's Liability Coverage.

The Contractor shall provide workers' compensation, in accordance with Chapter 440, F.S., and employer's liability insurance with minimum limits of \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate. Such policies shall cover all employees engaged in any work under the Contract.

d. Other Insurance.

The Pollution Response Action Contractor (PRAC) shall maintain pollution liability coverage with limits of not less than \$3,000,000 aggregate for personal injury or death, \$1,000,000 per occurrence for personal injury or death, and \$1,000,000 per occurrence for property damage.

The PRAC shall list the Department as an additional insured on each of the coverages described in this section and above. The PRAC's current certificate of insurance shall contain a provision that the insurance will not be canceled for any reason except after thirty (30) days written notice to the Department's Contracts Administrator and shall reference the DEP Contract Number.

The PRAC, at its own expense, shall cause to be listed all landowners or landowner's lessees, who request insurance coverage as part of signing a site access agreement that enables the PRAC to perform activities under this Contract, as additional insureds under the General Liability and Automobile Liability coverage described above.

e. Site Owners as Additional Insured.

The Contractor, at its own expense, shall cause to be listed all landowners or landowner's lessees, who request insurance coverage as part of signing a site access agreement that enables the Contractor to perform activities under this Contract, as additional insureds under the General Liability and Automobile Liability coverage referenced above.

**2. Payment and Performance Bonds.**

The Department reserves the right to require a performance bond on task assignments for which the Department deems it necessary.



**3. Liquidated Damages.**

There are no liquidated damages under this Contract.

**4. Retainage.**

No retainage is required under this Contract.

**5. MFMP Transaction Fee.**

The State of Florida, through the Department of Management Services (DMS), has instituted MFMP, a statewide e-procurement system. Pursuant to Rule 60A-1.031, Florida Administrative Code, payments under this Contract are exempt from the MFMP transaction fee.

**6. Quality Assurance Requirements.**

The Contractor shall develop and implement quality assurance practices consisting of policies, procedures, specifications, standards, and documentation sufficient to produce data of quality adequate to meet the Scope's objectives and to minimize loss of data due to out-of-control conditions or malfunctions. All sampling and analyses performed under this Contract must conform with the requirements set forth in Chapter 62-160, Florida Administrative Code, and in Exhibit D, the Quality Assurance Requirements for Contracts.

**7. Subcontracting.**

- a. Other than the work performed by the approved Primary Subcontractors, the Contractor shall not subcontract any work under this Contract without the prior written consent of the Department's Contract Manager. Department reserves the right to reject any proposed subcontractor based upon the Department's prior experience with subcontractor, subcontractor's reputation, or the Department's lack of adequate assurance of performance by subcontractor. Contractor agrees to be responsible for the fulfillment of all work elements included in any subcontract and agrees to be responsible for the payment of all monies due under any subcontract.
- b. Department shall not be liable to any subcontractor for any expenses or liabilities incurred under any subcontract, regardless of whether the Department has approved such subcontract or subcontractor. Contractor shall be solely liable to its subcontractor(s) for all expenses and liabilities incurred under any subcontract. Any subcontracts made under or in performance of this Contract must include the same conditions specified in this Contract, with the exception of insurance requirements (paragraph contained herein), and shall include a release of any rights, claims or liabilities against the Department. The level of insurance to be carried by subcontractors performing work under this Contract shall be at the discretion of Contractor.
- c. If subcontractors are used, the Contractor shall complete and submit Exhibit B, Subcontractor Utilization Report Form (Subcontractor Report) with each invoice. Failure to provide Subcontractor Report with an invoice shall result in a delay in processing the invoice for payment.
- d. For each invoice submitted under the Contract, the Contractor shall submit documentation of payment to each subcontractor or supplier, where subcontractors or suppliers performed services during the invoice period. Penalties for non-compliance and provisions for legal assistance for subcontractors are included in Subsection 287.0585(1), F.S.

**8. Personnel Changes.**

"Key Personnel" are those persons whose resumes were submitted for evaluation of the solicitation who have certain experienced, professional and/or technical skill that are essential for successful accomplishment of the work to be performed under this Contract. The Contractor agrees that such personnel shall not be removed from the Contract work or replaced without compliance with the following:

- a. If one or more of the key personnel, for any reason, becomes or is expected to become unavailable for work under this Contract for a continuous period exceeding 30 work days, or is expected to devote substantially less effort to the work than indicated in the proposal or initially anticipated, the Contractor shall, subject to the concurrence of the Contract Manager, promptly replace personnel with personnel of equal ability and qualifications.
- b. All requests for approval of substitutions hereunder must be in writing and provide a detailed explanation of the circumstances necessitating the proposed substitutions. The request must contain a resume for the proposed substitute, and any other information requested by the Contract Manager. The Contract Manager shall promptly notify the Contractor of approval or disapproval in writing.

If the Contract Manager determines that suitable and timely replacement of Key Personnel who have become unavailable for the Contract work is not reasonably forthcoming or that the resultant reduction of productive effort would be so substantial as to impair successful completion of the Contract, the Contract Manager may terminate the Contract for default or for the convenience, as appropriate, or make an equitable adjustment to the Contract to compensate the Department for any resultant delay, loss or damage.

#### **9. Intellectual Property.**

- a. The Contractor's intellectual property rights that preexist this Contract will remain with the Contractor. Intellectual property rights to all property created or otherwise developed by Contractor specifically for the Department will be owned by the State through the Department. Proceeds derived from the sale, licensing, marketing, or other authorization related to any such Department-controlled intellectual property right shall be handled in the manner specified by applicable statute.
- b. If the Contractor fails to provide, or no longer can provide, a deliverable or service under the Contract that contains or otherwise utilizes intellectual property controlled by the Contractor, the Contractor shall grant the Department a royalty-free, paid-up, nonexclusive, perpetual license to use, modify, reproduce, distribute, publish or release to others, such Contractor-controlled intellectual property solely for use in connection with the deliverables or services under the Contract.

#### **10. Additional Terms.**

- a. All Brownfields & CERCLA Site Screening services tasked under this Contract will be funded with EPA monies. All technical review and support services for the Federal Program Section under this Contract will be funded with federal monies. Therefore, the terms and conditions in Attachment 9, Contract Provisions for Federally-Funded Contracts, shall apply to those services, respectively.
- b. Status Reports. Status reports on contracted work are to be submitted, in writing and/or electronically, not less frequently than every other week. Reporting requirements for task assignments issued under this Contract will vary with task scope and period of performance. Any additional reporting requirements shall be identified in each task assignment at the time of task assignment issuance. In an effort to conserve and recycle natural resources, the Contractor shall submit all written reports generated under this Contract on recycled paper.
- c. Rate Increases. All rates contained herein shall be subject to renegotiation on the anniversary date of the Contract each year of the Contract. The Contractor or the Department shall initiate any renegotiation of rates sixty (60) days prior to the renegotiation date established herein. Failure to initiate a renegotiation of rates prior to the date(s) established may result in the continuation of the rates contained in the Contract until the next scheduled renegotiation date. Any agreed-upon rate increase shall be reduced to writing in an amendment. The Department reserves the right to terminate the Contract if an agreement is not reached by the renegotiation date. If rates are renegotiated, the Contractor must submit a new Truth-in-Negotiation certificate at the time of the amendment.
- d. Conflicts of Interest.
  1. The Department reserves the right to terminate this Contract for convenience in the event that, during the term of this Contract, there is a merger or acquisition by the Contractor of any other contractor resulting from DEP Solicitation No. 2021010, or in the event that, during the term of this Contract, the Contractor and any other contractor resulting from DEP Solicitation No. 2021020 is acquired by or merged with a parent corporation. In the event of termination for convenience under this paragraph, the Contractor shall be compensated for work satisfactorily completed and irrevocable commitments made under outstanding task assignments, without liability for anticipated profits for work not yet performed.
  2. The State may seek recovery of the costs of cleanup of specific sites from any and all responsible parties and must anticipate the possibility of litigation. In order to avoid a conflict of interest, or the appearance of a conflict of interest, the State requires that the Contractor notify the Department in writing within five (5) days of the Contractor's discovery of a potential conflict-of-interest and make such continuing disclosure throughout the term of the Contract, of any present or anticipated contractual or other business relationship between the Contractor, or any subcontract of the Contractor, and any of the persons or entities who are, or may be, responsible for work to be performed by the Contractor. The Department agrees to notify the Contractor within ten (10) days of receipt of such information whether or not it deems a conflict of interest to exist. For the purposes of this Contract, a contractor, an employee of the contractor, or contractor's subcontractor may be deemed to have had a business relationship with one of the responsible parties if it has had a relationship with a parent organization, or subsidiary, a predecessor or a successor of such party, or if it has been engaged by independent legal representatives on behalf of

any such parties, as defined. A full disclosure shall include a description of the action that the Contractor has taken, or proposes to take, to avoid or to mitigate such conflicts-of-interest.

3. In addition to the Contractor's duty to disclose any conflict-of-interest as described above, the Department shall retain and exercise the right to determine on its own initiative whether or not a conflict-of-interest on the part of the Contractor exists. The Contractor covenants that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of services required.
- e. Acceptance Process. All deliverables must be received and accepted in writing by the Department's Contract Manager before payment. This provision supersedes paragraph 6(a) of Attachment 1, Standard Terms and Conditions.
- f. Point of Contact. The Point of Contact for each section of the Waste Cleanup Program can be obtained from the Department's Contract Managers

**STATE OF FLORIDA**  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**Scope of Work**  
**ATTACHMENT 3**

**[TO BE INSERTED]**

**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
Public Records Requirements**

**ATTACHMENT 4**

**1. Public Records Access Requirements.**

- a. If the Contract exceeds \$35,000.00, and if the Contractor is acting on behalf of the Department in its performance of services under the Contract, the Contractor must allow public access to all documents, papers, letters, or other material, regardless of the physical form, characteristics, or means of transmission, made or received by the Contractor in conjunction with the Contract (Public Records), unless the Public Records are exempt from section 24(a) of Article I of the Florida Constitution or section 119.07(1), F.S.
- b. The Department may unilaterally terminate the Contract if the Contractor refuses to allow public access to Public Records as required by law.

**2. Additional Public Records Duties of Section 119.0701, F.S., If Applicable.**

If the Contractor is a "contractor" as defined in section 119.0701(1)(a), F.S., the Contractor shall:

- a. Keep and maintain Public Records required by the Department to perform the service.
- b. Upon request, provide the Department with a copy of requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
- c. A Contractor who fails to provide the Public Records to the Department within a reasonable time may be subject to penalties under section 119.10, F.S.
- d. Ensure that Public Records that are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the Contractor does not transfer the Public Records to the Department.
- e. Upon completion of the Contract, transfer, at no cost, to the Department all Public Records in possession of the Contractor or keep and maintain Public Records required by the Department to perform the service. If the Contractor transfers all Public Records to the Department upon completion of the Contract, the Contractor shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements. If the Contractor keeps and maintains Public Records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to the Department, upon request from the Department's custodian of Public Records, in a format specified by the Department as compatible with the information technology systems of the Department. These formatting requirements are satisfied by using the data formats as authorized in the Contract or Microsoft Word, Outlook, Adobe, or Excel, and any software formats the Contractor is authorized to access.

- f. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE DEPARTMENT'S CUSTODIAN OF PUBLIC RECORDS AT:**

**Telephone: (850) 245-2118**

**Email: [Public.Services@FloridaDEP.gov](mailto:Public.Services@FloridaDEP.gov)**

**Mailing Address: Department of Environmental Protection**

**ATTN: Office of Ombudsman and Public Services**

**Public Records Request**

**3900 Commonwealth Boulevard, MS 49**

**Tallahassee, Florida 32399**

**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
Price Sheet and Calculation of Costs**

**ATTACHMENT 5**

I. Price Sheet

[Insert Negotiated Price Sheet]

II. Calculation of Costs

1. Indirect costs shall be calculated as follows for Task Assignments and Task Assignment Change Orders:

Project Management - Shall be calculated at \_\_\_% of fully loaded Direct Labor Costs. For the purposes of this Contract, Project Management shall include the following:

- a. Communication - Maintaining communication with all involved personnel (including the Department, subcontractors, and internal contractor personnel) necessary for completing task assignments under this Contract.
- b. Resource Management - Allocation, coordination, management, and tracking of necessary resources for completion of tasks, including internal and subcontracted resources.
- c. Quality Control - Ensuring adequate quality controls on performance and work products through compliance with appropriate compQAPP and site-specific QAPP requirements, as well as internal technical and non-technical peer review of work product submittals (e.g., reports, data submittals, etc.) through compliance with appropriate Quality Assurance requirements.
- d. Progress Management - Monitoring project performance and schedule maintenance, control and tracking including the identification of critical pathways, milestones, schedule variances, and necessary corrective actions required for successful completion of each task's scope of work.
- e. Progress Reports - Development and submittal of project tracking reports.
- f. Progress Meetings - Periodic (e.g., weekly/biweekly) meetings between the Department and the Contractor to discuss the status of all related task assignments, and to identify and resolve outstanding issues.
- g. Financial Management - Budget management, control, and tracking for subtasks and overall projects including subcontractor payment, invoicing, etc.

Other Direct Costs (ODCs) - Shall be calculated at \_\_\_% of Direct Labor Costs + Project Management. For purposes of this Contract, ODCs shall include office supplies; shipping and freight (not including sample shipping); postage and handling; copying; communications (fixed and mobile phones, FAX); computer costs (VAX, CADD, Modeling, Word Processing, etc.) as applies to the costs associated with the use of the computer equipment and not the direct labor involved; and other costs not included in overhead or general and administrative costs.

Equipment Procurement Fee - Shall be calculated, on a task assignment basis, at 10% of the subcontractor(s) charges. The fee shall not exceed \$2,500 per subcontractor. The fee shall be applied for subcontractors who are providing equipment (excluding services), through vendor quotes, which cannot be directly supplied by the Contractor.

Subcontractor Handling Fee - Shall be calculated, on a task assignment basis, at the following rates according to the subcontractor costs: 10% for the first \$50,000; 7% for the next \$50,000; 5% for the remaining costs exceeding \$100,000. This fee structure shall be applied to each subcontractor included in a task for services (excluding equipment), through vendor quotes, which cannot be directly supplied by the Contractor.

Under pay for performance task assignments, the Department may elect to adjust the Subcontractor Handling Fee based upon the Contractor's performance under that Task Assignment. Any such changes to the Subcontractor Handling Fee structure will be negotiated with the Contractor and explained within the text of the Task Assignment Notification Form.

Completion Fee - The completion fee shall be calculated at 10% of Total Labor Cost. Total labor cost is defined as direct labor cost plus applicable fringe benefits, overhead, and general and administrative costs.

Under pay for performance task assignments, the Department may elect to adjust the Completion Fee based upon the Contractor's performance under that Task Assignment. Any such changes to the Completion Fee structure will be negotiated with the Contractor and explained within the text of the Task Assignment Notification Form.

Retainage - No retainage is required under this Contract.

Laboratory Analyses - Maximum analytical turn-around time shall be three (3) weeks unless otherwise specified by a Task Assignment. The cost for performing sample analysis, laboratory blanks, duplicates, spikes, and standards shall be charged in accordance with the rates in Attachment 5.

Drilling, Hazardous Waste Disposal and Mobile Laboratories - Rates will be determined on a task-by-task basis as quotes will be required for all subcontracted services that are not being directly provided by the Contractor.

General meetings will be held between select Contractor and DEP staff on at least an annual basis to discuss and strategize paths forward for all projects assigned to the Contractor. These meetings are excluded from the definition of Project Management and will be compensated by issuance of Task Assignments.

2. Charges for rates or expenses which are not included in Attachment 5, but which are required by the Department on a Task Assignment, shall be compensated at rates mutually acceptable to the Department and the Contractor, and shall be evidenced by an executed Task Assignment Notification Form. In the event that the Department determines that such rates should become a part of the rate schedule attached to this Contract, the Department shall initiate an amendment evidencing the rates mutually agreed to by both parties for inclusion in this Contract.
3. The purchase of non-expendable personal property or equipment costing \$1,000 or more purchased for purposes of this Contract remains the property of the Department. The Contractor's Contract Manager shall complete and sign a Property Reporting Form, DEP 55-211, and forward it along with the appropriate invoice to the Department's Contract Manager. The following terms shall apply:
  - a. The Contractor shall have use of the non-expendable personal property or equipment for the authorized purposes of the contractual arrangement as long as the required work is being performed.
  - b. The Contractor is responsible for the implementation of adequate maintenance procedures to keep the non-expendable personal property or equipment in good operating condition.

- c. When the non-expendable personal property or equipment is no longer needed, the Contractor will return all non-expendable personal property or equipment purchased under the terms of this Contract to the Department.
- d. If, however, the Contractor desires to purchase the non-expendable personal property or equipment when no longer needed, the Department may, at its discretion and subject to approval of the Department's Surplus Property Review Board, and in compliance with federal regulations, if applicable, elect to sell the equipment to the Contractor for its fair market value as of the date of title transfer, in accordance with DEP Directive 320.
- e. The Contractor is responsible for any loss, damage, or theft of, and any loss, damage, or injury caused by the use of, non-expendable personal property or equipment purchased with state funds and held in his possession for use in a contractual arrangement with the Department.



**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
Contract Provisions for Federally-Funded Contracts**

**ATTACHMENT 9**

The Department, as a Non-Federal Entity as defined by 2 CFR §200.69, shall comply with the following provisions, where applicable. For purposes of this Contract between the Department and the Contractor, the term “Recipient” shall mean “Contractor.”

Further, the Department, as a pass-through entity, also requires the Contractor to pass on these requirements to all lower tier subcontractors, and to comply with the provisions of the award, including applicable provisions of the OMB Uniform Guidance (2 CFR Part 200), and all associated terms and conditions. Therefore, Contractors must include these requirements in all related subcontracts and/or sub-awards. Contractors can include these requirements by incorporating this Attachment in the related subcontract, however for all such subcontracts and sub-awards, the Contractor shall assume the role of the Non-Federal Entity and the subcontractor shall assume the role of the Recipient.

**2 CFR PART 200 APPENDIX 2 REQUIREMENTS**

**1. Administrative, Contractual, and Legal Remedies**

The following provision is required if the Contract is for more than \$150,000. In addition to any of the remedies described elsewhere in the Contract, if the Recipient materially fails to comply with the terms and conditions of this Contract, including any Federal or State statutes, rules or regulations, applicable to this Contract, the Non-Federal Entity may take one or more of the following actions.

- i. Temporarily withhold payments pending correction of the deficiency by the Recipient.
- ii. Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
- iii. Wholly or partly suspend or terminate this Contract.
- iv. Take other remedies that may be legally available.

The remedies identified above, do not preclude the Recipient from being subject to debarment and suspension under Presidential Executive Orders 12549 and 12689. The Non-Federal entity shall have the right to demand a refund, either in whole or part, of the funds provided to the Recipient for noncompliance with the terms of this Contract.

**2. Termination for Cause and Convenience**

Termination for Cause and Convenience are addressed elsewhere in the Contract.

**3. Equal Opportunity Clause**

The following provision applies if the agreement meets the definition of “federally assisted construction contract” as defined by 41 CFR Part 60-1.3:

During the performance of this Contract, the Recipient agrees as follows:

- i. The Recipient will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Recipient will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
  - a. Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Recipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- ii. The Recipient will, in all solicitations or advertisements for employees placed by or on behalf of the Recipient, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

- iii. The Recipient will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Recipient's legal duty to furnish information.
- iv. The Recipient will send to each labor union or representative of workers with which he has a collective bargaining agreement or other Contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Recipient's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- v. The Recipient will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- vi. The Recipient will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- vii. In the event of the Recipient's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Recipient may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- viii. The Recipient will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Recipient will take such action with respect to any subcontractor purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

#### 4. Davis Bacon Act

If the Contract is a prime construction contract in excess of \$2,000 awarded by the Recipient, and if required by the Federal Legislation, the Recipient must comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must pay wages not less than once a week. The Recipient must comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each Recipient or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

#### 5. Contract Work Hours and Safety Standards Act

Where applicable, if the Contract is in excess of \$100,000 and involves the employment of mechanics or laborers, the Recipient must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each Recipient must be required to compute

the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

6. Rights to Inventions Made Under Contract

If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the Non-Federal Entity or subcontractor wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the Non-Federal Entity or subcontractor must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Contracts,” and any implementing regulations issued by the awarding agency.

7. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387)

If the Contract is in excess of \$150,000, the Recipient shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Awarding Agency and the Regional Office of the Environmental Protection Agency (EPA).

8. Debarment and Suspension (Executive Orders 12549 and 12689)

The Recipient certifies that it is not listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.”

9. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

The Recipient certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. If applicable, the Recipient shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award, using form SF-LLL, available at: [https://apply07.grants.gov/apply/forms/sample/SFLLL\\_1\\_2\\_P-V1.2.pdf](https://apply07.grants.gov/apply/forms/sample/SFLLL_1_2_P-V1.2.pdf).

10. Procurement of Recovered Materials

The Recipient must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act as described in 2 CFR part 200.322.

11. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

The Recipients and subcontractors are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. See Section 889 of Public Law 115-232 (National Defense Authorization Act 2019). Also, see 2 CFR 200.216 and 200.471.

**ADMINISTRATIVE**

12. General Federal Regulations

Recipients shall comply with the regulations listed in 2 CFR 200, 48 CFR 31, and 40 U.S.C. 1101 *et sequence*.

13. Rights to Patents and Inventions Made Under a Contract or Agreement

Rights to inventions made under this assistance agreement are subject to federal patent and licensing regulations, which are codified at Title 37 CFR Part 401 and Title 35 U.S.C. 200 through 212.

14. Compliance with the Trafficking Victims Protection Act of 2000 (2 CFR Part 175)

Recipients, their employees, subcontractors under this award, and subcontractors' employees may not:

- i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

- ii. Procure a commercial sex act during the period of time that the award is in effect; or
- iii. Use forced labor in the performance of the award or subawards under the award.

15. Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234)

Recipients must comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234), if applicable. This act requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

16. Water Resources Reform and Development Act (WRRDA) P.L. 113-121

Recipients must comply with the Water Resources Reform and Development Act (WRRDA) P.L. 113-121, if applicable. This act provides for improvements to the rivers and harbors of the United States, to provide for the conservation and development of water and related resources.

17. Whistleblower Protection

Recipients shall comply with U.S.C. §4712, Enhancement of Recipient and Subrecipient Employee Whistleblower Protection. This requirement applies to all awards issued after July 1, 2013 and effective December 14, 2016 has been permanently extended (Public Law (P.L.) 114-261).

(a) This award, related subawards, and related contracts over the simplified acquisition threshold and all employees working on this award, related subawards, and related contracts over the simplified acquisition threshold are subject to the whistleblower rights and remedies in the pilot program on award recipient employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (P.L. 112-239).

(b) Recipients, their subrecipients, and their contractors awarded contracts over the simplified acquisition threshold related to this award, shall inform their employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 U.S.C. 4712.

(c) The Recipient shall insert this clause, including this paragraph (c), in all subawards and in contracts over the simplified acquisition threshold related to this award; best efforts should be made to include this clause, including this paragraph (c) in any subawards and contracts awarded prior to the effective date of this provision.

18. Notification of Termination (2 CFR § 200.340)

In accordance with 2 CFR § 200.340, in the event that the Contract is terminated prior to the end of the period of performance due to the Recipient's or subcontractor's material failure to comply with Federal statutes, regulations or the terms and conditions of this Contract or the Federal award, the termination shall be reported to the Office of Management and Budget (OMB)-designated integrity and performance system, accessible through System for Award Management (SAM) currently the Federal Awardee Performance and Integrity Information System (FAPIIS). The Non-Federal Entity will notify the Recipient of the termination and the Federal requirement to report the termination in FAPIIS. See 2 CFR § 200.340 for the requirements of the notice and the Recipient's rights upon termination and following termination.

19. Additional Lobbying Requirements

- (a) The Recipient certifies that no funds provided under this Contract have been used or will be used to engage in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law.
- (b) The Lobbying Disclosure Act of 1995, as amended (2 U.S.C. §1601 *et seq.*), prohibits any organization described in Section 501(c)(4) of the Internal Revenue Code, from receiving federal funds through an award, grant (and/or subgrant) or loan unless such organization warrants that it does not, and will not engage in lobbying activities prohibited by the Act as a special condition of such an award, grant (and/or subgrant), or loan. This restriction does not apply to loans made pursuant to approved revolving loan programs or to contracts awarded using proper procurement procedures.
- (c) Pursuant to 2 CFR §200.450 and 2 CFR §200.454(e), the Recipient is hereby prohibited from using funds provided by this Contract for membership dues to any entity or organization engaged in lobbying activities.

**COMPLIANCE WITH ASSURANCES**

20. Assurances

Recipients shall comply with any and all applicable assurances made by the Department or the Recipient to the Federal Government during the Grant application process.

21. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms

Recipients shall take all affirmative steps necessary to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible, including those steps listed in 2 CFR 200.321(b).

**FEDERAL REPORTING REQUIREMENTS**

Grant Recipients awarded a new Federal grant greater than or equal to \$30,000 awarded on or after October 1, 2015, are subject to the FFATA the Federal Funding Accountability and Transparency Act ("FFATA") of 2006. The FFATA legislation requires that information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website, which is [www.USASpending.gov](http://www.USASpending.gov). The Contractor agrees to provide the information necessary, within one (1) month of execution, for the Department to comply with this requirement.

**ENVIRONMENTAL PROTECTION AGENCY-SPECIFIC** (Only Applicable to EPA-Funded Contracts)

22. EPA General Terms and Conditions (for purposes of compliance within the EPA General Terms and Conditions only, "Recipient" refers to the Department and "Subrecipient" refers to the Contractor).

Recipients and subrecipients shall comply with EPA General Terms and Conditions applicable to the specific Federal Award funding source, incorporated by reference and available at <https://www.epa.gov/grants/grant-terms-and-conditions>.

23. Record Keeping and Audit. The United States Environmental Protection Agency and the Comptroller General of the United States (U.S. Government Accountability Office), or their authorized representatives, shall have access to all books, records, and documents related to the performance of this Contract for audit purposes during the term of this Contract and for five years following Contract completion. In the event any work is subgranted or subcontracted, the Contractor shall similarly require each subgrantee and subcontractor to maintain and allow access to such records for audit purposes.

24. EPA's Prohibition on Paying Management Fees. Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this Contract. Management fees or similar charges may not be used to improve or expand the Project funded under this Contract, except to the extent authorized as a direct cost of carrying out the work identified in the Grant Work Plan.

25. EPA Cybersecurity Conditions

Recipients shall comply with the EPA Grant Cyber Security Conditions located at <https://www.epa.gov/grants/state-grant-cybersecurity-condition>, last amended July 6, 2015.

26. Environmental Justice Guidance under the National Environmental Policy Act (42 U.S.C. 4321)

Recipients shall comply with the Environmental Justice Guidance under the National Environmental Policy Act (42 U.S.C. 4321). This act relates to the fair treatment and meaningful involvement of all people regardless of race, color, national origin or income with respect to the development, implementation, and enforcement of environmental laws, regulations and policies.

27. EPA Regulations

Recipients shall comply with the following regulations: 40 CFR 4, 40 CFR 12, 40 CFR 12, 40 CFR 29, 40 CFR 33.302, 40 CFR 33.501(b) and (c), 40 CFR 34, 40 CFR 35, 2 CFR 1500, and 2 CFR 1532.

28. Drug-Free Workplace

Recipients must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 2 CFR Part 1536 Subpart B. Additionally, in accordance with these regulations, the Recipients must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

29. EPA's Program for Utilization of Small, Minority, and Women's Business Enterprises.

Acceptance of the funds awarded under this Contract requires general compliance with the EPA's Disadvantaged Business Enterprise (DBE) Program pursuant to 40 CFR, Part 33. Recipients shall not discriminate on the basis of race, color, national origin or sex in the performance of this Contract. Recipients shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts and/or subcontracts awarded under EPA financial assistance agreements. Failure by the Recipient to carry out these

requirements is a material breach of this Contract which may result in the termination of this Contract or other legally available remedies.

Based on the amount awarded to the Department under the original Federal funding source for this Contract, Recipients are subject to the reporting requirements of the EPA's DBE Program. Recipients must complete and submit a "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" report (EPA Form 5700-52A) with the applicable required Payment Request Form(s).

The current EPA Form 5700-52A is included as an Exhibit to this Attachment, but it is also available from the EPA Office of Small Business Program's Home Page at [http://www.epa.gov/osbp/dbe\\_reporting.htm](http://www.epa.gov/osbp/dbe_reporting.htm).

The Department has negotiated its current "Fair Share" objective and goals with the EPA, which are listed in Attachment 7, Grant Award Terms. However, if the Contractor does not want to rely on the applicable Department's MBE/WBE goals, the Contractor may contact the Department to coordinate the proposal of alternate MBE/WBE goals based on availability of qualified minority and women-owned businesses to do work in the relevant market for construction, services, supplies and equipment.

**30. American Iron and Steel (Compliance with P.L. 113-76)**

Recipients shall comply with the Consolidated Appropriations Act of 2014 (Public Law 113-76), if applicable. This act includes an American Iron and Steel (AIS) requirement, if applicable. Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) assistance recipients are required to use iron and steel products that are produced in the United States for projects for the construction, alteration, maintenance, or repair of a public water system or treatment works and if the project is funded through an assistance agreement executed beginning January 17, 2014 (enactment of the Act).

The appropriation language sets forth certain circumstances under which EPA may waive AIS requirements. Furthermore, the act exempts projects where engineering specifications and plans were approved by a state agency prior to January 17, 2014. §319(h) funded projects are excluded from this provision.

**31. Geospatial Data Standards**

Recipients must meet the EPA Geospatial Data Standards. All geospatial data created must be consistent with Federal Geographic Data Committee endorsed standards. Information on these standards can be found at [www.fgdc.gov](http://www.fgdc.gov).

**32. Signage Required Term and Condition**

**a. Signage Requirements**

The Recipient is required to place a sign at construction sites supported under this award displaying the EPA logo in a manner that informs the public that the project is funded in part or wholly by the EPA. The sign must be placed in a visible location that can be directly linked to the work taking place and must be maintained in good condition throughout the construction period.

Recipients are required to comply with the sign specifications provided by the EPA Office of Public Affairs (OPA) available at: <https://www.epa.gov/grants/epa-logo-seal-specifications-signage-produced-epa-assistance-agreement-recipients>. If the EPA logo is displayed along with the logos of other participating entities, the EPA logo must not be displayed in a manner that implies that EPA itself is conducting the project. Instead, the EPA logo must be accompanied with a statement indicating that the recipient received financial assistance from EPA for the project. As provided in the sign specifications from OPA, the EPA logo is the preferred identifier for assistance agreement projects and use of the EPA seal requires prior approval from the EPA. To obtain the appropriate EPA logo or seal graphic file, the recipient should send a request directly to OPA and include the EPA Project Officer in the communication. Instructions for contacting OPA is available on the [Using the EPA Seal and Logo page](#).

Consistent with section 6002 of RCRA, 42 U.S.C. 6962, and 2 CFR 200.322, recipients are encouraged to use recycled or recovered materials when procuring signs. Signage costs are considered an allowable cost under this assistance agreement provided that the costs associated with signage are reasonable. Additionally, to increase public awareness of projects serving communities where English is not the predominant language, recipients are encouraged to translate the language on signs (excluding the EPA logo or seal) into the appropriate non-English language(s). The costs of such translation are allowable, provided the costs are reasonable.

**b. Public or Media Events**

The Recipient agrees to notify the EPA Project Officer listed in this award document of public or media events publicizing the accomplishment of significant events related to construction projects as a result of this agreement, and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.

**33. Release of Claims**

For every project funded with EPA funds, the Contractor, and subcontractors as applicable, must include the EPA as a released party on the Department's release of claims form.

**National Aeronautics and Space Administration-Specific** (Only Applicable to NASA-Funded Contracts)

**34. Export Licenses**

- a. The Contractor shall comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, in the performance of this contract. In the absence of available license exemptions/exceptions, the Contractor shall be responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance.
- b. The Contractor shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of this contract, including instances where the work is to be performed on-site at Marshall Space Flight Center, where the foreign person will have access to export-controlled technical data or software.
- c. The Contractor shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions.
- d. The Contractor shall be responsible for ensuring that the provisions of this clause apply to its subcontractors.

**Department of Defense-Specific** (Only Applicable to DOD-Funded Contracts)

**35. Incorporated Regulations**

This Contract incorporates by reference all terms, conditions and provisions of the applicable provisions of the DoD Grant and Agreement Regulations (DoDGARS), 32 CFR Part 22 et seq., and the underlying award agreement. *(For purposes of compliance DoDGARS, "Recipient" refers to the Department and "Subrecipient" refers to the Contractor).*

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**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
General Contract Conditions – PUR 1000**

**EXHIBIT A**

**Contents**

1. Definitions.
2. Purchase Orders.
3. Product Version.
4. Price Changes Applicable only to Term Contracts.
5. Additional Quantities.
6. Packaging.
7. Inspection at Contractor's Site.
8. Safety Standards.
9. Americans with Disabilities Act.
10. Literature.
11. Transportation and Delivery.
12. Installation.
13. Risk of Loss.
14. Transaction Fee.
15. Invoicing and Payment.
16. Taxes.
17. Governmental Restrictions.
18. Lobbying and Integrity.
19. Indemnification.
20. Limitation of Liability.
21. Suspension of Work.
22. Termination for Convenience.
23. Termination for Cause.
24. Force Majeure, Notice of Delay, and No Damages for Delay.
25. Changes.
26. Renewal.
27. Purchase Order Duration.
28. Advertising.
29. Assignment.
30. Antitrust Assignment
31. Dispute Resolution.
32. Employees, Subcontractors, and Agents.
33. Security and Confidentiality.
34. Contractor Employees, Subcontractors, and Other Agents.
35. Insurance Requirements.
36. Warranty of Authority.
37. Warranty of Ability to Perform.
38. Notices.
39. Leases and Installment Purchases.
40. Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE).
41. Products Available from the Blind or Other Handicapped.
42. Modification of Terms.
43. Cooperative Purchasing.
44. Waiver.
45. Annual Appropriations.
46. Execution in Counterparts.
47. Severability.



1. **Definitions.** The definitions contained in s. 60A-1.001, F.A.C. shall apply to this agreement. The following additional terms are also defined:
  - (a) “Contract” means the legally enforceable agreement that results from a successful solicitation. The parties to the Contract will be the Customer and Contractor.
  - (b) “Customer” means the State agency or other entity identified in a contract as the party to receive commodities or contractual services pursuant to a contract or that orders commodities or contractual services via purchase order or other contractual instrument from the Contractor under the Contract. The “Customer” may also be the “Buyer” as defined in the PUR 1001 if it meets the definition of both terms.
  - (c) “Product” means any deliverable under the Contract, which may include commodities, services, technology or software.
  - (d) “Purchase order” means the form or format a Customer uses to make a purchase under the Contract (e.g., a formal written purchase order, electronic purchase order, procurement card, contract or other authorized means).
2. **Purchase Orders.** In contracts where commodities or services are ordered by the Customer via purchase order, Contractor shall not deliver or furnish products until a Customer transmits a purchase order. All purchase orders shall bear the Contract or solicitation number, shall be placed by the Customer directly with the Contractor, and shall be deemed to incorporate by reference the Contract and solicitation terms and conditions. Any discrepancy between the Contract terms and the terms stated on the Contractor’s order form, confirmation, or acknowledgement shall be resolved in favor of terms most favorable to the Customer. A purchase order for services within the ambit of section 287.058(1) of the Florida Statutes shall be deemed to incorporate by reference the requirements of subparagraphs (a) through (f) thereof. Customers shall designate a contract manager and a contract administrator as required by subsections 287.057(15) and (16) of the Florida Statutes.
3. **Product Version.** Purchase orders shall be deemed to reference a manufacturer’s most recently release model or version of the product at the time of the order, unless the Customer specifically requests in writing an earlier model or version and the contractor is willing to provide such model or version.
4. **Price Changes Applicable only to Term Contracts.** If this is a term contract for commodities or services, the following provisions apply.
  - (a) Quantity Discounts. Contractors are urged to offer additional discounts for one time delivery of large single orders. Customers should seek to negotiate additional price concessions on quantity purchases of any products offered under the Contract. State Customers shall document their files accordingly.
  - (b) Best Pricing Offer. During the Contract term, if the Customer becomes aware of better pricing offered by the Contractor for substantially the same or a smaller quantity of a product outside the Contract, but upon the same or similar terms of the Contract, then at the discretion of the Customer the price under the Contract shall be immediately reduced to the lower price.
  - (c) Sales Promotions. In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, a Contractor may conduct sales promotions involving price reductions for a specified lesser period. A Contractor shall submit to the Contract Specialist documentation identifying the proposed (1) starting and ending dates of the promotion, (2) products involved, and (3) promotional prices compared to then-authorized prices. Promotional prices shall be available to all Customers. Upon approval, the Contractor shall provide conspicuous notice of the promotion.
  - (d) Trade-In. Customers may trade-in equipment when making purchases from the Contract. A trade-in shall be negotiated between the Customer and the Contractor. Customers are obligated to actively seek current fair market value when trading equipment, and to keep accurate records of the process. For State agencies, it may be necessary to provide documentation to the Department of Financial Services and to the agency property custodian pursuant to Chapter 273, F.S.
  - (e) Equitable Adjustment. The Customer may, in its sole discretion, make an equitable adjustment in the Contract terms or pricing if pricing or availability of supply is affected by extreme and unforeseen volatility in the marketplace, that is, by circumstances that satisfy all the following criteria: (1) the volatility is due to causes wholly beyond the Contractor’s control, (2) the volatility affects the marketplace or industry, not just the particular Contract source of supply, (3) the effect on pricing or availability of supply is substantial, and (4) the volatility so affects the Contractor that continued performance of the Contract would result in a substantial loss.

5. **Additional Quantities.** For a period not exceeding ninety (90) days from the date of solicitation award, the Customer reserves the right to acquire additional quantities up to the amount shown on the solicitation but not to exceed the threshold for Category Two at the prices submitted in the response to the solicitation.
6. **Packaging.** Tangible product shall be securely and properly packed for shipment, storage, and stocking in appropriate, clearly labeled, shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases, or other types of containers. All containers and packaging shall become and remain Customer's property.
7. **Inspection at Contractor's Site.** The Customer reserves the right to inspect, at any reasonable time with prior notice, the equipment or product or plant or other facilities of a Contractor to assess conformity with Contract requirements and to determine whether they are adequate and suitable for proper and effective Contract performance.
8. **Safety Standards.** All manufactured items and fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate State inspector. Acceptability customarily requires, at a minimum, identification marking of the appropriate safety standard organization, where such approvals of listings have been established for the type of device offered and furnished, for example: the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; and the American Gas Association for gas-operated assemblies. In addition, all items furnished shall meet all applicable requirements of the Occupational Safety and Health Act and state and federal requirements relating to clean air and water pollution.
9. **Americans with Disabilities Act.** Contractors should identify any products that may be used or adapted for use by visually, hearing, or other physically impaired individuals.
10. **Literature.** Upon request, the Contractor shall furnish literature reasonably related to the product offered, for example, user manuals, price schedules, catalogs, descriptive brochures, etc.
11. **Transportation and Delivery.** Prices shall include all charges for packing, handling, freight, distribution, and inside delivery. Transportation of goods shall be FOB Destination to any point within thirty (30) days after the Customer places an Order. A Contractor, within five (5) days after receiving a purchase order, shall notify the Customer of any potential delivery delays. Evidence of inability or intentional delays shall be cause for Contract cancellation and Contractor suspension.
12. **Installation.** Where installation is required, Contractor shall be responsible for placing and installing the product in the required locations at no additional charge, unless otherwise designated on the Contract or purchase order. Contractor's authorized product and price list shall clearly and separately identify any additional installation charges. All materials used in the installation shall be of good quality and shall be free of defects that would diminish the appearance of the product or render it structurally or operationally unsound. Installation includes the furnishing of any equipment, rigging, and materials required to install or replace the product in the proper location. Contractor shall protect the site from damage and shall repair damages or injury caused during installation by Contractor or its employees or agents. If any alteration, dismantling, excavation, etc., is required to achieve installation, the Contractor shall promptly restore the structure or site to its original condition. Contractor shall perform installation work so as to cause the least inconvenience and interference with Customers and with proper consideration of others on site. Upon completion of the installation, the location and surrounding area of work shall be left clean and in a neat and unobstructed condition, with everything in satisfactory repair and order.
13. **Risk of Loss.** Matters of inspection and acceptance are addressed in s. 215.422, F.S. Until acceptance, risk of loss or damage shall remain with the Contractor. The Contractor shall be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the Customer shall: record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; report damages to the carrier and the Contractor; and provide the Contractor with a copy of the carrier's Bill of Lading and damage inspection report. When a Customer rejects a product, Contractor shall remove it from the premises within ten days after notification or rejection. Upon rejection notification, the risk of loss of rejected or non-conforming product shall remain with the Contractor. Rejected product not removed by the Contractor within ten days shall be deemed abandoned by the Contractor, and the Customer shall have the right to dispose of it as its own property. Contractor shall reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected product.
14. **Transaction Fee.** The State of Florida has instituted MyFloridaMarketPlace, a statewide eProcurement System ("System"). Pursuant to section 287.057(23), Florida Statutes (2002), all payments shall be assessed a Transaction Fee of one percent (1.0%), which the Contractor shall pay to the State, unless exempt pursuant to 60A-1.032, F.A.C.

For payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the Contractor. If automatic deduction is not possible, the Contractor shall pay the

Transaction Fee pursuant to Rule 60A-1.031(2), F.A.C. By submission of these reports and corresponding payments, Contractor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee.

Contractor shall receive a credit for any Transaction Fee paid by the Contractor for the purchase of any item(s) if such item(s) are returned to the Contractor through no fault, act, or omission of the Contractor. Notwithstanding the foregoing, a Transaction Fee is non-refundable when an item is rejected or returned, or declined, due to the Contractor's failure to perform or comply with specifications or requirements of the agreement.

Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering procurement costs from the Contractor in addition to all outstanding fees. **CONTRACTORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE SUBJECT TO BEING REMOVED FROM THE DEPARTMENT OF MANAGEMENT SERVICES' VENDOR LIST AS PROVIDED IN RULE 60A-1.006, F.A.C.**

**15. Invoicing and Payment.** Invoices shall contain the Contract number, purchase order number if applicable, and the appropriate vendor identification number. The State may require any other information from the Contractor that the State deems necessary to verify any purchase order placed under the Contract.

At the State's option, Contractors may be required to invoice electronically pursuant to guidelines of the Department of Management Services. Current guidelines require that Contractor supply electronic invoices in lieu of paper-based invoices for those transactions processed through the system. Electronic invoices shall be submitted to the Customer through the Ariba Supplier Network (ASN) in one of the following mechanisms – EDI 810, cXML, or web-based invoice entry within the ASN.

Payment shall be made in accordance with sections 215.422 and 287.0585 of the Florida Statutes, which govern time limits for payment of invoices. Invoices that must be returned to a Contractor due to preparation errors will result in a delay in payment. Contractors may call (850) 413-7269 Monday through Friday to inquire about the status of payments by State Agencies. The Customer is responsible for all payments under the Contract. A Customer's failure to pay, or delay in payment, shall not constitute a breach of the Contract and shall not relieve the Contractor of its obligations to the Department or to other Customers.

**16. Taxes.** The State does not pay Federal excise or sales taxes on direct purchases of tangible personal property. The State will not pay for any personal property taxes levied on the Contractor or for any taxes levied on employees' wages. Any exceptions to this paragraph shall be explicitly noted by the Customer in the special contract conditions section of the solicitation or in the Contract or purchase order.

**17. Governmental Restrictions.** If the Contractor believes that any governmental restrictions have been imposed that require alteration of the material, quality, workmanship or performance of the products offered under the Contract, the Contractor shall immediately notify the Customer in writing, indicating the specific restriction. The Customer reserves the right and the complete discretion to accept any such alteration or to cancel the Contract at no further expense to the Customer.

**18. Lobbying and Integrity.** Customers shall ensure compliance with Section 11.062, FS and Section 216.347, FS. The Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the Customer's Inspector General, or other authorized State official, the Contractor shall provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor shall retain such records for the longer of (1) three years after the expiration of the Contract or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>). The Contractor agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for any costs of investigations that do not result in the Contractor's suspension or debarment.

**19. Indemnification.** The Contractor shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the State and Customers, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage

to real or personal tangible property alleged to be caused in whole or in part by Contractor, its agents, employees, partners, or subcontractors, provided, however, that the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State or a Customer.

Further, the Contractor shall fully indemnify, defend, and hold harmless the State and Customers from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right, provided, however, that the foregoing obligation shall not apply to a Customer's misuse or modification of Contractor's products or a Customer's operation or use of Contractor's products in a manner not contemplated by the Contract or the purchase order. If any product is the subject of an infringement suit, or in the Contractor's opinion is likely to become the subject of such a suit, the Contractor may at its sole expense procure for the Customer the right to continue using the product or to modify it to become non-infringing. If the Contractor is not reasonably able to modify or otherwise secure the Customer the right to continue using the product, the Contractor shall remove the product and refund the Customer the amounts paid in excess of a reasonable rental for past use. The customer shall not be liable for any royalties.

The Contractor's obligations under the preceding two paragraphs with respect to any legal action are contingent upon the State or Customer giving the Contractor (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense, and (3) assistance in defending the action at Contractor's sole expense. The Contractor shall not be liable for any cost, expense, or compromise incurred or made by the State or Customer in any legal action without the Contractor's prior written consent, which shall not be unreasonably withheld.

- 20. Limitation of Liability.** For all claims against the Contractor under any contract or purchase order, and regardless of the basis on which the claim is made, the Contractor's liability under a contract or purchase order for direct damages shall be limited to the greater of \$100,000, the dollar amount of the contract or purchase order, or two times the charges rendered by the Contractor under the purchase order. This limitation shall not apply to claims arising under the Indemnity paragraph contain in this agreement.

Unless otherwise specifically enumerated in the Contract or in the purchase order, no party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless the contract or purchase order requires the Contractor to back-up data or records), even if the party has been advised that such damages are possible. No party shall be liable for lost profits, lost revenue, or lost institutional operating savings. The State and Customer may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them. The State may set off any liability or other obligation of the Contractor or its affiliates to the State against any payments due the Contractor under any contract with the State.

- 21. Suspension of Work.** The Customer may in its sole discretion suspend any or all activities under the Contract or purchase order, at any time, when in the best interests of the State to do so. The Customer shall provide the Contractor written notice outlining the particulars of suspension. Examples of the reason for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Contractor shall comply with the notice and shall not accept any purchase orders. Within ninety days, or any longer period agreed to by the Contractor, the Customer shall either (1) issue a notice authorizing resumption of work, at which time activity shall resume, or (2) terminate the Contract or purchase order. Suspension of work shall not entitle the Contractor to any additional compensation.
- 22. Termination for Convenience.** The Customer, by written notice to the Contractor, may terminate the Contract in whole or in part when the Customer determines in its sole discretion that it is in the State's interest to do so. The Contractor shall not furnish any product after it receives the notice of termination, except as necessary to complete the continued portion of the Contract, if any. The Contractor shall not be entitled to recover any cancellation charges or lost profits.
- 23. Termination for Cause.** The Customer may terminate the Contract if the Contractor fails to (1) deliver the product within the time specified in the Contract or any extension, (2) maintain adequate progress, thus endangering performance of the Contract, (3) honor any term of the Contract, or (4) abide by any statutory, regulatory, or licensing requirement. Rule 60A-1.006(3), F.A.C., governs the procedure and consequences of default. The Contractor shall continue work on any work not terminated. Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from events completely beyond the control, and without the fault or negligence, of the Contractor. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted products were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Customer. The rights and remedies of the Customer in this clause are in addition to any other rights and remedies provided by law or under the Contract.

- 24. Force Majeure, Notice of Delay, and No Damages for Delay.** The Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. In case of any delay the Contractor believes is excusable, the Contractor shall notify the Customer in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) days after the date the Contractor first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the Customer. The Contractor shall not be entitled to an increase in the Contract price or payment of any kind from the Customer for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor shall perform at no increased cost, unless the Customer determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State or to Customers, in which case the Customer may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Customers with respect to products subjected to allocation, or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the products that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.
- 25. Changes.** The Customer may unilaterally require, by written order, changes altering, adding to, or deducting from the Contract specifications, provided that such changes are within the general scope of the Contract. The Customer may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the written consent of the Contractor, which shall not be unreasonably withheld. If unusual quantity requirements arise, the Customer may solicit separate bids to satisfy them.
- 26. Renewal.** Upon mutual agreement, the Customer and the Contractor may renew the Contract, in whole or in part, for a period that may not exceed 3 years or the term of the contract, whichever period is longer. Any renewal shall specify the renewal price, as set forth in the solicitation response. The renewal must be in writing and signed by both parties, and is contingent upon satisfactory performance evaluations and subject to availability of funds.
- 27. Purchase Order Duration.** Purchase orders issued pursuant to a state term or agency contract must be received by the Contractor no later than close of business on the last day of the contract's term to be considered timely. The Contractor is obliged to fill those orders in accordance with the contract's terms and conditions. Purchase orders received by the contractor after close of business on the last day of the state term or agency contract's term shall be considered void.

Purchase orders for a one-time delivery of commodities or performance of contractual services shall be valid through the performance by the Contractor, and all terms and conditions of the state term or agency contract shall apply to the single delivery/performance, and shall survive the termination of the Contract.

Contractors are required to accept purchase orders specifying delivery schedules exceeding the contracted schedule even when such extended delivery will occur after expiration of the state term or agency contract. For example, if a state term contract calls for delivery 30 days after receipt of order (ARO), and an order specifies delivery will occur both in excess of 30 days ARO and after expiration of the state term contract, the Contractor will accept the order. However, if the Contractor expressly and in writing notifies the ordering office within ten (10) calendar days of receipt of the purchase order that Contractor will not accept the extended delivery terms beyond the expiration of the state term contract, then the purchase order will either be amended in writing by the ordering entity within ten (10) calendar days of receipt of the contractor's notice to reflect the state term contract delivery schedule, or it shall be considered withdrawn.

The duration of purchase orders for recurring deliveries of commodities or performance of services shall not exceed the expiration of the state term or agency contract by more than twelve months. However, if an extended pricing plan offered in the state term or agency contract is selected by the ordering entity, the contract terms on pricing plans and renewals shall govern the maximum duration of purchase orders reflecting such pricing plans and renewals.

Timely purchase orders shall be valid through their specified term and performance by the Contractor, and all terms and conditions of the state term or agency contract shall apply to the recurring delivery/performance as provided herein, and shall survive the termination of the Contract.

Ordering offices shall not renew a purchase order issued pursuant to a state term or agency contract if the underlying contract expires prior to the effective date of the renewal.

- 28. Advertising.** Subject to Chapter 119, Florida Statutes, the Contractor shall not publicly disseminate any information concerning the Contract without prior written approval from the Customer, including, but not limited to mentioning the Contract in a press release or other promotional material, identifying the Customer or the State as a reference, or otherwise linking the Contractor's name and either a description of the Contract or the name of the State or the Customer in any material published, either in print or electronically, to any entity that is not a party to Contract, except potential or actual authorized distributors, dealers, resellers, or service representative.
- 29. Assignment.** The Contractor shall not sell, assign or transfer any of its rights, duties or obligations under the Contract, or under any purchase order issued pursuant to the Contract, without the prior written consent of the Customer. In the event of any assignment, the Contractor remains secondarily liable for performance of the contract, unless the Customer expressly waives such secondary liability. The Customer may assign the Contract with prior written notice to Contractor of its intent to do so.
- 30. Antitrust Assignment.** The Contractor and the State of Florida recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Florida. Therefore, the contractor hereby assigns to the State of Florida any and all claims for such overcharges as to goods, materials or services purchased in connection with the Contract.
- 31. Dispute Resolution.** Any dispute concerning performance of the Contract shall be decided by the Customer's designated contract manager, who shall reduce the decision to writing and serve a copy on the Contractor. The decision shall be final and conclusive unless within twenty one (21) days from the date of receipt, the Contractor files with the Customer a petition for administrative hearing. The Customer's decision on the petition shall be final, subject to the Contractor's right to review pursuant to Chapter 120 of the Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to the Contractor's ability to pursue any other form of dispute resolution; provided, however, that the parties may employ the alternative dispute resolution procedures outlined in Chapter 120.

Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to the Contract shall be the appropriate state court in Leon County, Florida; in any such action, Florida law shall apply and the parties waive any right to jury trial.

- 32. Employees, Subcontractors, and Agents.** All Contractor employees, subcontractors, or agents performing work under the Contract shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of the Customer and shall comply with all controlling laws and regulations relevant to the services they are providing under the Contract. The State may conduct, and the Contractor shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by the Contractor. The State may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with a Customer's security or other requirements. Such approval shall not relieve the Contractor of its obligation to perform all work in compliance with the Contract. The State may reject and bar from any facility for cause any of the Contractor's employees, subcontractors, or agents.
- 33. Security and Confidentiality.** The Contractor shall comply fully with all security procedures of the United States, State of Florida and Customer in performance of the Contract. The Contractor shall not divulge to third parties any confidential information obtained by the Contractor or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Contract work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the State or Customer. The Contractor shall not be required to keep confidential information or material that is publicly available through no fault of the Contractor, material that the Contractor developed independently without relying on the State's or Customer's confidential information, or material that is otherwise obtainable under State law as a public record. To insure confidentiality, the Contractor shall take appropriate steps as to its personnel, agents, and subcontractors. The warranties of this paragraph shall survive the Contract.
- 34. Contractor Employees, Subcontractors, and Other Agents.** The Customer and the State shall take all actions necessary to ensure that Contractor's employees, subcontractors and other agents are not employees of the State of Florida. Such actions include, but are not limited to, ensuring that Contractor's employees, subcontractors, and other agents receive benefits and necessary insurance (health, workers' compensations, and unemployment) from an employer other than the State of Florida.
- 35. Insurance Requirements.** During the Contract term, the Contractor at its sole expense shall provide commercial insurance of such a type and with such terms and limits as may be reasonably associated with the Contract. Providing and maintaining adequate insurance

coverage is a material obligation of the Contractor. Upon request, the Contractor shall provide certificate of insurance. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract. All insurance policies shall be through insurers authorized or eligible to write policies in Florida.

- 36. Warranty of Authority.** Each person signing the Contract warrants that he or she is duly authorized to do so and to bind the respective party to the Contract.
- 37. Warranty of Ability to Perform.** The Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor's ability to satisfy its Contract obligations. The Contractor warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133 of the Florida Statutes, or on any similar list maintained by any other state or the federal government. The Contractor shall immediately notify the Customer in writing if its ability to perform is compromised in any manner during the term of the Contract.
- 38. Notices.** All notices required under the Contract shall be delivered by certified mail, return receipt requested, by reputable air courier service, or by personal delivery to the agency designee identified in the original solicitation, or as otherwise identified by the Customer. Notices to the Contractor shall be delivered to the person who signs the Contract. Either designated recipient may notify the other, in writing, if someone else is designated to receive notice.
- 39. Leases and Installment Purchases.** Prior approval of the Chief Financial Officer (as defined in Section 17.001, F.S.) is required for State agencies to enter into or to extend any lease or installment-purchase agreement in excess of the Category Two amount established by section 287.017 of the Florida Statutes.
- 40. Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE).** Section 946.515(2), F.S. requires the following statement to be included in the solicitation: "It is expressly understood and agreed that any articles which are the subject of, or required to carry out, the Contract shall be purchased from the corporation identified under Chapter 946 of the Florida Statutes (PRIDE) in the same manner and under the same procedures set forth in section 946.515(2) and (4) of the Florida Statutes; and for purposes of the Contract the person, firm, or other business entity carrying out the provisions of the Contract shall be deemed to be substituted for the agency insofar as dealings with such corporation are concerned." Additional information about PRIDE and the products it offers is available at <http://www.pridefl.com>.
- 41. Products Available from the Blind or Other Handicapped.** Section 413.036(3), F.S. requires the following statement to be included in the solicitation: "It is expressly understood and agreed that any articles that are the subject of, or required to carry out, this contract shall be purchased from a nonprofit agency for the Blind or for the Severely Handicapped that is qualified pursuant to Chapter 413, Florida Statutes, in the same manner and under the same procedures set forth in section 413.036(1) and (2), Florida Statutes; and for purposes of this contract the person, firm, or other business entity carrying out the provisions of this contract shall be deemed to be substituted for the State agency insofar as dealings with such qualified nonprofit agency are concerned." Additional information about the designated nonprofit agency and the products it offers is available at <http://www.respectofflorida.org>.
- 42. Modification of Terms.** The Contract contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions between the Customer and the Contractor. The Contract may only be modified or amended upon mutual written agreement of the Customer and the Contractor. No oral agreements or representations shall be valid or binding upon the Customer or the Contractor. No alteration or modification of the Contract terms, including substitution of product, shall be valid or binding against the Customer. The Contractor may not unilaterally modify the terms of the Contract by affixing additional terms to product upon delivery (e.g., attachment or inclusion of standard preprinted forms, product literature, "shrink wrap" terms accompanying or affixed to a product, whether written or electronic) or by incorporating such terms onto the Contractor's order or fiscal forms or other documents forwarded by the Contractor for payment. The Customer's acceptance of product or processing of documentation on forms furnished by the Contractor for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.
- 43. Cooperative Purchasing.** Pursuant to their own governing laws, and subject to the agreement of the Contractor, other entities may be permitted to make purchases at the terms and conditions contained herein. Non-Customer purchases are independent of the agreement between Customer and Contractor, and Customer shall not be a party to any transaction between the Contractor and any other purchaser.

State agencies wishing to make purchases from this agreement are required to follow the provisions of s. 287.042(16)(a), F.S. This statute requires the Department of Management Services to determine that the requestor's use of the contract is cost-effective and in the best interest of the State.

- 44. Waiver.** The delay or failure by the Customer to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of the Customer's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.
- 45. Annual Appropriations.** The State's performance and obligation to pay under this contract are contingent upon an annual appropriation by the Legislature.
- 46. Execution in Counterparts.** The Contract may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- 47. Severability.** If a court deems any provision of the Contract void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable and all other provisions shall remain in full force and effect.



**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
Subcontractor Utilization Report Form**

**EXHIBIT B**

**DIRECTIONS:**  
Contractors working for the Department **must complete and submit this attachment with each invoice submitted for payment.** If more rows are needed, duplicate this form as needed. Questions regarding use of this form should be directed to the Procurement Section, Florida Department of Environmental Protection, 3800 Commonwealth Boulevard, MS# 93, Tallahassee, Florida 32399-3000, Phone (850) 245-2361.

DEP Contract No.: \_\_\_\_\_ Invoice Number: \_\_\_\_\_

Task Assignment No. (if applicable): \_\_\_\_\_

Invoice Service Period: \_\_\_\_\_

Business Name & Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Business Phone Number: \_\_\_\_\_

INDICATE THE <u>ONE</u> CATEGORY THAT BEST DESCRIBES EACH ORGANIZATION LISTED																						
BUSINESS CLASSIFICATION				CERTIFIED MBE				NON-CERTIFIED MBE				NON-PROFIT ORG.										
NON-MINORITY	SMALL BUSINESS (STATE)	SMALL BUSINESS (FEDERAL)	GOVERNMENTAL AGENCY	NON-PROFIT ORGANIZATION	P.R.I.D.E.	AFRICAN AMERICAN	HISPANIC	ASIAN/HAWAIIAN	NATIVE AMERICAN	AMERICAN WOMAN	SERVICE-DISABLED VETERAN	AFRICAN AMERICAN	HISPANIC	ASIAN/HAWAIIAN	NATIVE AMERICAN	AMERICAN WOMAN	SERVICE-DISABLED VETERAN	BOARD IS 51% OR MORE MINORITY	51% OR MORE MINORITY OFFICERS	51% OR MORE MINORITY COMMUNITY SERVED	OTHER NON-PROFIT	

LIST NAMES AND ADDRESSES OF SUBCONTRACTORS UTILIZED THIS INVOICE PERIOD	LIST AMOUNT PAID TO EACH SUBCONTRACTOR THIS INVOICE PERIOD

**SUBCONTRACTOR UTILIZATION REPORT FORM CERTIFICATION:** I certify that the information provided in the table above is accurate as of the last day of the payment period identified on this form.

\_\_\_\_\_  
Contractor's Contract Manager Signature \_\_\_\_\_  
Date

**STATE OF FLORIDA**  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**Contractor Affidavit / Release of Claims Form**

**EXHIBIT C**

This affidavit must be completed and signed by the Contractor when requesting final payment for a Florida Department of Environmental Protection (Department) authorized Task Assignment. The signature of the Contractor shall be notarized as set forth below. Final payment for a Task Assignment will not be released until this form is accepted by the Department.

The undersigned certifies as follows:

1. I, \_\_\_\_\_ am the \_\_\_\_\_ of  
(name of person appearing) (title of person appearing)

\_\_\_\_\_ with the authority to  
(name of Contractor)

make this statement on behalf;

2. \_\_\_\_\_ ("the Contractor") entered into an  
(name of company or person)

Agreement with the Department to perform certain work under Task Assignment No. \_\_\_\_\_.

3. Contractor has completed the work in accordance with the aforementioned Work Assignment, including all attachments. Thereto.

4. All subcontractors have been paid in full.

5. Upon receipt by Contractor from Department of final payment under the aforementioned Work Assignment, Contractor releases Department from any and all claims of Contractor and any of its subcontractors and vendors that may arise under, or by virtue of, the Task Assignment, except those claims that may be specifically exempt and set forth under the terms of this Contract. Exemptions claimed must be attached to this affidavit and reference the Task Assignment number. Any exemptions not attached are waived.

\_\_\_\_\_  
(Signature of Authorized Contractor Representative)

----- **Notarization of Signature of Contractor (required)** -----

State of \_\_\_\_\_ County of \_\_\_\_\_

Sworn to and subscribed before me by means of  physical presence or  online notarization this

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

[Notary Seal]

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Name typed, printed or stamped

My Commission Expires: \_\_\_\_\_

Notary Public, State of \_\_\_\_\_

Commission Number (if applicable) \_\_\_\_\_

Personally known OR  Produced Identification

Type of ID: \_\_\_\_\_

**STATE OF FLORIDA**  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**Quality Assurance Requirements for Contracts**  
**Standard Field & Lab Services**

**EXHIBIT D**

**1. GENERAL REQUIREMENTS AND DEFINITIONS**

- a. As applicable to the Scope of Services (i.e., scope of work) described in the Contract, the sampling, field testing and laboratory analyses performed under this Contract shall conform to the requirements set forth in Chapter 62-160, Florida Administrative Code (F.A.C.), and “Requirements for Field and Analytical Work Performed for the Department of Environmental Protection under Contract” (DEP-QA-002/02), February 2002.
- b. Hereinafter, “DEP” or “Department” refers to the Florida Department of Environmental Protection.
- c. “Contractor” shall refer to the contractor, subcontractors, or any entity procured to conduct work under the Contract.
- d. “Sample” and “sampling” refers to samples that shall be either collected or analyzed under the terms of this Contract.

**2. REQUIREMENTS FOR LABORATORIES**

- a. All applicable laboratory testing activities shall be performed by laboratories certified by the Florida Department of Health Environmental Laboratory Certification Program (DoH ELCP) for all applicable matrix/method/analyte combinations to be measured for this Contract. Laboratory certification requirements are described in [Rule 62-160.300](#), F.A.C. Certification is not required for laboratory tests outside of the scope of DoH ELCP accreditation as determined according to Paragraph 62-160.300(5)(c), F.A.C.
- b. For samples collected from a non-potable water matrix, the certification requirement is met if the laboratory is certified for the contracted analyte(s) in at least one method utilizing an analytical technology appropriate for the Contract, as determined by the Department according to Paragraph 62-160.300(1)(c), F.A.C.
- c. If the laboratory is not certified for some or all proposed test measurements, the laboratory shall apply for certification within one month of Contract execution. The laboratory shall attempt to become fully certified for all applicable matrix/method/analyte combinations to be performed for the Contract by maintaining active coordination with the DoH ELCP throughout the application process. Regardless of when the laboratory receives certification, the laboratory shall implement all applicable standards of the National Environmental Laboratory Accreditation Conference ([NELAC 2003 Quality Systems standards, as adopted](#)) upon Contract execution.
- d. Laboratories shall maintain certification as specified in item 2.a above during the life of the Contract. Should certification for an analyte or test method be lost, all affected tests shall be immediately sub-contracted to a laboratory with current DoH ELCP certification in the appropriate matrix/method/analyte combination(s). The Contractor shall notify the DEP Contract manager in writing before any change to a sub-contracted laboratory is made.
- e. The DoH ELCP certificate number (certified laboratory identification number) for each contracted (and sub-contracted) laboratory shall be listed in the required Contract Quality Assurance (QA) Plan (see Section 6 below) in association with the analytical tests to be performed by each laboratory analyzing samples for the Contract.
- f. Each certified laboratory analyzing contracted samples shall ensure that an acceptable demonstration of capability (DOC) is performed as described in the [2003 NELAC Quality Systems standards](#) (NELAC 2003, Section 5.5.4.2.2 and Appendix C). In addition, each certified laboratory that performs any of the proposed matrix/method/analyte combination(s) approved for

the Contract shall have the requisite DOC documentation and supporting laboratory records on file for the applicable combinations. The DOCs performed shall meet the requirements for precision, accuracy, method detection limit (MDL) and/or practical quantitation limit (PQL), as specified in each applicable laboratory test method, Standard Operating Procedure (SOP) or Quality Manual, or as listed in the Contract QA Plan (Section 6, below). Alternative limits for detection and quantitation other than MDL and PQL shall be determined, if applicable to the laboratory. DOCs performed for the contracted analytes shall include any modifications to the test method or SOP that have been approved by DEP according to Subsection [62-160.330\(3\)](#), F.A.C., if applicable. If requested by the Department, documentation that supports the DOC for a specified analyte and test method shall be made available for review.

- g. The contracted (and/or subcontracted) laboratory shall report PQLs and MDLs or other specified limits of detection and quantitation with the results of sample analyses. MDLs and/or PQLs shall only be required for test methods that are technically amenable to the determination of MDLs and/or PQLs. For those test methods where the determination of MDLs and/or PQLs are not technically feasible, the laboratory shall report a value or increment representing the lower limit of the working range of the test method, however determined by the laboratory. The laboratory shall indicate whether the reported limit represents a limit of detection or quantitation. In all cases, limits of detection and quantitation other than MDLs and PQLs shall be explicitly defined and evaluated by the laboratory. All limits shall be as listed in the applicable laboratory test method, SOP or Quality Manual, or as listed in the Contract QA Plan (Section 6, below). The reported MDLs and PQLs (or other limits per above) shall meet the analytical sensitivity and quantitation objectives for the Contract.
- h. Additional laboratory quality control expectations:
  - (i) The selected laboratory test methods listed in the QA Plan shall provide results that meet applicable Contract data quality objectives.
  - (ii) All laboratory testing procedures shall follow the analytical methods as approved in the Contract QA Plan (see Section 6).
  - (iii) The laboratory shall adhere to the quality control requirements specified in the laboratory test methods and this Exhibit.
  - (iv) The laboratory shall calculate all sample results according to the procedures specified in the analytical test methods approved in the Contract QA Plan.

### 3. **FIELD ACTIVITIES**

- a. All sample collection and field testing activities shall be performed in accordance with the Department's "Standard Operating Procedures for Field Activities" ([DEP-SOP-001/01](#), January, 2018). The specific standard operating procedures (SOPs) to be used for this Contract shall be cited in the Contract QA Plan (see Section 6).
- b. Field-Generated Quality Control (QC) Blanks are defined in DEP SOP [FQ 1000](#) (subparts FQ 1211 – FQ 1214) and shall be composed and analyzed for sample collection activities associated with this Contract according to the requirements of part FQ 1230 (sections 1. – 2.3.1), DEP SOP [FS 2100](#) (Part FS 2110, sec. 2.1.1.2) and/or DEP SOP FS 2400 (Part FS 2430, sec. 2.1.1.2), as applicable to the analytes and matrices to be collected using the sampling equipment specified in the Contract QA Plan (see Section 6 below).
  - (i) If an analyte detected in the sample is also found in any field-generated QC blank that is associated with the sample, the Contractor shall investigate and attempt to determine the cause of the QC blank contamination. If any contracted sample results are qualified as in (ii) below, the outcome of this investigation shall be reported to the DEP Contract manager and shall include a discussion of the corrective measures taken to minimize future occurrences of QC blank contamination associated with the collection of samples for this Contract.
  - (ii) If an analyte detected in the sample is also found in any field-generated QC blank that is associated with the sample, the analytical result reported for the affected sample shall be

qualified as an estimated value, unless the analyte concentration in the blank is less than or equal to 10% of the reported sample concentration. The “G” data qualifier code shall be reported with the sample result for any blank concentration exceeding the above “10%” criterion for the affected analyte (see Table 1, Chapter 62-160, F.A.C.).

4. **REPORTING, DOCUMENTATION AND RECORDS RETENTION**

- a. Reporting, Documentation and Records Retention shall be in compliance with the provisions specified in the DEP Contract.
- b. Deliverable requirements for Reporting are further specified in DEP Contract Scope of Services.
- c. All laboratory and field records described or listed in Rules [62-160.240](#) and [62-160.340](#), F.A.C., shall be retained for a minimum of five years after the generation (or completion) of the records applicable to the Contract. Longer retention times as specified in the Contract shall supersede.
- d. All field and laboratory data and supporting information shall be reported for this Contract according to applicable requirements in Subsections 62-160.340(3) – (8), F.A.C.
- e. Any other documentation and reports associated with work performed for this Contract shall be likewise retained and shall include relevant information for the procedures described in Sections 2 and 3, above.
- f. Any documentation or reports specifically identified in this Contract as deliverable work products shall be retained as in 4.a., above.
- g. All field and laboratory records that are associated with work performed under this Contract shall be organized so that any information can be quickly and easily retrieved for inspection, copying or distribution.
- h. The Department reserves the right to request some or all of the laboratory or field information in an electronic format specified by the Department, as specified in the Contract and/or Scope of Services, and/or as described in the approved Contract QA Plan (see Section 6). Also, see Subsection k., below.
- i. Any certified laboratory reports issued for contracted sample analyses using certified methods shall be generated in accordance with NELAC Quality Systems requirements ([NELAC 2003](#), section 5.5.10).
- j. Upon request by the Department’s Contract manager or as required by the Contract, copies of the original laboratory reports shall be submitted to the Department Contract manager.
- k. In addition to any reports of sample results provided per Contract deliverable requirements and Subsections b., e., f. and g., above, the Contractor shall submit any of the laboratory information and/or records associated with the contracted analyses as described in this section (Section 4) upon request by DEP, including any of the following:
  - ▶ Laboratory sample identification (ID) and associated Field ID
  - ▶ Analytical/test method
  - ▶ Parameter/analyte name
  - ▶ Analytical result (including dilution factor)
  - ▶ Result unit
  - ▶ Applicable DEP Data Qualifier Codes per Table 1 of Rule [62-160.700](#), F.A.C.
  - ▶ Result comment(s) to include corrective/preventive actions taken for any failed QC measure (e.g., QC sample result, calibration failure) or other problem related to the analysis of the samples
  - ▶ Date and time of sample preparation (if applicable)
  - ▶ Date and time of sample analysis
  - ▶ Results of laboratory verification of field preservation of received samples
  - ▶ Sample matrix
  - ▶ DoH ELCP certification number for each laboratory (must be associated with the test results generated by each laboratory analyzing samples under this Contract)
  - ▶ MDL, Limit of Detection (LOD) or other defined limit of detection

- ▶ PQL, Limit of Quantitation (LOQ) or other defined limit of quantification
  - ▶ Field and laboratory QC blank results:
    - Laboratory QC blank analysis results as required by the method and the NELAC Quality Systems standards (e.g., method blank)
    - Results for trip blanks, field blanks and equipment blanks, as applicable to the project and as specified in the QA Plan (see Section 6)
  - ▶ Results for field duplicates (or replicates)
  - ▶ Results for other QC and calibration verification results, as applicable to the specific test methods used for the contracted analyses:
    - Results of sample matrix spikes, laboratory duplicates or matrix spike duplicates
    - Results of surrogate spike analyses
    - Results of laboratory control samples (LCS)
    - Results of calibration verifications
    - Acceptance criteria used to evaluate each reported quality control measure
- l. Unequivocal documentation links between each reported laboratory quality control measure (e.g., QC blanks, matrix spikes, LCS, duplicates, calibration verification) and the associated sample result(s) shall be maintained for all contracted analyses.
- m. In addition to any field information provided per Contract deliverable requirements, and Subsections b., e., f. and g., above, the Contractor shall submit any of the field information and/or records associated with the contracted samples as described in this section (Section 4) upon request by DEP, including any of the following:
- ▶ Site name and location information
  - ▶ Field ID for each sample container and the associated analytes (test methods) for which the container was collected
  - ▶ Date and time of sample collection
  - ▶ Sample collection depth, if applicable
  - ▶ Sample collection method identified by the DEP SOP number, where applicable
  - ▶ If performed, indicate samples that were filtered
  - ▶ Field test measurement results:
    - DEP SOP number (FT-series), where applicable
    - Parameter name
    - Result
    - Result unit
    - Applicable Data Qualifier Codes per Table 1 of Rule 62-160.700, F.A.C.
  - ▶ Narrative comments providing explanations, descriptions and/or discussions of: field conditions impacting QC for sample collections, unacceptable field measurements, field-testing meter calibration verification failures, or other problems related to the sampling event, and corrective/preventive actions taken for the items noted (e.g., for blank contamination or meter calibration failure).
- n. The Department reserves the right to request some or all of the laboratory or field information in a format as specified in the Contract and/or Scope of Services, and/or as described in the approved QA Plan (see Section 6).

## 5. AUDITS

- a. TECHNICAL AUDITS BY THE DEPARTMENT – Pursuant to Rule 62-160.650, F.A.C., the Department may conduct audits of field and laboratory activities. In addition to allowing Department representatives to conduct onsite audits of contracted work in the field or at Contractor facilities, upon request by the Department, field and laboratory records pertinent to the contracted research as described per Section 4, above, shall be provided by the Contractor. If an audit by the Department results in a determination that the reported data are not usable for the

purpose(s) of the Contract, do not meet the data quality objectives specified by the Contract, do not meet other applicable Department criteria described in the Contract, its exhibits, the QA Plan (see Section 6) or these QA Requirements, do not meet applicable data validation criteria outlined in Rule 62-160.670, F.A.C., or are not otherwise suitable for the intended use of the data (however applicable), the DEP Contract manager shall pursue remedies available to the Department pursuant to the terms of the Contract.

b. **PLANNING REVIEW TECHNICAL AUDITS –**

(i) **Initial:** The Contractor shall review the Contract QA Plan (see Section 6) relative to the completed field and laboratory activities to determine if data quality objectives are being met, identify any improvements to be made to project activities, and refine the sampling and/or analytical design or schedule, if applicable. A summary of the review, including any corrective action plans or amendments to the Contract QA Plan, shall be sent to the DEP Contract manager, and a copy of all submitted documents shall be maintained with the permanent project records.

(ii) **Ongoing:** Planning reviews as described in subsection (i) above shall occur after the initial planning review audit for the remainder of the Contract, as specified in the Scope of Services.

(iii) **Statements of Usability:** Initial and ongoing Planning Review Technical Audits described in (i) and (ii) above shall include statements about data usability relative to the Contract data quality objectives and any data quality indicators that may be specified in the Contract, its exhibits, the QA Plan (see Section 6), or these QA Requirements. This usability determination shall take into account all applicable data quality acceptance and usability criteria for quality control and environmental sample results for the Contract, as specified in the procedures, test methods, QA Plan, Quality Manual(s), other Contract exhibits, or these QA Requirements.

(iv) Initial and ongoing reviews and summaries shall be completed within timeframes specified in the Contract Scope of Services.

c. **QUALITY SYSTEMS AUDITS –** The Contractor shall ensure that any required laboratory and field quality system audits are performed according to the respective Quality Manuals or other relevant internal quality assurance documents for each entity performing work under the Contract. The results of these audits shall be documented in the Contractor's records. Copies of the above audit reports or results shall be provided to the DEP Contract manager upon request. Copies of audit records for internal audits conducted per DEP SOP [FA 1000](#) (subpart FA 4200) or NELAC Quality Systems requirements ([NELAC 2003](#), section 5.4.13) shall be similarly provided upon request.

6. **QUALITY ASSURANCE PLAN**

a. The Contractor shall submit a Quality Assurance (QA) Plan for the Contract to the DEP Contract manager, if required and as specified in the Contract Scope of Services. The Standard QA Plan Template may be used to capture all required elements in the Plan.

b. The DEP Contract number shall appear on the title page of the submitted QA Plan. The Department shall review and either approve the QA Plan or provide comments to the Contractor as to why the QA Plan is not approved, within timeframes specified in the Contract Scope of Services. If further revisions are needed, the Contractor shall respond within timeframes specified in the Contract Scope of Services. The Department shall respond to all revisions to the QA Plan within timeframes specified in the Contract Scope of Services.

c. Work may not begin for specific Contract tasks until approval (or conditional approval) has been received by the Contractor from the DEP Contract manager. Sampling and analysis for the Contract may not begin until the QA Plan has been approved (or conditionally approved).

d. Once approved, the Contractor(s) shall follow the procedures and methods described in the approved QA Plan and any other relevant quality assurance documents, including, but not limited to:

- ▶ Ensuring that all stated quality control measures are collected, analyzed and evaluated for acceptability;
- ▶ Using only the protocols approved in the QA Plan; and
- ▶ Using only the equipment approved in the QA Plan.

If any significant changes occur in sampling project design, project analyte list, procedures or test methods, equipment, or key personnel, the Contractor shall submit appropriate revisions of the QA Plan to the DEP Contract manager for review, within timeframes specified in the Contract Scope of Services. The proposed revisions may not be implemented until they have been approved (or conditionally approved) by the DEP Contract manager, as documented through written or electronic correspondence.



