STATE OF ALABAMA)
)
MONTGOMERY COUNTY)

CONTRACTUAL AGREEMENT BETWEEN
_____
AND THE ALABAMA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT

This Agreement is entered into between _____ (Contractor) and the Alabama Department of Environmental Management (Department) pursuant to the Tronox Environmental Settlement Agreement~~an appropriation by the U.S. Environmental Protection Agency~~. This Agreement will provide for emergency response actions, assessment and remediation of contamination from underground storage tank systems.

The parties hereto agree as follows:

1. Scope of Services

The Contractor will provide services as set out in the Scope of Services, which is included with this Agreement as Attachments A and B and which are incorporated as if fully set out herein.

2. Payment

(a) The Department agrees to reimburse the Contractor an amount not to exceed $400,000 for the services performed under this Agreement. Unless otherwise specified in the workplan, mileage, travel and per diem costs will be reimbursed in accordance with state law.

(b) The Contractor shall submit 2 copies of the payment requests utilizing forms provided in Attachment C not more than once per month for each site to the Department. The final invoice shall be submitted within ninety (90) days of expiration of this Agreement. The Contractor shall submit payment requests to the Alabama Department of Environmental Management, Groundwater Branch, Land Division, Post Office Box 301463, Montgomery, Alabama 36130-1463. The payment requests shall be submitted by the fifteenth day of each month or another Department approved day of the month in a format acceptable to the Department. Requests for payment shall be made on the Federal Leaking Underground Storage Tank Payment Request form shown in Attachment C. The Department shall have the authority to approve the invoices, and no payments shall be made without the approval of the Department. The Department shall use its best efforts to approve invoices within thirty (30) days of submittal. When discrepancies occur regarding portions of an invoiced amount, the Department shall pay the undisputed amount in accordance with this part. The disputed item(s) will be paid within thirty (30) days of when the discrepancies are resolved. When invoices are submitted to the Department which are subject to approval by the Board of Adjustment, payment will be made according to the Board of Adjustment's procedures.

(c) In the case of non-governmental agencies, prior to the purchase of any items or the execution of any printing contracts under this agreement with a value less than $1,000.00, one quote or attempt for a quote of outside costs, including but not limited to copying costs and freight terms, must be obtained. For items with a value from $1,000.00 to $3,000.00, two such quotes or attempts for quotes must be obtained. For items with a value of $3,000.00 or greater, three such quotes or attempts for quotes must be obtained. The purchase of any items or the execution of any contract shall comply with the Alabama Bid Laws Sections 41-16-20 et. Seq. of the Code of Alabama (1975).

(d) No payment shall be made except for work authorized by a Work Order. No minimal payment is guaranteed by the Department. Payment for work specified in Work Orders shall be based on the terms, conditions, and rates established in Attachment F and paragraph (a) of this Section 2. Documentation of labor and travel costs shall be in accordance with the formats included in Attachment F or equivalent formats approved by the Department. Attachment F is an integral and enforceable part of this Contract. In preparing budget proposals, the Contractor shall reference the rates and charges established in Attachment F.

(e) The sum of all payments to the Contractor by the Department for services performed under the terms of this Contract shall not exceed $XXX,XXX. The maximum allowable hourly rates by labor category as shown on Attachment F are hereby established for remuneration purposes of this contract. All other charges will be billed on actual expenses not to exceed the applicable rates as outlined in Attachment F. Administrative pass through charges shall be limited to ten (10) percent of each subcontractor charge with the exception of corrective action system installation and corrective action system purchases which shall be limited to five (5) per cent of each subcontractor charge.

(f) Provisions on termination shall apply as set out in Sections 4 and 5 of this Contract.

3. Term of Agreement

All work performed under this Agreement shall begin on the date on which this Agreement is executed, and shall terminate on DATE. This Agreement is conditioned upon the receipt of sufficient funds from the Alabama Legislature and/or the Tronox Environmental Settlement Agreement~~U.S. Environmental Protection Agency~~ and is subject to termination in the event of proration of the fund from which payment under this Agreement is to be made. If the term of this Agreement extends beyond one fiscal year, this Agreement is subject to termination in the event that funds are not appropriated for the continued payment of the contract in subsequent fiscal years. This Agreement may be amended by the mutual written agreement of both parties.

4. Termination of Agreement for Cause

If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligation under this Agreement, or if the Contractor shall violate any of the covenants, agreements or stipulations of this Agreement, the Department shall thereupon have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof at least 30 days before the effective date of such termination. In that event, any finished or unfinished studies, reports or other work by the Contractor shall, at the option of the Department, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed under this Agreement.

5. Termination for Convenience of the Department

The Department may terminate this Agreement at any time by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least 30 days before the effective date of such termination and under the same conditions as herein set forth for the Department, the Contractor may cancel this Agreement. In the event of cancellation, all finished or unfinished studies, reports or other work by the Contractor shall, at the option of the Department, become its property. If the Agreement is terminated by the Department as provided herein, the Contractor shall be paid for all work satisfactorily completed prior to termination.

6. Changes

The Department may, from time to time, require changes in the scope of services of the Contractor to be performed hereunder. Such changes, including any increases or decreases in the amount of the Contractor's compensation, which are mutually agreed upon by and between the Department and the contractor shall be incorporated in written amendments to this Agreement.

7. Title VI and Equal Employment Opportunity

The Contractor will comply with Title VI of the Civil Rights Act of 1964 (88-352) and all requirements ~~of the U. S. Environmental Protection Agency (hereinafter called "EPA")~~ issued pursuant to that title, to the end that in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity funded by this contract.

There shall be no discrimination against any employee who is employed in the work covered by this Agreement, or against any applicant for such employment, because of race, color, religion, sex, national origin, age or disability covered by the Americans with Disabilities Act. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor shall insert a similar provision in all subcontracts for services covered by this Agreement.

8. Interest of Members of the Department and Others

No officer, member or employee of the Department and no members of the Environmental Management Commission, and no other public official of the governing body of the locality or localities in which the project is situated or being carried out who exercise any functions or responsibilities in the review or approval of the undertaking or carrying out of this project, shall participate in any decision relating to this Agreement which affects his personal interest or have any personal or pecuniary interest, direct or indirect, in this agreement or the proceeds thereof.

9. Assignability

The Contractor shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the Department.

10. Findings Confidential

Any reports, information, data, etc., given to or prepared or assembled by the Contractor under this Agreement which the Department requests to be kept as confidential shall not be made available to any individual or organization by the Contractor without the prior written approval of the Department, unless such confidentiality would be contrary to the law of the State of Alabama or the United States.

11. Acknowledgment

Videos, films, computer disks, printed information or other materials produced for dissemination under this agreement must include the following acknowledgment:

> "This project was funded or partially funded by the Alabama Department of Environmental Management."

12. Reproducible Materials

Any printed information, photographs or art works delivered to the Department under this agreement shall be camera ready and/or computer ready as appropriate. The master tape of any video or audio productions will be delivered to the Department in an immediately reproducible form. Any

computer program generated under this agreement will be delivered to the Department in an original and immediately reproducible form.

13. Officials Not to Benefit

No member of or delegate to the Congress of the United States of America, and no resident commissioner, shall be admitted to any share or part hereof or to any benefit to arise herefrom.

14. Copyright

No reports, maps, or other documents or products produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the contractor.

15. Audits and Access to Records

The Contractor agrees to abide by the requirements of the federal Single Audit Act and OMB's Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (commonly called Uniform Guidance). When financial statements are prepared and an audit is performed as a result of OMB Uniform Guidance requirements the Contractor shall provide the Department with a copy of its audit report covering the period of this contract within thirty (30) days of receipt by the Contractor of the auditor's report.

If OMB Uniform Guidance is applicable the Contractor agrees that the Comptroller General of the United States or any of his/her duly authorized representatives, the Secretary of Commerce or any of his/her duly authorized representatives, the Director of ADEM or any of his/her duly authorized representatives, and the Chief Examiner of the Department of Examiners of Public Accounts and any of his/her duly authorized representatives shall, until the expiration of three (3) years from the date of submission of the final financial report, have access to and the right to audit, examine, and make excerpts or transcripts from any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this Agreement. The Contractor agrees to provide access to any or all documents, papers, records and directly pertinent books of the Contractor involving transaction related to this Agreement upon written request from the Director of ADEM.

16. Taxes

The Contractor is responsible for reporting and making payment of any applicable federal and state taxes which may be due as a result of payments received pursuant to this Agreement.

17. Contractor Not Entitled to Merit System Benefits

In the case of Non-State Agencies under no circumstances shall the Contractor or any of its employees be entitled to receive the benefits granted to State employees under the Merit System Act by reason of this Agreement.

18. Not to Constitute a Debt of the State/Settlement of Claims

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this contract shall contravene any statute or Constitutional provision or amendment, either now in effect or which may, during the course of this contract, be enacted, then the conflicting provision in the contract shall be deemed null and void. The Contractor's sole remedy for the settlement of any and all disputes arising under the terms of this agreement shall be limited to the filing of a claim with the Board of Adjustment for the State of Alabama.

19. Alternative Dispute Resolution.

In the event of any dispute between the parties, senior officials shall meet and engage in a good faith attempt to resolve the dispute. Should that effort fail and the dispute involves the payment of money, a party's sole remedy is the filing of a claim with the Board of Adjustments of the State of Alabama.
For any and all other disputes arising under the terms of this contract which are not resolved by negotiation, the parties agree to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation. Such dispute resolution shall occur in Montgomery, Alabama, utilizing where appropriate, mediators selected from the roster of mediators maintained by the Center for Dispute Resolution of the Alabama State Bar.

20. Requisite Reviews and Approvals

Contractor acknowledges and understands that this contract is not effective until it has received all requisite state government approvals and Contractor shall not begin performing work under this contract until notified to do so by the Alabama Department of Environmental Management. Contractor is entitled to no compensation for work performed prior to the effective date of this contract.

21. Work Orders

All work performed by the Contractor under this Contract must be authorized by a Work Order (Attachment D). A Work Order is a document issued by the Department authorizing the Contractor to perform tasks described in Attachment A and B or requiring the Contractor to submit documents or plans. Each Work Order shall become an integral and enforceable part of this Contract once executed by the Department. Each Work Order shall specify the tasks that the Contractor shall perform, and shall, where required, provide for submittal of a scope of work and cost proposal for identified tasks. Where a Work Order requests the Contractor to prepare a cost proposal, the cost proposal shall be presented on a signed ADEM Federal Leaking Underground Storage Tank Trust Fund Cost Proposal (Attachment E), which shall become an integral and enforceable part of this Contract once approved by the Department. The Department may require modification to the cost proposal prior to approval.

Commented [CAT1]: Is there a form that can be referenced? If no, need to add procedural step.

The Contractor must notify the Department when expended costs have reached 80 percent of the total projected cost approved by the Department. At this time the Contractor shall also indicate to the Department if the total projected cost is expected to exceed the amount approved by the Department, as well as the percent completion of the project. If the amount is expected to exceed the approved amount, the Department may require submittal of an amended cost proposal for approval and justification for the projected exceedance.

22. Work Order Amendments

All changes to the scope of work or budget established in a Work Order shall be by an Amendment, as described in this part. A Work Order Amendment may be initiated by the Department or by the Contractor. Under no circumstances shall the Contractor proceed with work beyond the work authorized by a Work Order unless an Amendment has been approved.

a. Department Initiated Amendments
If the Department determines there is a need for an Amendment to a Work Order, the Department shall notify the Contractor in writing and provide the Contractor with a description of the proposed Amendment, and why an Amendment is required. This description shall specify the portions of the work to be performed under the Work Order that would be affected by the Amendment.

Upon receipt of notice of an Amendment from the Department, the Contractor may be required to cease work on those tasks affected by the change as directed in the notice. Within ten (10) business days of receipt of the notice, the Contractor shall submit a proposal for the cost of the additional or modified work required by the proposed Amendment to the Department.

After receipt of the estimate from the Contractor, the Department shall issue an amended Work Order, decline to issue the Amendment to the Work Order and notify the Contractor that the original Work Order shall be in force, or direct the Contractor to discontinue all work on the Work Order. In the event that the Department elects to discontinue the work, the Contractor shall be reimbursed for actual expenses incurred for the work accomplished under the Work Order and the reasonable costs of demobilization. Upon receipt of the notice to discontinue work, work should be halted immediately and payment for expenses is limited to work accomplished and expenses incurred as of the date of receipt of notice.

b. Contractor Initiated Amendments

If work conditions deviate significantly from predicted conditions, the Contractor may propose that the Work Order be amended. The Contractor shall contact the Department in writing and identify the unexpected work conditions and the proposed change in the Work Order, including a cost proposal. The Contractor shall include documentation that supports the need for the Amendment. Only Amendments based on materially different conditions which could not have been predicted from available material and data shall be considered by the Department. Amendments for other reasons outside the Contractor's control may be considered by the Department.

Within ten (10) business days of receipt of a proposed Amendment supported by adequate documentation from the Contractor, the Department shall respond to the Contractor in writing. In this response, the Department shall notify the Contractor of the Department's decision to approve, deny, or modify the proposed Amendment. If the Department has decided to approve the proposed Amendment, an amended Work Order shall be issued incorporating the Contractor's proposed changes and budget. If the Department has decided to deny the proposed Amendment, the Department shall direct the Contractor to perform under the terms of the Work Order as originally issued.

If the Department has decided to modify the proposed Amendment, the Department shall provide the Contractor with the terms of the proposed modification. Within ten (10) business days of receipt of this modification, the Contractor shall accept or reject the modified proposed Amendment. If the Contractor accepts the proposed modified Amendment, the Contractor shall give the Department notice of acceptance and the Department shall issue an amended Work Order as modified. If the contractor does not accept the proposed modified Amendment, the Contractor shall give the Department notice of the rejection. In the event the Contractor does not accept the modification, the Department may: (1) require the Contractor to proceed with work under the terms of the original Work Order; or (2) direct the Contractor to discontinue all work on the Work Order. In the event that the Department elects to discontinue the work, the Contractor shall be reimbursed for actual expenses incurred for the work accomplished under the Work Order and the reasonable costs of demobilization. Upon receipt of the notice to discontinue work, work should be halted immediately and payment for expenses is limited to work accomplished and expenses incurred as of the date of receipt of notice.

23. Standard of Work

All work performed pursuant to this Contract must meet the satisfaction of the Department. The Department shall not approve, and no payment shall be provided for, work that does not meet generally accepted professional standards. The Contractor shall remain in compliance with all applicable certification and licensure requirements and all work shall be performed in accordance with all applicable federal, state or local laws, ordinances, rules and regulations, the terms of the Work Order and this Contract. All work performed under this Contract shall be done in accordance with a site specific Safety Plan.

All work performed under this Contract shall be performed in accordance with an acceptable Quality Assurance Plan. The Contractor is required to submit a ~~UST specific~~ Quality Assurance Program Plan (QAPP) to the Department within sixty (60) days of the effective date of this

Commented [CAT2]: Removed since UST reference.

agreement. The Contractor shall modify the QAPP as necessary to meet the Department's requirements for an acceptable QAPP. The Contractor's accepted QAPP will be incorporated as if fully set out herein. Site Specific Study Plans will be required for each site that the contractor collects data on. The development of these plans will be directed through site specific work orders.

24. Stop Work Orders

a. Non-emergency Conditions

If the Department determines that, for any reason, work authorized under a Work Order should stop, temporarily or permanently, the Department may issue a written Stop Work Order to the Contractor. The Stop Work Order shall specify the reason for the stoppage. The Contractor shall immediately comply with the terms of the Stop Work Order which may include steps to leave the site in a safe condition. The Contractor may request the Department to issue a Stop Work Order for the purpose of initiating a Work Order Amendment.

b. Emergency Conditions

The Department may issue a Stop Work Order if the Department determines that conditions at the site may create a danger to public health and welfare or the environment. A Stop Work Order issued by the Department may be oral, provided that a written explanation of the Stop Work Order is provided within the next working day. The Contractor shall immediately comply with the terms of the Stop Work Order issued by the Department which may include steps to leave the site in a safe condition. The Contractor may request the Department to issue a Stop Work Order if the Contractor determines that conditions at the site may create a danger to public health or the environment.

c. Costs; Schedules

Costs incurred by the Contractor as a result of the issuance of a Stop Work Order shall be paid by the Department in accordance with Attachment F, which is incorporated as if fully set out herein, unless the Stop Work Order resulted from violations of the Safety Plan, the Quality Assurance Plan, or from the Contractor's non-compliance with the terms of this Contract. If the Stop Work Order was issued because of violations of the Safety Plan, the Quality Assurance Plan, or because the Contractor was otherwise not in compliance with this Contract or the Work Order, no payment for the cost incurred as the result of the issuance of the Stop Work Order shall be made. Schedules established by Work Orders shall be extended by the period of time a Stop Work Order is in effect including a reasonable time for re-mobilization.

25. Responsibility of the Contractor

a. 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. For environmental measurements or data generation, the Contractor shall comply with the Quality Assurance Plan, site specific Quality Assurance Project Plans, and other applicable EPA and ADEM guidelines. The Contractor shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in the Contractor's designs, drawings, specifications, reports and other services as consistent with the obligations under this Contract.

b. The Contractor shall perform the professional services necessary to accomplish the work specified in the Contract in accordance with this Contract and applicable Department requirements in effect on the date of execution of this Contract.

c. The Department's approval of drawings, designs, specifications, reports and incidental work or materials furnished hereunder shall not in any way relieve the Contractor of responsibility for the technical adequacy of the Contractor's work. Neither the Department's review, approval, acceptance nor payment for any of the services shall be construed as a waiver of any rights under this Contract or of any cause for action arising out of the performance of this Contract.

d. The Contractor shall be, and shall remain, liable in accordance with applicable law for all damages to the Department caused by the Contractor's negligent performance of any of the services

furnished under this Contract. The Contractor shall not be responsible for any time delays caused by circumstances beyond the Contractor's control.

e. The Contractor's obligations under this clause are in addition to the Contractor's other expressed or implied assurances under this Contract or State law and in no way diminish any other rights that the Department may have against the Contractor for faulty materials, equipment or work.

26. Conflicts Check

Within ten (10) business days, or another timeframe specified in writing by the Department, of the issuance of a Work Order for a new site, the Contractor shall notify the Department regarding any actual or potential conflicts of interest posed by the Contract. The Contractor shall include a description of the actual or potential conflict in this notice. If there is no conflict of interest, the notice shall include the following certification signed by the Contractor:

> To the best of (name of contractor)'s knowledge and belief, no conflict of interest would be created by the assignment of this site to this firm. To the best of this firm's knowledge, no relationship exists between this firm, its parent companies, affiliates, subcontractors and subsidiaries, and any potentially responsible parties involved with this site, except (disclose any relationship that the Contractor has that does not rise to the level of a conflict of interest).

In the event that an unanticipated conflict is discovered after the signing of this Contract, the Contractor shall immediately notify the Department, and cease work on the site until the conflict is resolved. The cost of demobilization because of a conflict shall not be paid by the Department. The Contractor shall not conduct work for any other party on the site unless specifically authorized to do so by the Department.

27. Contractor/Subcontractor Responsibilities

The Contractor is responsible for all work assigned to the Contractor under this Contract whether or not the Contractor produces it. The Contractor certifies that subcontracting will comply with 40 CFR Part 31. In the event that an audit discovers that pricing methods used by subcontractors do not meet this standard, the Contractor shall indemnify the Department for the costs set aside by the Department as a result of such a discovery. Further, the Department will consider the Contractor to be the sole point of contact with regard to matters governed by this Contract, including payment of any and all charges resulting from this Contract. If any part of the work is to be subcontracted, the Contractor must provide complete description of work subcontracted and descriptive information about the subcontractor's organization and abilities when submitting a work plan. The Department reserves the right to approve all subcontractors before use for work under this Contract. The Contractor shall perform a cost or price analysis before selecting subcontractors. This analysis should consider factors similar to those shown on Attachment E. The Contractor is responsible for ensuring that the subcontractor complies with all provisions of this Contract. The Contractor shall not utilize the services of any firms which have been suspended under 40 CFR Part 32. The Contractor shall take affirmative steps to ensure that small, minority and women's businesses are used when possible as sources of supplies, construction and services, as specified in 40 CFR Part 33.240. The Contractor shall report on compliance with 40 CFR Part 33.240 quarterly by submitting to the Department the information required in Attachment G, which is made an enforceable part of this Contract.

The Contractor shall pay all subcontractors for provided services prior to requesting payment from the Department. Documentation of payment, to include copies of actual invoices, shall be submitted with the request for payment. The Contractor shall cooperate and coordinate with other Department contractors, and shall ensure that all subcontractors coordinate and cooperate with other Department contractors.

28. Continuity of Services

In the event this Contract is canceled or expires, the Contractor shall provide phase-in phase-out training if requested to do so by the Department. The phase-in phase-out services shall be provided to enable the Department or another contractor to continue, extend, or expand the work to be performed by the Contractor. The Contractor shall provide the phase-in phase-out training requested by the Department, including conducting a training program and establishing dates for transfer of responsibility to new personnel. During the phase-in phase-out period, the Contractor shall provide sufficient experienced personnel to allow the work governed by this Contract to proceed without a loss of efficiency. The Contractor shall also provide the Department with copies of computer models, data tapes and other records developed under this Contract, and ensure that training is provided on the use of these materials. The Contractor shall be reimbursed its phase-in phase-out costs at the rates specified in Attachment F of this Contract.

29. Site Stabilization

If the Contractor becomes aware that a site assigned to the Contractor requires immediate corrective action to stabilize the site to prevent further damage to the environment or to remove a threat to public health or welfare, the Contractor shall immediately notify the Department of the situation. If authorized by the Department, the Contractor shall respond to the situation under the terms and conditions established in Attachment B. Attachment B is made an integral part of this Contract.

30. Site Access

The Contractor shall be responsible for checking property ownership for the purpose of obtaining access to property needed to accomplish work assigned under this Contract. However, if after making reasonable efforts, such as several verbal and written contacts and providing the property owner with a "right of entry" statement, the Contractor cannot obtain access to the site, the Contractor shall notify the Department that there is an access problem and the Department shall use its best efforts to obtain access to the site. Reasonable efforts do not include payment of fees solely for the purpose of gaining access. Site access agreements shall be submitted to the Department upon execution.

31. Meetings

The Contractor shall meet with the Department to discuss matters relevant to this Contract upon request of the Department. The Department shall meet with the Contractor upon the Contractor's request to discuss matters relevant to this Contract. Such meetings shall take place at the Department's office in Montgomery, Alabama or at a site under this Contract.

32. Monthly Progress Reports

The Contractor, by the 7th day following the end of a given month, shall submit progress reports for each assigned site to the Department containing the information and in a format mutually agreeable to Contractor and Department in accordance with Attachment A.

33. Permits and Licenses

The Contractor shall obtain and maintain all site specific licenses, permits, authorizations, or any other documents required by Federal, State, or local governments or other authorities, that are needed for the work that the Contractor shall perform pursuant to this Contract. The Department will provide reasonable assistance to the Contractor in obtaining such permits, licenses, authorization or other documents.

34. Health and Safety

The Contractor shall ensure that all personnel of the Contractor and subcontractors working under this Contract have received health and safety training appropriate to the tasks the personnel perform under this Contract. The Contractor shall be solely responsible for the health and safety of its employees in connection with the work performed under this Contract. The Contractor shall ensure that subcontractors employed to perform work under this Contract are solely responsible for the health and safety of their employees.

35. Community Relations

The Contractor shall upon request by the Department conduct a community relations program throughout the time this Contract is in effect. Pursuant to a Work Order the Contractor shall assist the Department in making presentations on the progress of work, and shall be available to answer questions from the public regarding the progress of a site, if requested to do so by the Department.

36. Insurance

The Contractor shall maintain the following liability insurance coverage.

TYPE OF POLICY	LIMITS OF LIABILITY	DESCRIPTION
Worker's Compensation	Statutory	All states
Employer's Liability	$500,000	
Automobile Liability	$1,000,000 combined single limit (bodily injury and property damages)	All owned, non-owned, and hired vehicles
General Liability	$1,000,000 combined single limit	Broad Form Comprehensive General Liability
Umbrella Excess Liability	$3,000,000	This policy is in excess of the underlying General Liability, Worker's Compensation, and Automobile Liability policies

The Contractor shall provide proof of the above liability coverage to the Department upon the signing of this Contract and if requested to do so thereafter.

37. Litigation Responsibilities

The Contractor shall upon the request of the Department provide factual and expert testimony on the behalf of the Department in lawsuits involving this Contract. The Contractor agrees to consult regarding trial issues and to serve as trial witnesses on issues relating to this Contract. The hourly rates for such work shall be at the then current hourly rate for applicable staff. No work undertaken by the Contractor in preparation for legal action shall be disclosed without the prior consent of attorneys assigned to the case by the Department.

38. Liability

The Contractor shall indemnify, save and hold the Department, its agents and employees harmless from any and all claims or causes of action to the comparative extent caused by the willful, reckless or negligent acts or omissions in the performance of this Contract by Contractor or Contractor's agents or employees.

39. Ownership of Documents

All drawings, specifications, data, photos, and other work products, finished or unfinished, prepared by the Contractor in the performance of its obligations under this Contract shall be exclusive property of the Department and shall be remitted to the Department upon the expiration or termination of this Contract or upon request by the Department. Upon expiration of this Contract, provisions on final payment shall apply as set out in Section 49 of this Contract. Upon termination of this Contract, provisions on termination shall apply as set out in Sections 4 and 5 of this Contract. The Contractor may retain one copy for the Contractor's files. The Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of the Contractor's obligations under this Contract without the prior written consent of the Department. In the event that a document prepared under this Contract contains proprietary information, the Department shall take measures to ensure that the proprietary information is not released to the public, except as may be required by law, provided that the Contractor notifies the Department of the proprietary nature of the material. The Contractor may label all materials with a disclaimer which clearly describes the Department as the client for which the work was prepared and which limits the validity of the data to specified uses.

40. Force Majeure

Failure to meet time requirements established with respect to this Contract caused by acts of God, war, strike, riot or other catastrophe or by acts or omissions by the Department or by other reasons beyond the reasonable control of the Contractor, which are not due to negligence, or lack of diligence on the Contractor's part and which occur despite the Contractor's good faith efforts to meet the time requirements, shall not be considered to be noncompliance with the Contract if the Contractor promptly notifies the Department of the failure to meet the time requirements and the reasons therefore and takes all necessary steps to bring compliance as soon as practicable.

41. Violating Facilities

Pursuant to 40 CFR Part 33.1020, the Contractor shall comply with all applicable standards, orders or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and EPA regulations (40 CFR. Part 15) which prohibit the use under nonexempt Federal contracts, grants or loans, of facilities included on the EPA List of Violating Facilities.

42. Energy Efficiency

The Contractor shall comply with mandatory standards and policies on energy efficiency contained in the State's energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

43. Supersession

The Department and the Contractor agree that this and other appropriate clauses in 40 CFR 31 apply to that work performed under this Contract and that these clauses supersede any conflicting provisions of this Contract.

44. Price Reduction for Defective Cost or Pricing Data

(a) The Contractor and subcontractor, where appropriate, assure that the costs and pricing data submitted for evaluation with respect to negotiation of prices for negotiated contracts,

subcontracts and change orders is based on current, accurate and complete data supported by their books and records. If the Department ~~or EPA~~ determines that any price (including profit) negotiated in connection with this Contract, subcontracts or amendment there under was increased by any significant sums because the data provided was incomplete, inaccurate or not current at the time of submission, then such price or cost or profit shall be reduced accordingly and the Department shall modify the Contract in writing to reflect such action.

(b) Failure to agree on a reduction shall be subject to the remedies clause of this Contract.

45. Covenant Against Contingent Fees

The Contractor assures that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage brokerage or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this assurance, the Department shall have the right to annul this Contract without liability or, at its discretion, to deduct from the Contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

46. Gratuities

(a) If the Department finds after a notice and hearing that the Contractor or any of the Contractor's agents or representatives offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official or employee of the Department in an attempt to secure a contract or favorable treatment in awarding, amending or making any determinations relating to the performance of this Contract, the Department may, by written notice to the Contractor, terminate this Contract. The Department may also pursue other rights and remedies that the law or this Contract provides. However, the existence of the facts on which the Department bases such findings shall be in issue and may be reviewed in proceedings under the Remedies Clause of this Contract.

(b) In the event this Contract is terminated as provided in paragraph (a), the Department may pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor, and as a penalty, in addition to any other damages to which it may be entitled by law, be entitled to exemplary damages in an amount (as determined by the Department) which shall be not less than three nor more than ten times the costs the Contractor incurs in providing any such gratuities to any such officer or employee.

47. Waste removal and monitoring well maintenance

The Contractor shall be responsible for disposal of all non-hazardous wastes generated by the Contractor or Subcontractors resulting from services performed pursuant to this Contract including, but not limited to, drill cuttings, spent cleaning fluids, soil and groundwater samples, purge water, and protective clothing. All hazardous wastes shall be managed according to Division 14 of ADEM's Administrative Code. The Contractor shall recommend to the Department the means of disposal of hazardous wastes. The Contractor is not responsible for the long term maintenance of monitoring wells installed pursuant to this Contract. The Contractor shall be responsible, however, for proper abandonment of monitoring wells installed pursuant to this Contract where required by the Department. Proper abandonment procedures shall be addressed in a Work Order.

48. Immigration Affirmation

By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the state of Alabama. Furthermore, a contracting party found to be in

violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

49. Prohibition against Boycotting by Contractors

In compliance with Act 2016-312, the Contractor hereby certifies that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.

50. Suspension and Debarment.

The Contractor certifies to the best of its knowledge and belief that it and the principals are in compliance with the requirements of 2 CFR 180.335 and understands that falsely representing this certification by accepting the terms and conditions of this contract may result in the rejection of this proposal or termination of the award.

51. No Funds for Lobbying Cause.

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL," Disclosure Form to Report Lobbying," in accordance with its instructions.

52. Final Payment

Upon satisfactory completion of the work performed under this Contract, as a condition before final payment under this Contract or as a termination settlement under this Contract, the Contractor shall execute and deliver to the Department a release of all claims against the Department arising under, or by virtue of, this Contract. Final payment under this Contract or settlement upon termination of this Contract shall not constitute a waiver of the Department's claims against the Contractor.

53. Contractor Representatives

Contractor Representatives are authorized to sign contracts and accept Work Orders on behalf of the Contractor. Contractor Representatives are: _____

_____

By:_____

Program Manager

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

By:_____

Lance R. LeFleur
Director

_____

Governor of Alabama

_____
As to Legal Form

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on this the

_____ day of _____, 2020.