

CONTRACT

Contract No. PR-xxxx-xx
Between the
NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY
And
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
Regarding
Environmental Engineering Services

This Contract is made and entered into by and between the Nebraska Department of Environmental Quality (NDEQ) and _____ Consultants whose principle offices are located at _____, _____.

NOW, THEREFORE, the parties do hereby agree to the following terms and conditions:

I. CONTRACT TERM AND AWARD AMOUNT

The Term of this Contract shall commence on July 1, 2016 and shall expire on June 30, 2019. NDEQ shall have the right, at its sole option, to extend the term of the Contract for two separate, one-year periods, or any portion thereof. Option periods shall be effective and initiated by formal amendments to this Contract. All terms, conditions, and provisions of this original Contract shall remain the same and apply during the option periods. The total amount of this Contract, to be awarded during the Term of the Contract, shall not exceed twenty million dollars (\$20,000,000.00)

II. WORK DESCRIPTION

The Nebraska Department of Environmental Quality (NDEQ) uses State and Federal money to perform investigations and cleanup of petroleum releases from Underground Storage Tanks (UST's), Above Ground Storage Tanks (AST's), and other sources. Contractors will conduct site investigations, records review, report and plan preparation, remediation system design, construction, operation and maintenance, technical document reviews, and program development activities. The Contractor must also be prepared to provide emergency response services for releases of petroleum that threaten the safety of lives and property.

III. CONTRACT DOCUMENTS

This Contract shall incorporate the documents listed below. In the event of an inconsistency between provisions of the Contract documents, the inconsistency shall be resolved by giving precedence in the following order:

- A. Contract Award, including attachments;
- B. Contract Amendments with the latest dated amendment having the highest priority;
- C. Contractor's Proposal;
- D. Request for Proposal addenda or amendments, to include written questions and NDEQ answers, with the latest amendment having the highest priority;
- E. Request for Proposal and amendments; and
- F. Request for Proposal Form.

IV. FINANCIAL ADMINISTRATION

A. Type of Contract

This is a Time and Materials Contract. The approved Contractor Charge Rates are contained in Appendix A. Work will be assigned and administered utilizing a Task Assignment process as described in Section IV.B of this Contract. Payment and invoices will be administered as described in Section IV.C of this Contract.

B. Task Assignment Process

1. The Contractor shall perform work assigned under this Contract only as directed in a Task Assignment, and in accordance with the terms and conditions stipulated within this Contract. The Contractor shall provide services on an “as needed, if needed basis,” as determined by the NDEQ. NDEQ shall assume no responsibility and no liability for costs incurred by the Contractor for work performed prior to, without the issuance, or above the ceiling price of a Task Assignment. Upon issuance of a Task Assignment, the Contractor shall prepare and submit a work plan and cost proposal to the NDEQ Contract Administrator to perform work described in the Task Assignment. NDEQ is obligated to pay the costs of preparing the work plan and cost proposal. Upon receipt, the work plan shall become the property of NDEQ. NDEQ shall have the right to use or adopt ideas contained in the work plan. Selection or rejection of the work plan will not affect this right.
2. NDEQ may accept or reject the Contractor’s work plan and cost estimate as submitted or enter into negotiations with the Contractor. Upon agreement on the work plan and cost estimate, NDEQ will issue a Task Assignment with an associated ceiling price and schedule for completion of work. Upon receipt of a Task Assignment, the Contractor shall commence work as specified therein. NDEQ may consider to not issue additional Task Assignments to a Contractor based on the Contractor’s performance in meeting the approved ceiling price and schedule for completion of work in a Task Assignment.
3. In the event of a need for urgent action, NDEQ may require the Contractor to begin work immediately prior to finalization of a Task Assignment. Written authorization shall be issued by the NDEQ Contract Administrator.
4. In the event a Task Assignment issued during the Term of this Contract is not completed within that period, NDEQ and the Contractor may amend this Contract to extend the Term to allow completion of the Task Assignment. All terms, conditions, and provisions of the Contract shall remain the same and apply during any extension period.
5. If the Contractor determines that the work plan and cost estimate needs to be modified, the Contractor shall, prior to incurring costs exceeding the ceiling price, submit a written request to the NDEQ Contract Administrator specifying the needed modification, the reason for such modification, and any anticipated change in the ceiling price. Upon agreement on the requested modifications, NDEQ will issue a Task Assignment Amendment with an associated ceiling price. Upon receipt of a Task Assignment Amendment, the Contractor shall commence work as specified therein. If agreement is not made on the requested modifications, NDEQ is not obligated to pay for costs above the ceiling price.
6. If NDEQ determines that the Task Assignment needs to be modified, NDEQ shall issue a Task Assignment Amendment to the Contractor specifying the needed modification. The Contractor shall then revise the work plan and cost estimate accordingly. Upon agreement on the requested modifications, NDEQ will issue a Task Assignment Amendment with an associated ceiling price. Upon receipt of a Task Assignment Amendment, the Contractor shall commence work as specified therein.

C. Payment and Invoices

1. The Contractor shall perform the work called for in each Task Assignment issued under this Contract on a Time and Materials basis. The Contractor shall receive compensation, as specified herein, for services and work performed up to the ceiling price established for each Task Assignment. NDEQ shall not be obligated to pay the Contractor any amount incurred in excess of the ceiling price of each Task Assignment.
2. Labor costs will be computed by multiplying the applicable charge rate for the employee in question by the actual direct labor hours worked. The charge rate for each employee performing work under this Contract shall be based on the approved hourly rates contained in Appendix A, Contractor Charge Rates. Fractional parts of any hour shall be payable on a prorated basis.
3. The cost of subcontracts that are authorized pursuant to the requirements and restrictions contained in the RFP shall be reimbursable costs in accordance with Appendix A, Contractor Charge Rates.
4. Direct cost items and services are defined as those materials which enter directly into the end product or which are used or consumed directly in connection with the furnishing of such product. Allowable costs of direct materials, supplies, services, etc., shall be determined by NDEQ. The Contractor shall be reimbursed

for direct cost items and services purchased for the Contract, in accordance with Appendix A, Contractor Charge Rates.

5. The Contractor shall, to the extent of its ability, procure materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials, and take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. Credit shall be given to NDEQ for cash and trade discounts, rebates, allowances, credits, salvage, the value of resulting scrap when the amount of such scrap is appreciable, commissions, and other amounts which have accrued to the benefit of the Contractor, or would have so accrued except for the fault or neglect of the Contractor. Such benefits lost, through no fault or neglect on the part of the Contractor, or lost through fault of NDEQ, shall not be deducted from gross costs.
6. The Contractor shall be paid upon submission of an original and properly certified invoice with supporting documentation and billing summary chart. Each Task Assignment shall be accounted for separately and be billed under a separate invoice. Invoices for each Task Assignment shall be submitted no more than once each month and if monthly expenditures exceed \$500.00. If the monthly expenditures for each Task Assignment are less than \$500.00, the Contractor shall carry that month's bills over to the following month until the total invoice amount to be claimed reaches or exceeds \$500.00. To facilitate processing and payment, each invoice must reference the NDEQ Contract number and the Task Assignment number.
7. Invoices shall be supported by an itemized statement of costs claimed to have been incurred by the Contractor during the period covered by the invoice and shall include copies of vouchers, invoices, or other evidence of actual payment for other direct charges. If a personal car is used, a mileage log must be submitted. Meal receipts are not required as long as the meal costs are within the allowable federal per diem rate for the project location.
8. The State may withhold ten percent (10%) of the total ceiling price of each Task Assignment, as retainage. The entire retainage amount will be payable upon successful completion of the work described in the Task Assignment. Upon completion of the work described in the Task Assignment, the contractor will invoice the State for any outstanding work and for the retainage, up to the actual cost. The State may reject the final invoice by identifying the specific reasons for such rejection in accordance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §81-2401 through 81-2408). Otherwise, the work described in the Task Assignment will be deemed accepted and the State will release the final payment and retainage in accordance with the Contract payment terms. The Contractor shall identify the final invoice by affixing in a prominent place the words "FINAL INVOICE." The State will require the Contractor to accept payment by electronic means such as ACH deposit.
9. A Billing Summary chart may also be requested with each invoice with the following columns: (1) Task Description (with the project tasks listed as line items below that heading), (2) Agreed Upon Cost Per Task, (3) Amount Billed on Previous Invoices, by task, (4) Amount Billed on Current Invoice, by task, (5) Total Amount Billed to Date, by task, and (6) Percent of Task Completed (with approximate percentage of progress listed for each of the line-item tasks). At the bottom of the Budget Summary chart, the totals for each of the columns must be tallied and shown. The Retainage Amount of the total ceiling price of the Task Assignment shall be computed and shown by taking 10% of the total amount summed under the Agreed Upon Cost Per Task column.
10. Printed and/or attached to each invoice shall be the following certification which shall be manually signed by an authorized representative of the Contractor: "I certify that the above bill is correct; that the amounts claimed represent fair charges against the Nebraska Department of Environmental Quality; and that reimbursement has not and will not be received from any other source, public or private."
11. All requests for reimbursement of costs incurred by the Contractor shall be reviewed within ten (10) working days of their receipt by the NDEQ. If costs are deemed ineligible, the Contractor shall be notified by the NDEQ within ten (10) working days of the receipt of the request. Within thirty (30) working days after the receipt of a properly documented reimbursement request, the NDEQ shall transmit payment to the Contractor, the amount of the eligible cost. The NDEQ shall not be held responsible for delays in payment, due to causes beyond its control.
12. Payment to the Contractor shall be contingent upon required annual MBE/WBE reports and any other required reports being submitted to NDEQ.

V. CONTRACT SPECIFIC REQUIREMENTS

- A.** The Contractor agrees to provide environmental engineering services including site assessments, groundwater monitoring evaluations, remediation treatment system design, operation and maintenance, technical document reviews, and program development activities identified in Section IV of the Request for Proposal (RFP) and the Contractor’s Proposal.
- B.** The Contractor agrees and understands that this Contract shall not be construed as an exclusive arrangement and that other contracts for the same types of services may exist.
- C.** A registered Professional Geologist in the State of Nebraska shall be assigned to direct field activities and prepare or approve technical reports related to the practice of Geology. A licensed professional engineer in the State of Nebraska shall be assigned to review all engineering design documents, plans and specifications. The engineer or subordinates shall have experience with the design of remediation/treatment systems for soil and groundwater contamination.
- D.** The contractor shall comply with Title 178 – Environmental Health, Chapter 10 - Regulations Governing Licensure of Water Well and Pump Installation Contractors and Certification of Water Well Drilling and Pump Installation Supervisors, and Water Well Monitoring and Natural Resources Ground Water Technicians, Chapter 11 - Continuing Education and Fees, and Chapter 12 - Water Well Construction, Pump Installation and Water Well Decommissioning Standards.
- E.** The Contractor shall prepare and submit to NDEQ a Generic Health and Safety Plan (HSP) for its workers and subcontractors related to the performance of site assessment and remediation activities. The Contractor shall also prepare and submit to NDEQ a site-specific HSP appendix to the Generic HSP for each site assessment project, as part of the work plan prepared in accordance with the Task Assignment process described in Section IV.B. The contents of the Generic HSP and site-specific HSP appendix shall be in accordance with Standards of the Occupational Safety and Health Administration 29 CFR, Part 1910. The Contractor shall assume the sole responsibility of ensuring that its workers and subcontractors adhere to the plans. The Contractor shall require all personnel to read and sign an agreement indicating compliance with the plans prior to commencing work. The Contractor shall submit the Generic HSP along with its Standard Operating Procedure (SOPs) related to the collection of environmental samples to NDEQ as part of the signed generic QAPP. Site-specific HSP appendices shall be submitted with each work plan specific to a site. Contractors that have previously submitted a Generic HSP to NDEQ do not need to re-submit unless modifications to the Generic HSP have occurred.
- F.** The Contractor shall follow NDEQ’s Generic Quality Assurance Project Plan (QAPP) for the State-lead Petroleum Assessment and Remediation Contract activities, when performing site assessment work under this contract. The Contractor shall prepare and submit to NDEQ a site-specific QAPP addendum for each site assessment project, as part of the work plan prepared in accordance with the Task Assignment process described in Section IV.B., to ensure that all work is carried out in accordance with established and acceptable standards of practice and that the work executed is fully documented. The site-specific QAPP addendums shall be prepared in accordance with NDEQ’s Generic QAPP and EPA Requirements for Quality Assurance Project Plans, EPA QA/R-5. The Contractor must submit the site-specific QAPP addendums for NDEQ review and approval prior to beginning work at a site. The Contractor shall also submit all forms to be used that will document the work to be executed. During execution of the work, the Contractor’s personnel shall strictly adhere to the Generic QAPP and site-specific QAPP addendums.
- G.** The Contractor shall document all site assessment field activities on a daily basis and include copies of the field notes in submitted reports. The Contractor shall modify record keeping procedures as required by NDEQ. Photographic documentation is also required for site assessment activities and shall be included in submitted reports.
- H.** The Contractor shall make available its key personnel to NDEQ for meetings as deemed necessary by NDEQ to discuss or coordinate any aspect of the work or proposed work.
- I.** The Contractor shall repair or replace material damaged during site assessment activities and restore as near as possible the damaged environment to pre-assessment conditions. At a minimum, the Contractor shall perform the following:

 - 1. Grading of surface;
 - 2. Replacement of soil;
 - 3. Replacement of damaged concrete, asphalt or other surface cover;

4. Reseeding or replanting of vegetation, and;
 5. Repair of any damaged utilities
- J.** The Contractor shall provide security to the site to protect the public and the work effort. The security level shall be sufficient to reasonably protect personal property and persons from harm or damage.
- K.** The Contractor shall be responsible for the proper and legal disposal of all contaminated materials generated through the performance of work under a task assignment. Sample transportation and temporary storage shall be considered elements of disposal.
- L.** The Contractor shall meet the following time requirements related to performance of work under this Contract:
1. Completion of work specified in a Task Assignment by the Task Assignment completion date;
 2. Site assessment reports shall be submitted to NDEQ within sixty (60) days of completion of field work and within thirty (30) days of receiving data from fixed laboratories, or as mutually agreed on;
 3. Special Reports: All other reports or data shall be submitted as determined necessary by NDEQ and indicated in the Task Assignment.

VI. CONDITIONS

Federal Grant Conditions

The following grant conditions shall be complied with by all recipients of federal grant funds. The Contractor agrees to comply with all the following provisions, rules and regulations (copies can be obtained from NDEQ):

1. Office of Management and Budget Circulars A-102, A-133, A-87 and 40 CFR Parts 31, 32, and 35.
2. Procurement standards of 40 CFR 31.32(g).
3. Prohibitive lobbying 18 U.S.C. Section 1913, Section 607(a) of Public Law 96.74, or Section 319 of Public Law 101-121.
4. Federal Register, Vol. 53, No. 102, Debarment and Suspension under EPA, Assistance Loan and Benefit Programs.
5. Rules governing "Fair Share" of federal funds to Minority Business Enterprises (MBEs), Women-owned Business Enterprises (WBEs), Small Business Enterprises (SBEs), Small Disadvantaged Businesses (SDBs), and Small Business in Rural Areas (SBRAs). Affirmative steps outlined in 40 CFR 30.44, or 40 CFR 33.240, or 40 CFR 35.6580, or Section 129 of Public Law 100-590, whichever is applicable. ("Fair Share" Percentages: Supplies, 5% MBE, 12% WBE; Equipment, 6% MBE, 11% WBE; Services, 5% MBE, 11% WBE; and Construction, 6% MBE, 8% WBE.) The Contractor agrees to include in its bid specifications, and require all of its prime contractors to include in their bid specifications for subcontracts, a "Fair Share". The Contractor agrees to document the official grant files with all efforts taken to achieve the "Fair Share" and to report quarterly to NDEQ all "Fair Share" procurement efforts regardless of the size of the sub-contract.
6. Section 204 of the Demonstration Cities and Metropolitan Development Act of 1996 as amended (42 USC Section 3334).
7. Provisions of the American with Disabilities Act.
8. Hotel and Motel Fire Safety Act of 1990.
9. EPA Order 1000.25 regulating the use of recycled paper.

A. Amendments

This Contract may be amended in writing at any time by mutual agreement of the parties, except insofar as any proposed amendments are in any way contrary to applicable law or requirements of the EPA or NDEQ.

B. Forfeiture, Repayment and Delays in Disbursement of Funds

Violation of any conditions of this Contract by the Contractor or failure of the Contractor to complete and maintain the project in the manner described, including any amendments thereto which have been properly approved, shall result in the forfeiture of any funds not disbursed. In addition, if for any reason the project is not completed as described, including any amendments thereto that have been or are hereafter approved by the NDEQ, the NDEQ may recover from the Contractor any or all funds disbursed.

C. Remedies Not Exclusive

The use by either the Contractor or the NDEQ of any remedy specified herein for the enforcement of this Contract is not exclusive and shall not deprive the party from using such remedy, or limit the application of any other remedy provided by law.

D. Assignment

No assignment or transfer of this Contract or any part hereof, rights hereunder, or interest herein by the Contractor shall be valid unless and until it is approved by the NDEQ and made subject to such reasonable terms and conditions as the NDEQ may impose.

E. Waiver of Rights

The Contractor or NDEQ may from time to time waive any of their rights under this Contract. However, any waiver of rights with respect to a default of any condition of this Contract shall not be deemed to be a waiver with respect to any other default.

F. Applicable Rules and Regulations

Both parties shall abide by all applicable rules and regulations of the NDEQ, including any that may be adopted subsequent to the effective date of this Contract, except those that would invalidate or be inconsistent with the provisions of this Contract.

G. Inspection of Books, Records and Reports

The duly authorized representative of either party shall have the right to inspect and make copies of any books, records or reports of the other party pertaining to this Contract or related matters during regular office hours. Each party shall maintain and make available for such inspection accurate records of all its costs, disbursements and receipts with respect to its activities under this Contract. A single audit is required if \$500,000 or more is provided by federal funding in any one year period through this Contract. Copies of the single audit report shall be sent to NDEQ.

H. Independent Contractor

The Contractor is and shall perform as an independent contractor and as such shall have and maintain exclusive control over all of its employees, agents and operations. Neither the Contractor nor any person employed by the Contractor shall act, propose to act or be deemed the NDEQ's agent, representative or employee. The Contractor assumes full and exclusive responsibility for the payment of all premiums, contributions, payroll taxes and other taxes now or hereafter required by any law or regulation and agrees to comply with all applicable laws, regulations and orders relating to social security, unemployment compensation, OSHA, affirmative action, equal employment opportunity and other laws, regulations and orders of like nature. For any work hereunder subject to the Veterans Readjustment Assistance Act of 1974, or the Rehabilitation Act of 1973, the parties hereto shall comply with all provisions thereof, together with all applicable rules, regulations and orders of the Department of Labor, and the notices required pursuant to 41 CFR 60-1.4, 60-250.4 and 60-741.4 which are hereby incorporated by reference into this Contract

State Grant Conditions

The following grant conditions shall be complied with by all recipients of federal grant funds. The Contractor agrees to comply with all the following provisions, rules, and regulations (copies can be obtained from NDEQ):

A. Nondiscrimination

The Nebraska Fair Employment Practice Act prohibits contractors to the State of Nebraska and their subcontractors from discriminating against any employee, or applicant for employment in the performance of such contracts, with respect to hire, tenure, terms, conditions or privileges of employment because of race, color, religion, sex, disability or national origin. The Contractor's signature is a guarantee of compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of this Contract. The Contractor shall insert a similar provision in all subcontracts for services to be covered by any contract resulting from this Contract.

B. Publication Rights

All parties shall have publication and reproduction rights for all reports and materials, which are produced as a result of this Contract.

C. Termination

This Contract may be terminated in whole or in part, in writing, by either party in the event of failure by the other party to fulfill its obligations under this Contract, through no fault of the terminating party, provided that no termination may be affected unless the other party is given:

1. Not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate; and
2. An opportunity for consultation with the terminating party prior to termination.

D. Change of Ownership and Key Personnel

If any change in ownership or control of the company is anticipated during the term of the Contract, the Contractor shall provide notice to NDEQ the circumstances of such change and indicate when the change will likely occur. The department at its sole discretion will determine if the contract will be retained or terminated as a result of change of ownership.

The Contractor's RFP response identified the roles of specific professionals who will work on these projects. The names and titles of the team proposed for assignment to the State projects has been identified in full, with a description of the team leadership, interface and support functions, and reporting relationships. The primary work assigned to each person has also been identified. The contractor shall not reassign, remove or replace any identified personnel without the approval of NDEQ. If, for any reason, one or more of the aforementioned employees becomes unavailable for assignment of work under this Contract, the Contractor shall provide notice to NDEQ. The notice shall also identify the proposed replacement personnel. The Department shall have the right to approve or reject replacement personnel identified. The Department at its sole discretion will determine if the contract will be retained or terminated as a result of a change of personnel.

E. Hold Harmless

The Contractor agrees to hold NDEQ harmless for loss or damage sustained by any person as a direct result of the negligent or willful acts by the Contractor, its employees, subcontractors, or agents in the performance of this agreement including all associated costs of any defending action.

VII. CONTRACT ADMINISTRATORS

The Contract Administrators for each party to this Contract shall be as follows. The Contract Administrator may be changed upon written notification.

NDEQ Contract Administrator

Phil Hargis
1200 N St
Suite 400, The Atrium
Lincoln, NE 68509-8922

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Company Name: _____

Signature: _____

Signature: _____

Printed Name: Dennis Burling

Printed Name: _____

Title: Deputy Director of Administration

Title: _____

Date: _____

Date: _____

Company Address: _____

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Appendix A

PR-2011-02

Contractor Charge Rates

_____ Consultants

Labor

The Contractor shall perform the work called for in each Task Assignment issued under this contract on a time and materials basis. The Contractor shall receive compensation, as specified hereunder, for all services and work performed up to the ceiling price established for each Task Assignment. Labor costs shall be computed by multiplying employee's charge rate by the actual direct labor hours worked. The charge rate for each employee performing work under this contract shall be based on a totally burdened multiplier on direct salary. The burdened multiplier shall include profit, wages, overhead, general and administrative expenses, and the cost of bidding, awarding, and administering subcontracts. The Contractor shall not increase the wages of its employees for the purpose of increasing the employee charge rates. The burdened multiplier for the contract is X.XX. The charge rates shall not be varied by virtue of the Contractor having performed work on an overtime basis. Fractional parts of any hour shall be payable on a prorated basis. The burdened multiplier for travel time under this Contract shall be X.XX.

Subcontracts

The cost of subcontracts, which are authorized pursuant to the "Subcontracts" clause of Section IV/Services/Subcontracting, shall be reimbursable costs hereunder, provided such costs are consistent with the Direct Costs paragraph below. NDEQ shall reimburse Contractor at a rate of XXX% of the actual cost paid for subcontracts.

Direct Costs

Allowable costs of direct materials, supplies, services, etc., shall be determined by NDEQ. The Contractor shall be reimbursed for direct items and services purchased for the contract only when cash, checks, or other forms of actual payment have been made for such purchased items or services. NDEQ shall reimburse Contractor at a rate of XXX% of the actual cost paid for materials or services. Direct items and services are defined as those materials which enter directly into the end product or which are used or consumed directly in connection with the furnishing of such product.